



## **SBA Issues Rules for Paycheck Protection Program**

An analysis prepared by NAPEO, our industry trade association

The Small Business Administration (SBA) has tonight issued [interim final rules](#) (IFR) regarding the Paycheck Protection Program (PPP).

We are happy to report that the IFR provides additional flexibility regarding the documentation that will be needed to establish a company's eligibility for a PPP loan. Specifically, it states that the company "must submit such documentation as is necessary to establish eligibility such as payroll processor records, [or] payroll tax filings..." Moreover, the IFR goes on to state, "For borrowers that do not have any such documentation, the borrower must provide other supporting documentation, such as bank records, sufficient to demonstrate the qualifying payroll amount." Accordingly, PPP lenders should accept payroll reports provided by PEOs in support of their client company's PPP application.

Elsewhere in the IFR it also expressly states that "[e]ach lender's underwriting obligation under the PPP is limited to effectively (i) confirming receipt of the applicant's certifications, (ii) confirming receipt of information demonstrating the applicant was a going concern on or around February 15, 2020, and (iii) confirming the dollar amount of average monthly payroll costs for the preceding year "by reviewing the payroll documentation submitted with the borrower's application." In other words, PPP lenders' ability to request documentation outside of items strictly necessary to confirm payroll is very limited.

The IFR also provides that a lender may rely on a borrower's attestation and supporting documentation with respect to amounts for which the borrower seeks loan forgiveness. This should ease the process for client employers in seeking and obtaining loan forgiveness.

Two points: It is our strong recommendation that clients work with their existing banks. Secondly, we have prepared [a letter for your clients to use](#), which briefly describes the PEO relationship and assures the lender that the PEO will be providing the necessary wage information.

In addition, the SBA has further revised the actual PPP loan application. Specifically, the prior version of the PPP loan application required each applicant to attest that they had provided tax information to the lender for purposes of determining loan eligibility and amount and that the tax information provided was identical to that provided to the IRS.

Following additional outreach by us to the SBA and other allies, the loan application was revised to now read as follows:



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I acknowledge that the lender will confirm the eligible loan amount using required documents submitted. I understand, acknowledge and agree that the Lender can share any tax information that I provided with SBA's authorized representatives, including authorized representatives of the SBA Office of Inspector General, for the purpose of compliance with SBA Loan Program Requirements and all SBA reviews.

This language makes clear that lenders can confirm the eligible loan amount using the "required documents" as set forth in the IFR, such as payroll records, bank statements, etc., and that tax documents (such as Forms 941) are not required to be provided to lenders to qualify for the loans. And while the application does continue to reference "tax information," it says specifically "any," tax information, indicating that, in fact, no such "tax information" may be provided, but if "any tax information" is provided, the client employer is merely authorizing the SBA to share that information with SBA representatives and the Office of the Inspector General.

**Again, under these rules, 941s are not required to be provided to lenders in order to qualify for the loans.**

This change is an important one our clients and should help ensure that our client employers are well-positioned to secure needed PPP loans. As always, we will continue to monitor this fast-moving situation and provide updates to our members as appropriate.