



Special Board Meeting Agenda

April 30, 2020

5:30 p.m.

Encore Education Corporation
Phone: (760) 949-2036
Fax (760) 956-3338
www.encorehighschool.com

Sites:

www.encorehighschool.com

If you would like to speak during public comment, please email your full name, the item you would like to comment about, and your comment, to board@encoreedcorp.com. These comments will be read aloud during open session at the board meeting. The chance to add public comment through emails will close after the agenda is approved during the meeting.

Board Members:

Suzanne Cherry, Board President
Rob Gabler, Board Vice President
Kelly Ahmed, Board Secretary/Treasurer
Evelyn Rojas, Board Member
Paula Gharib, Board Member
Mari Miller, Board Member

The Order of Business may be changed without notice: Notice is hereby given that the order of consideration of matters on this agenda may be changed without prior notice.

Reasonable Limitations May be placed on public testimony: The Governing Board's presiding officer reserves the right to impose reasonable time limits on public testimony to ensure that the agenda is completed. For any person requiring a translator, this time will be doubled to account for translation time.

Reasonable Accommodation for any individual with a Disability: Pursuant to the Rehabilitation Act of 1973, any individual with a disability who requires reasonable accommodation to attend or to participate in this meeting of the Governing board may request assistance by contacting the EEC (760) 949-2036.

Public Documents relating to Open Session Agenda items are available for review by the public at the Reception Desk at Encore Education Corporation's Executive office or on the internet at www.encorehighschool.com. For more information concerning this agenda, please contact EEC (760) 949-2036.

Public comment: Individuals wishing to provide public comment at this Board meeting must send their comments in writing to board@encoreedcorp.com prior to or during the meeting. Comments submitted by email will be read aloud during the Board meeting for up to three minutes. If comments are in Spanish or another language, they will be translated to English and be given up to six minutes. The Board reserves the right to limit the overall time for public comment to a reasonable amount of time.

1.0 CALL TO ORDER. The meeting was called to order at ___ (time).

2.0 OPEN GENERAL SESSION

ROLL CALL	Present	Absent
Suzanne Cherry	___	___
Kelly Ahmed	___	___
Rob Gabler	___	___
Paula Gharib	___	___
Evelyn Rojas	___	___
Mari Miller	___	___

3.0 APPROVAL OF THE AGENDA

MOTION: _____	Second: _____	Vote: _____	Approved/Denied _____	
ROLL CALL	AYE	NAY	ABSTENTION	ABSENT
Suzanne Cherry	___	___	___	___
Kelly Ahmed	___	___	___	___
Rob Gabler	___	___	___	___
Paula Gharib	___	___	___	___
Evelyn Rojas	___	___	___	___
Mari Miller	___	___	___	___

4.0 INVITATION TO ADDRESS THE BOARD, OPEN SESSION ITEMS. This is the time and place for the general public to address the Board of Directors on any matter within jurisdiction of the Board. Comments should be limited to 3 minutes. Unless an item has been placed on the published agenda in accordance with the Brown Act, there shall be no action taken, nor should there be comments on, responses to, or discussion of a topic not on the agenda. The Board members may: (1) acknowledge receipt of information/report; (2) refer to staff with no direction as to action or priority; or (3) refer the matter to the next agenda.

5.0 CONSENT ITEMS. It is recommended that the board considers approving a number of agenda items as a consent list. These items are routine in nature and can be enacted in one motion without further discussion. Consent items may be called up by any member at the meeting for clarification, discussion, or change.

5.1 MEETING MINUTES - April 27, 2020

MOTION: _____	Second: _____	Vote: _____	Approved/Denied _____	
ROLL CALL	AYE	NAY	ABSTENTION	ABSENT
Suzanne Cherry	___	___	___	___
Kelly Ahmed	___	___	___	___
Rob Gabler	___	___	___	___
Paula Gharib	___	___	___	___
Evelyn Rojas	___	___	___	___
Mari Miller	___	___	___	___

6.0 ACTION ITEMS.

6.1 ACTION- Discussion of and vote on closure of Encore High School for the Arts (“Encore-Riverside”) effective June 30, 2020. The Board will discuss factors such as low projected attendance for 2020-21 school year, the COVID-19 pandemic, and concerns regarding insurance prior to voting on the potential closure of Encore-Riverside at the end of the school year.

MOTION: _____		Second: _____	Vote: _____	Approved/Denied _____
ROLL CALL	AYE	NAY	ABSTENTION	ABSENT
Suzanne Cherry	___	___	___	___
Kelly Ahmed	___	___	___	___
Rob Gabler	___	___	___	___
Paula Gharib	___	___	___	___
Evelyn Rojas	___	___	___	___
Mari Miller	___	___	___	___

6.2 ACTION- Approval of PPP Loan for COVID-19 relief.

MOTION: _____		Second: _____	Vote: _____	Approved/Denied _____
ROLL CALL	AYE	NAY	ABSTENTION	ABSENT
Suzanne Cherry	___	___	___	___
Kelly Ahmed	___	___	___	___
Rob Gabler	___	___	___	___
Paula Gharib	___	___	___	___
Evelyn Rojas	___	___	___	___
Mari Miller	___	___	___	___

7.0 BOARD COMMENTS / REPORTS. The Governing Board will take comments/updates from fellow board members, and the EEC Executive Administration for future agenda issues.

8.0 ADJOURNMENT

MOTION: _____		Second: _____	Vote: _____	Approved/Denied _____
ROLL CALL	AYE	NAY	ABSTENTION	ABSENT
Suzanne Cherry	___	___	___	___
Kelly Ahmed	___	___	___	___
Rob Gabler	___	___	___	___
Paula Gharib	___	___	___	___
Evelyn Rojas	___	___	___	___
Mari Miller	___	___	___	___

The meeting adjourned at _____ (time).

The next meeting will be held, **May 18, 2020** at 6:00 pm



Exhibit 5.1

April 30, 2020

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Rob Gabler, Board Vice President
Kelly Ahmed, Board Secretary/Treasurer
Evelyn Rojas, Board Member
Paula Gharib, Board Member
Mari Miller, Board Member

INFO:

Meeting Minutes- April 27, 2020



Special Board Meeting Agenda

April 27, 2020

6:45 p.m.

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1.0 CALL TO ORDER. The meeting was called to order at **6:45pm** (time).

2.0 OPEN GENERAL SESSION

ROLL CALL	Present	Absent
Suzanne Cherry	<u>X</u>	___
Kelly Ahmed	<u>X</u>	___
Rob Gabler	<u>X</u>	___
Paula Gharib	<u>X</u>	___
Evelyn Rojas	<u>X</u>	___
Mari Miller	<u>X</u>	___

3.0 APPROVAL OF THE AGENDA

MOTION: <u>Kelly Ahmed</u>		Second: <u>Paula Gharib</u>	Vote: <u>6/0</u>	Approve/Denied - <u>Approved</u>
ROLL CALL	AYE	NAY	ABSTENTION	ABSENT
Suzanne Cherry	<u>X</u>	___	___	___
Kelly Ahmed	<u>X</u>	___	___	___
Rob Gabler	<u>X</u>	___	___	___
Paula Gharib	<u>X</u>	___	___	___
Evelyn Rojas	<u>X</u>	___	___	___
Mari Miller	<u>X</u>	___	___	___

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5.0 ACTION ITEMS.

5.1 ACTION- REVIEW AND APPROVAL OF BOARD RESOLUTION FOR FORMATION OF A CORPORATION TO OPERATE THE RIVERSIDE CAMPUS AS EXPRESSION SCHOOL OF THE ARTS.

MOTION: <u>Paula Gharib</u>		Second: <u>Rob Gabler</u>	Vote: <u>6/0</u>	Approve/Denied - <u>Approved</u>
ROLL CALL	AYE	NAY	ABSTENTION	ABSENT
Suzanne Cherry	<u>X</u>	___	___	___
Kelly Ahmed	<u>X</u>	___	___	___
Rob Gabler	<u>X</u>	___	___	___
Paula Gharib	<u>X</u>	___	___	___
Evelyn Rojas	<u>X</u>	___	___	___
Mari Miller	<u>X</u>	___	___	___

5.2 REVIEW AND APPROVAL OF DRAFT AMENDED MOU BETWEEN ENCORE EDUCATION CORPORATION AND RIVERSIDE UNIFIED SCHOOL DISTRICT

MOTION: <u>Mari Miller</u>		Second: <u>Paula Gharib</u>	Vote: <u>6/0</u>	Approve/Denied - <u>Approved</u>
ROLL CALL	AYE	NAY	ABSTENTION	ABSENT
Suzanne Cherry	<u>X</u>	___	___	___
Kelly Ahmed	<u>X</u>	___	___	___
Rob Gabler	<u>X</u>	___	___	___
Paula Gharib	<u>X</u>	___	___	___
Evelyn Rojas	<u>X</u>	___	___	___
Mari Miller	<u>X</u>	___	___	___

5.3 REVIEW AND APPROVAL OF DRAFT CHARTER RENEWAL PETITION TO BE SUBMITTED TO RIVERSIDE UNIFIED SCHOOL DISTRICT BY APRIL 30, 2020.

MOTION: <u>Rob Gabler</u>	Second: <u>Evelyn Rojas</u>	Vote: <u>6/0</u>	Approve/Denied – <u>Approved</u>	
ROLL CALL	AYE	NAY	ABSTENTION	ABSENT
Suzanne Cherry	<u>X</u>	---	---	---
Kelly Ahmed	<u>X</u>	---	---	---
Rob Gabler	<u>X</u>	---	---	---
Paula Gharib	<u>X</u>	---	---	---
Evelyn Rojas	<u>X</u>	---	---	---
Mari Miller	<u>X</u>	---	---	---

5.4 ~~Action~~ APPROVAL OF RIVERSIDE CAMPUS NAME CHANGE – EXPRESSION SCHOOL OF THE ARTS – WITHDRAWN TO DUE PRIOR APPROVAL

5.5 REVIEW AND APPROVAL OF ARTICLES OF INCORPORATION FOR THE EXPRESSION SCHOOL OF THE ARTS CORPORATION AND EXPEDITED FILING OF THE SAME.

MOTION: <u>Evelyn Rojas</u>	Second: <u>Mari Miller</u>	Vote: <u>6/0</u>	Approve/Denied - <u>Approved</u>	
ROLL CALL	AYE	NAY	ABSTENTION	ABSENT
Suzanne Cherry	<u>X</u>	---	---	---
Kelly Ahmed	<u>X</u>	---	---	---
Rob Gabler	<u>X</u>	---	---	---
Paula Gharib	<u>X</u>	---	---	---
Evelyn Rojas	<u>X</u>	---	---	---
Mari Miller	<u>X</u>	---	---	---

6.0 BOARD COMMENTS / REPORTS. The Governing Board will take comments/updates from fellow board members, and the EEC Executive Administration for future agenda issues.

7.0 CLOSED SESSION. 6:57 pm

7.1 CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to paragraph (2) or (3) of subdivision (d) of Section 54956.9; (one case)

Return to Open Session at 7:54 pm

There was no action taken in closed session. The board will hold a Special Board Meeting on Thursday, April 30, 2020 at 5:30pm

8.0 ADJOURNMENT

MOTION: <u>Mari Miller</u>	Second: <u>Paula Gharib</u>	Vote: <u>6/0</u>	Approve/Denied - <u>Approved</u>	
ROLL CALL	AYE	NAY	ABSTENTION	ABSENT
Suzanne Cherry	<u>X</u>	---	---	---
Kelly Ahmed	<u>X</u>	---	---	---
Rob Gabler	<u>X</u>	---	---	---
Paula Gharib	<u>X</u>	---	---	---
Evelyn Rojas	<u>X</u>	---	---	---
Mari Miller	<u>X</u>	---	---	---

The meeting adjourned at **7:55pm** (time).

The next meeting will be held, **May 18, 2020** at 6:00 pm



Exhibit 6.1

April 30, 2020

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Evelyn Rojas, Board Member

Paula Gharib, Board Member

Mari Miller, Board Member

INFO:

Action Item- Discussion of and vote on closure of Encore High School for the Arts ("Encore-Riverside") effective June 30, 2020.



Exhibit 6.2

April 30, 2020

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Mari Miller, Board Member

INFO:

Action Item- Approval of PPP Loan for COVID-19 relief.

COVID-19 Coronavirus Impact - Financial & Related Guidance

The “Paycheck Protection Program”

UPDATED: APRIL 23, 2020

Background

- The Paycheck Protection Program, or “PPP”, was authorized as part of the \$2.3 trillion CARES Act federal stimulus bill in late March to help mitigate the fiscal impact of COVID-19.
- Eligible borrowers are small businesses with under 500 employees (including 501(c)3 nonprofit corporations).
- The PPP is structured as an SBA-backed bank loan, with a 2-year term and a 1.0% interest rate.
- The intent of the PPP is two-part:
 1. to provide relief and support for small businesses impacted by COVID-19, to support the ongoing operations of the business.
 2. To maintain pre-COVID staffing levels to the extent possible.
- If borrowers maintain pre-COVID staffing levels and meet other PPP requirements, the loan will be 100% forgiven, converting the PPP loan to a grant.

PPP Certifications

- California charter schools with 500 or fewer employees are eligible to receive the PPP as 501(c)3 nonprofit corporations.
- Schools should preserve (or restore) pre-COVID staffing levels, at least through the end of this fiscal year if not longer.
- PPP funds will be used to retain workers and maintain payroll (including benefits), make mortgage/lease payments for facilities, and pay utilities over the 8-week period following loan origination.
- **School is certifying that “current economic uncertainty makes this loan request necessary to support the ongoing operations of the applicant.”**

What is “Economic Uncertainty”?

- Most small businesses are facing immediate fiscal impact from COVID-19, and need the PPP to cover immediate payroll needs.
- Conversely, most California charter schools are not facing significant immediate fiscal impact from COVID-19, as state funding is likely to continue for the next two months, but are facing much greater subsequent fiscal uncertainty over the next 3-24 months as a result of COVID-19 economic impact causing statewide funding cuts and deferrals.
- Included as links and attachments to this presentations are statewide fiscal projections from multiple sources, including FCMAT, School Services, Charter Schools Development Center (CSDC) and others, documenting potential funding cuts of as much as 20% per year and the risk of a prolonged recession as bad as or even worse than the 2007-08 recession.
- **The intent for charter schools participating in the PPP should be to use the PPP funds to maintain pre-COVID staffing levels and ensure continuing operations over the next 3-24 months in the face of economic uncertainty due to COVID-19 fiscal impact.**

Should We Take The PPP?

- There is no black & white, yes/no answer about whether each charter school should accept PPP funds. Each organization should review its own set of facts and circumstances, and make an individual decision about accepting the PPP for their organization.
- To assist schools in making this decision, we have developed the following tool, showing some factors that can affect the PPP decision and how:

REASONS FOR ACCEPTING PPP

- Facing Greater Fiscal Uncertainty
- Tighter Annual Budgets
- Lower Cash Reserves
- Less Ability To Cut Staff Without Impacting Education
- **Significant Difficulty In Weathering Two Years of Deep Funding Cuts**

REASONS AGAINST ACCEPTING PPP

- Facing Little or No Fiscal Uncertainty
- Large Budget Surpluses
- Higher Cash Reserves
- Greater Ability To Cut Staff Without Impacting Education
- **Can Weather Two Years of Deep Funding Cuts Without Affecting Programs**

Steps To Move Forward

- Board adopts PPP Loan Resolution and ratifies all prior actions taken in regard to submitting the PPP application and obtaining initial SBA approval (if Board decides not to accept PPP funds, Board should instead adopt Resolution stating non-participation in PPP and directing staff to return any PPP funds)
- Board directs staff and DMS to take all actions necessary to track PPP expenditures for the 8-week period following loan origination and report these expenditures to the SBA lending bank to document expenditures for loan forgiveness as per PPP guidelines
- Over the next 24 months as more information and visibility on COVID fiscal impact becomes available, Board should include periodic discussion of PPP status and how PPP funds have been used to support School operations in the face of fiscal uncertainty

PPP Info / Fiscal Impact Links

- FCMAT Fiscal Alert:
<https://www.fcmat.org/PublicationsReports/FCMAT-Fiscal-Alert-Effective-Cash-Management-During-Uncertain-Times.pdf>
- School Services Fiscal Report:
<https://www.sscal.com/publications/fiscal-reports/its-time-batten-down-hatches>
- CSDC (Eric Premack) “Charter Currents”:
<https://www.chartercenter.org/resources/charter-currents/charter-currents-coronavirus-19-update-11-it-s-official-the-recession-is-here-and-dampening-tax-revenues>
- Small Business Administration Main PPP website:
<https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program>
- Small Business Administration PPP “Interim Final Rule”:
<https://www.sba.gov/sites/default/files/2020-04/PPP%20Interim%20Final%20Rule%200.pdf>

Effective Cash Management During Uncertain Times

Background

You have heard the phrase, “cash is king.” Private industry has long understood the importance of this concept. Governmental entities and especially California schools began to fully appreciate the importance of effective cash forecasting and management strategies during the Great Recession when state cash receipts fell dramatically, resulting in the deferral of cash payments to local educational agencies (LEAs). During the economic recovery of the past eight years, the focus on cash has understandably lost a bit of its luster. However, during periods of economic distress, cash is a “third rail” issue, and LEAs must enhance their planning and monitoring around cash issues weekly.

This Fiscal Alert addresses the impact of the ongoing COVID-19 pandemic on LEAs cash resources for the current and subsequent fiscal year. This alert is for all LEAs, including county superintendents serving in their financial oversight role. During these rapidly changing, unprecedented times, it is critical for LEAs to begin analyzing and planning for various scenarios that will adversely impact cash flow and avoid cash shortfalls.

During the Great Recession a significant decline in state tax revenues prompted numerous apportionment deferrals that caused LEA cash fluctuations and resulted in extensive local borrowing. Similar deferrals will be one of the first tools the state uses to stabilize its own cash flow and to control in what year Proposition 98 appropriations are attributed. Cash deferrals are more favorable to LEAs than actual reductions in state funding but require LEAs to maintain accurate cash flow projections and to develop multiple cash flow scenarios to deal with the impact of the deferrals when they occur.

The May Revision may address short-term state plans and determine whether cash deferrals are part of those plans, especially for June 2020. However, the May Revision, and likely the June adopted budget, will not provide definitive answers about budget and associated apportionment plans, necessitating the need for LEAs to wait until a revised state budget is adopted in August/September to receive a more complete funding plan for the 2020-21 fiscal year. Use the time now, before the May Revision, to analyze and plan for various current year and budget year cash scenarios for your LEA. Cash deferrals could come as soon as June 2020, with a deferral of the June principal apportionment to early July. Ensuring the availability of adequate cash reserves is a vital function for all LEAs.

FCMAT

Michael H. Fine
Chief Executive Officer

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Administrative Agent
Mary C. Barlow
Office of Kern County
Superintendent of Schools

Budget vs. Cash Flow

Budgets and cash flow projections are equally important but vary in their nature, data and analysis. The term “budget” means that funds are devoted to a purpose and/or entity, while “cash” means that funds are paid and readily available for use. Cash flow projections are built from budget data with apportionment schedules and payment terms on compensation and purchases taken into consideration. LEA budgets are a set of annual data with a focus on June 30. Cash flow is presented in shorter periods of time, typically monthly, but weekly and daily in some cases depending on circumstances. Budgets and cash flow are equalized with year-end accruals. Significant variances in cash flow actuals to projections generally serve as the first indicator of fiscal distress. Deficit cash positions determine the timing and amounts of the need for alternative liquidity (see below). The general fund, which is the focus of most LEA budgets, is only one of the district’s funds. Cash is transferable and may be commingled; therefore, LEAs need to project and analyze all funds.

Relevant Issues

Cash Flow Analysis and Planning

Following best practices under normal circumstances LEAs should update cash flow projections monthly and not only at periodic reporting periods. At a minimum, cash projections should be prepared extending through the current and into the subsequent fiscal year. In periods of economic distress and funding uncertainties, the frequency and depth of cash flow projections and analysis should be increased.

Using recently completed second interim cash flow projections as the starting point, update the projections with February and March actuals, and build in necessary changes in the forecast for April, May and June, considering the new realities affecting the LEA. Do not limit the analysis and monitoring to the general fund, expand to cover all funds; Reviewing cash positions across all funds is essential to proper analysis.

Considerations regarding cash receipts must look beyond state apportionments for LCFF. To a lesser degree of impact, cash flow analysis must include:

- Property taxes – April is a significant month for property tax receipts. Monitor and analyze apportionments from the county auditor/controller and treasurer/tax collector against the existing cash flow projections. Most California counties operate under the Teeter Plan for tax collection apportionments to local agencies, in which the tax levy is apportioned without regard to delinquencies, shielding local agencies from the impacts of late and nonpayments. County offices of education and districts should consult frequently with their county auditor/controller and treasurer/tax collector to understand cash flow expectations and adjust cash flow projections accordingly.
- Local cash receipts from a variety of sources are also adversely affected, including:
 - Parent-paid nutrition programs, childcare programs, and transportation programs.

- Facility leases and use of facilities fees
- Lottery sales are impacted from the stay-at-home orders. While new lottery revenue forecasts for third and fourth quarters have not been released, cash flows should assume a decreased third quarter payment (and fourth quarter accrual).

Regarding cash payments, most LEAs are experiencing unplanned, extraordinary expenditures including:

- The shift to distance learning including procuring technology and network access devices
- Maintaining salaries and in some cases increasing compensation for disaster service workers
- Accounting for interfund cash lending or deficit absorption in the general fund to cover cafeteria fund and childcare program deficits

LEAs should also consider delaying any nonessential payments and discretionary purchases to preserve available cash for critical operational functions. Savings should also be accounted for, including utilities, fuel, some contracted services, and other variables related to the physical operations of campuses (using summer months as an example).

If the cash flow projection for the LEA shows negative for any period (month, week, or day), corrective action must be taken to ensure sufficient cash resources are made available to eliminate this negative position. In some counties, county treasurers automatically provide safeguards by allowing short-term negative cash balances in one fund if they are offset by other LEA funds. You should clearly understand how your county treasurer functions when it comes to LEA cash balances. If corrective action is required, it may include the use of alternative liquidity resources and adjustments to expenditure plans, or a combination of both.

Alternative Liquidity

Alternative liquidity is a fancy term for the identification of available cash resources outside of the LEA's general fund. Therefore, expanding the cash projections and monitoring across all funds is essential. LEAs should immediately begin to prepare alternative liquidity schedules that show the projected cash flow and cash balance for each fund by month, and in some cases by week. Alternative liquidity analyses should also look beyond the district's funds on deposit in the county treasury and determine what short-term borrowing options exist for cash flow and working capital needs.

Regarding interfund borrowing, LEAs should analyze the various forms of alternative liquidity against the provisions of Education Code Section 42603. Borrowing from other funds to satisfy temporary shortfalls in operating cash is common practice among California school districts. With increasing uncertainty about the state apportionment plans, districts should refresh their knowledge on proper interfund borrowing. Now is the time to prepare temporary borrowing resolutions for your board of education to consider for approval. This authorization will enable LEA business officials to quickly access the cash resources in other funds by temporarily transferring those resources to where they are needed. A best practice is to adopt a resolution at the start of each fiscal year to authorize interfund borrowing throughout the year; but if such authorization does not currently exist through June 30, 2020, a resolution should be prepared now for the current year.

Education Code Section 42603 allows temporary borrowing between funds, stating the following:

The governing board of any school district may direct that moneys held in any fund or account may be temporarily transferred to another fund or account of the district for payment of obligations. The transfer shall be accounted for as temporary borrowing between funds or accounts and shall not be available for appropriation or be considered income to the borrowing fund or account. Amounts transferred shall be repaid either in the same fiscal year, or in the following fiscal year if the transfer takes place within the final 120 calendar days of a fiscal year. Borrowing shall occur only when the fund or account receiving the money will earn sufficient income, during the current fiscal year, to repay the amount transferred. No more than 75 percent of the maximum of moneys held in any fund or account during a current fiscal year may be transferred.

LEAs need to be mindful of the interfund borrowing repayment requirements specified in code. Failure to repay a lending fund in accordance with the statutory provisions can damage the trust of the district's stakeholders and should be identified as a deficiency in the district's annual audit report.

The Education Code does not limit interfund borrowing authority to particular funds and includes no specific exclusions for funds holding restricted dollars. Borrowing from bond proceeds is not advisable and, in some cases depending on bond official statement offering documents, may be inappropriate. This includes the potential loss of tax-exempt status for the bonds, the loss of the direct subsidy payments, possible disclosure violations, and other legal considerations that should be avoided. FCMAT recommends that districts utilize the other options available to mitigate a temporary cash shortage instead of using bond proceeds. This coincides with guidance outlined in a previous Fiscal Alert as well as in an advisory published by the California Debt and Investment Advisory Commission (CDIAC). Also see FCMAT Fiscal Alert Interfund Borrowing Using Bond Proceeds (https://www.fcmat.org/PublicationsReports/FCMAT_Fiscal_Alert-Interfund_Borrowing_Using_Bond_Procees-10-1-19.pdf). Ultimately the decision to borrow from bond proceeds should be made locally after consultation with the LEA's bond counsel.

As mentioned, alternative liquidity is not limited to interfund borrowing but includes other options available to districts in need of temporary cash as follows:

1. Tax and Revenue Anticipation Notes (TRANs)

Another common method to mitigate a cash shortfall is a TRANs, a short-term note that may be issued by the district or the county board of supervisors on its behalf and secured by anticipated tax revenues to be collected in the same fiscal year. TRANs funds, sometimes held in a "proceeds" account, may be used for any purpose, including current expenses, capital expenditures, repayment of indebtedness and working capital. Many districts access TRANs through pooled TRANs such as through their county office of

education or a related organization. There is usually a minimum of 90 days lead time to complete a TRANs transaction and pay cost of issuance fees for attorney, financial advisor, underwriter, and other professional assistance.

2. County Superintendent of Schools (Education Code sections 42621 and 42622)

A district may borrow from the county superintendent of schools with the approval of the county board of education. Funds loaned by the county superintendent are subject to availability of excess funds held by the county superintendent. Funds must be repaid within the same fiscal year. (EC 42621)

Similar provisions exist for county superintendent of schools to make a conditional apportionment to a district or charter school that may be paid back to the county superintendent in the subsequent fiscal year. (EC 42622)

3. County Treasurer

The California Constitution, Article XVI, Section 6, states the following:

...the treasurer of any city, county, or city and county shall have power and the duty to make such temporary transfers from the funds in custody as may be necessary to provide funds for meeting the obligations incurred for maintenance purposes by any city, county, city and county, district, or other political subdivision whose funds are in custody and are paid out solely through the treasurer's office. Such temporary transfer of funds to any political subdivision shall be made only upon resolution adopted by the governing body of the city, county, or city and county directing the treasurer of such city, county, or city and county to make such temporary transfer. Such temporary transfer of funds to any political subdivision shall not exceed 85 percent of the anticipated revenues accruing to such political subdivision, shall not be made prior to the first day of the fiscal year nor after the last Monday in April of the current fiscal year, and shall be replaced from the revenues accruing to such political subdivision before any other obligation of such political subdivision is met from such revenue.

To borrow from the county treasurer, the district must submit a resolution to the county board of supervisors requesting a loan. Following the board's approval, the county treasurer's office disburses to the district an amount not to exceed 85% of the amount of money accruing to the district during the current fiscal year. Repayment of the advance is made from tax revenues accruing to the district later in the fiscal year.

Cash Monitoring

Cash should always be monitored routinely and in-depth. The best practice is to monitor cash flow projections against actuals monthly. However, in rapidly changing environments, it is highly recommended and not unusual to expand that monitoring to real time for planned receipts and high dollar expenditures. In times of uncertainty, at a minimum, monitoring should occur weekly. The goal of the increased surveillance is to ensure you do not incur a shortfall or fall below a preestablished balance for working capital needs.

Reserves as components of the fund balance are not necessarily equivalent to cash holdings but may be backed by other assets. During uncertain times, it is essential to ensure that all reserves are supported by equivalent cash balances. During the previous period of economic distress it was not uncommon for LEAs to have adequate fund balance reserves, but as a result of both inter-year and intra-year cash deferrals from the state, only a small portion of the reserves were backed by cash balances at any given time. This limited the usefulness of the reserves for an emergency or unforeseen circumstance.

In most cases, the link between LEAs and county treasurers (who serve as the LEA's treasurer) is through the county superintendent. In a fiscally uncertain environment, it is essential to maintain regular communication and strengthen relationships with the county treasurer. County superintendents should ensure that property taxes, state apportionments, interest income, and other cash resources are recorded timely to school district accounts. In addition, timely reconciliations, including clearing accounts, are important in ensuring the accuracy of all incoming and outgoing cash. County superintendents serve a vital role for the LEAs regarding cash flow monitoring.

Conclusion

The accuracy and reasonableness of preparing cash flow projections through the subsequent fiscal year depends on both apportionment schedules and budget assumptions. At a minimum, each budget scenario prepared should have at least one cash flow projection (all funds). However, apportionment considerations can and will be adjusted without regard to budget assumptions and will necessitate more than one cash flow projection scenario for each budget scenario. For example, a budget scenario with a zero cost of living adjustment for 2020-21 will necessitate at least two cash flow scenarios; one with a June deferral to July and one without. The June deferral, if following past accounting practice, will not adversely affect revenues, only cash receipts.

Remember that an emergency appropriation for districts (e.g., a state takeover of an LEA's governance) is triggered by insufficient cash flow to meet payroll at a given time. The trigger is influenced by budget deficits but is based on cash flow projections. Despite the challenges with cash flow during the Great Recession, LEAs managed their cash flow adequately and avoided the need for state intervention.

Cash oversight is always an important LEA responsibility, and it is especially heightened during this difficult and uncertain economic time. We recommend LEAs dedicate sufficient resources to regular and accurate monitoring of cash availability to ensure critical functions can continue without interruption. Yes, cash is king. But also remember, cash shows no mercy if you run out.

[Click Here for COVID-19 Related Resources](#)

FISCAL REPORT

Department of Finance Provides Update to the Legislature



BY JAMIE METCALF

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posted April 11, 2020

On April 10, 2020, Keely Bosler, Director of the Department of Finance (DOF) issued an interim fiscal update to state policy makers on the impact of the COVID-19 pandemic on the State Budget and in anticipation of the May Revision.

Ms. Bosler noted that “the economic disruption from the pandemic is expected to result in a recession and have significant negative effects on state revenues. This impact is expected to be immediate, affecting fiscal year 2019–20, and will continue into fiscal year 2020–21 and additional years depending on the pace of recovery of local, state, and national economies.”

Ms. Bosler further indicated that the DOF is evaluating all budget year costs of currently authorized services within a workload budget and prioritizing and reducing expenditures. Despite the federal government reimbursing a majority of expenditures related to public health and safety, the state expects higher expenditures in Medi-Cal, California Work Opportunity and Responsibility to Kids (CalWORKs), and other health and human services programs. General Fund revenues are heavily reliant on the “big three” taxes of personal income, sales and use, and corporation—generating over two-thirds of General Fund revenue. Due to the delay in filing taxes and payments from April to July, revenues from the big three will be approximately 39% of receipts estimated in the Governor’s January Budget.

Additional federal funding of \$8.4 billion in May 2020 through the Coronavirus Aid, Relief, and Economic Security (CARES) Act; roughly \$7 billion for COVID-19-related expenditures in 2020; and other federal funding for schools, colleges, universities, childcare, etc., are critical in supporting the state's expenditures.

Although the state has maintained significant budget reserves and cash by paying off all of its budgetary borrowing or "wall of debt", paying down other liabilities, and maintaining a balanced budget in the last several years, the Governor has authorized the State Controller to establish the General Cash Revolving fund. The State Controller's Office (SCO) uses the General Cash Revolving fund as a precautionary measure to allow the state to issue Revenue Anticipation Warrants (RAW). However, the SCO doesn't anticipate issuing RAWs this year because of projected available cash and unused borrowable sources.

The Director concludes by stating, "The May Revision that the Administration will submit to the Legislature by the statutory deadline will reflect the extraordinary impacts of the COVID-19 pandemic on the state's fiscal condition. As this letter demonstrates, the state faces daunting challenges and difficult decisions in the weeks and months ahead. The Administration will continue to work with the Legislature during this unprecedented crisis to maintain a balanced budget that promotes opportunity and supports an equitable economic recovery."

We will continue to monitor the state's fiscal condition and keep you up to date, so stay tuned.

Editor's Note: CSDC is offering these Coronavirus-19 updates for public viewing, to members and non-members alike, and in front of our usual member's only "paywall" as a service to the larger charter school community. We hope nonmembers will consider [joining CSDC](#).

The Recession Is Here, State Financial Picture Deteriorates

Sacramento, CA—Massive job losses and an abrupt halt to economic activity make it clear that we have entered a recession, according to Legislative Analyst Gabriel Petek, speaking at last Thursday's surreal hearing of the new Senate Special Budget Subcommittee on COVID-19 Response. Just a handful of senators and staff sporting homemade surgical masks assembled in the Senate's largest, yet near-empty, hearing room. Petek and staff from Governor Newsom's Administration presented via video from what appeared to be their home offices. The hearing started approximately one hour late after heavy use apparently crashed the Senate's website.



Senator Holly Mitchell (D-Los Angeles) chairing budget subcommittee hearing on April 16.

While neither the Analyst nor Newsom's staff offered specific figures, they did offer the following key points:

- The State of California is "likely facing a potentially significant budget problem" and revenues will be "insufficient to cover existing service levels."
- The sudden nature of the economic downturn, combined with its late spring timing and the delay in the income tax filing deadline from April to July 15, will make it difficult for the state to estimate its revenues during this important budgeting season.

- Hope for a short, “V-shaped” recession where the sudden downturn is followed by a rapid recovery are fast fading.
- Past experiences with recessions indicate that the recession “will last several budget cycles” starting with the current 2019-20 fiscal year and perhaps lasting beyond 2020-21.
- A recession reflecting typical post-war economic cycles would cost the state an estimated \$50 million in revenues. Preliminary data on this new recession, however, indicates that the new recession could be significantly worse than a typical one, and perhaps on par with the Great Recession during 2008-10, costing the state \$35 billion in the current year and \$85 billion in subsequent years.
- The extent of the economic downturn is likely dependent on two major, unknown factors: (1) the path taken by the Coronavirus and (2) the federal government’s response.
- A more optimistic scenario would result in a “U-shaped” recession curve, where the virus dissipates over the summer and the economy recovers sharply starting late this year.
- A less optimistic scenario is where the virus initially dissipates, but roars back in the fall leading to a longer, “L-shaped” recession curve with a more delayed recovery.
- The federal response, principally including the CARES Act’s \$2.2 trillion stimulus, is helpful and further federal aid could prove critical to economic recovery. The federal role is critical because the federal government can both borrow and print money whereas the state is prohibited from doing so per the California Constitution.

As we’ve noted in our prior COVID-19 updates (see update [#10](#) and view our early [“fiscal prepping” webinar](#), if you haven’t already done so), school funding is in a very precarious situation in California, notwithstanding the state’s substantial budget reserves. Though it’s still much too early to know the specific impact that COVID-19 will have on school funding, the following points seem increasingly clear:

- Substantial funding cuts for public schools in California are a distinct possibility.
- The specific depth and timing of the cuts is unknown.
- Preliminary indications are that the new recession could be as bad as the Great Recession of 2008-09.
- The Great Recession resulted in K-12 education funding cuts in the range of 20 percent, along with substantial intra- and inter-year funding deferrals.
- Due to the lack of information about state revenues and the depth/severity of the new recession, the state likely will develop and adopt a “workload” budget in May and June for the 2020-21 fiscal year. It likely will substantially revise the budget after the start of the fiscal year, perhaps in August, after the deferred April 15 income taxes are due in July.
- Given this odd budgeting cycle, schools will likely need to adopt budgets this spring with very limited revenue data.

- Some of the impact of the recession may be mitigated by recent (see below) and future federal aid, though the amount and targeting of future aid remains unclear. Schools that do not participate in the federal Title I aid program should not count on any federal aid unless our advocacy efforts to broaden the targeting of this aid are successful.
- Other potential mitigation measures might include deferring planned pension (CalSTRS and CalPERS) contribution increases, reducing various mandates (we've suggested eliminating the Beginning Teacher Support and Assessment and other mandates, and others. To date, none of these has been enacted nor proposed in official legislative action.
- CSDC continues to strongly recommend that charter schools sharpen their cash flow and multi-year financial modeling capacity.
- Where CSDC previously suggested modeling relatively modest cuts assuming a "V-shaped" recession curve, CSDC now suggests modeling a "less pessimistic," zero COLA scenario and a "more pessimistic" (e.g., 10-20 percent cut) range for 2020-21, until the revenue picture clarifies.
- To avoid over-appropriating the constitutional "Prop 98" funding guarantee, CSDC presumes that the state will need to defer some state aid from the current, 2019-20 fiscal year into the 2020-21 year. As such, we presume the usual May and/or June Principal Apportionments could be subject to delay. If so, we hope any such deferrals would be short, into very early July.
- Based on our discussions with Newsom Administration and CDE staff, we presume that the Governor will soon issue an executive order suspending the upcoming local control accountability plan (LCAP) adoption mandate, instead shifting it to late this calendar year. Stay tuned for a forthcoming and more detailed update from CSDC on point.

Federal CARES Act Funding

The federal CARES Act allocated \$13 billion for an Elementary and Secondary School Emergency Relief Fund, part of a larger Education Stabilization Fund. We anticipate that these will provide an 83 percent boost to schools' [2019-20 federal Title I](#), Part A entitlements, thereby providing some significant initial relief to those schools. Direct-funded charter schools should receive these funds directly. Locally-funded charter schools, however, will need to work with their sponsoring district to ensure that they receive their fair share of these funds.

Based on our discussions with federal officials, CSDC anticipates and is advocating for the federal government to enact additional economic stimulus legislation. The specific level of funding, allocation formulas, etc., are unknown at this time. CSDC is advocating for all schools, including those that opt not to participate in the bureaucratic Title I program, should share in funding and that if the funds are to be targeted towards disadvantaged students, for using family income rather than Title I allocations as the basis for allocating the funds. Schools may want to suggest the same to their congressional representatives.

Charter Facilities Grant Funding Shortfall Growing

The California School Finance Authority (CSFA) issued a [memo](#) noting that they anticipate deeper deficits in funding for the Charter School Facilities Grant Program. This popular program reimburses up to 75 percent of two types of costs: (1) rent/lease costs and (2) other lease-related costs (i.e., specified remodeling, maintenance, improvements, etc. costs), not to exceed a per-ADA cap (\$1,184/ADA for 2019-20) for schools serving communities with high proportions of low-income students.

The fixed, \$136 million appropriation contained in the 2019-20 state budget was the only item in the state budget this year that was not augmented by the legally mandated cost-of-living adjustment (COLA). This funding is insufficient to fund the approximate \$161 million in estimated claims, according to CSFA. Law calls for first reimbursing the lease/rent cost pool, then using remaining funds to reimburse “other” costs. If funds fall short, reimbursements for the “other” costs pool are shorted on a pro-rata basis. If funds remain short after zeroing-out “other” costs reimbursement, rent/lease costs are pro-rated down to the level of available funding.

For the 2019-20 fiscal year, CSFA currently estimates that zero “other” costs will be reimbursed while an estimated 95 percent of rent/lease costs will be reimbursed. These figures are estimates and are subject to change. While CSDC anticipates that reimbursements will be a bit higher than CSFA’s current estimates given their slightly conservative methodology, the 95 percent figure is sound for conservative budgeting purposes.

For the upcoming, 2020-21 fiscal year, the Governor’s January budget proposal included a COLA (but not backfilling the prior year deficit). Whether the COLA will be funded seems increasingly suspect given deterioration in the state’s finances. As such, CSDC suggests assuming zero reimbursement of “other” costs and reimbursement of 90 percent of “other” costs for the 2020-21 fiscal year.

CDE/SBE Apply for Multi-Pronged Federal Waiver

The California Department of Education and State Board of Education are applying for a multi-part waiver to the U.S Secretary of Education. If granted, the waiver would:

- Flex the usual cap on schools’ ability to carrying-over federal Title I funding across fiscal years. Under normal rules, schools generally may only carry over up to 15 percent of their Title I funding, with exceptions allowed once every three years. The waiver would flex the once-in-three-years limitation.

- Flex needs assessment, content-area spending, and technology spending limitations of the Title IV program.
- Flex professional development spending limitations in the Title II program, presumably giving LEAs additional flexibility to spend the funds on training staff to provide distance learning.

Secretary DeVos appears to be granting such waivers liberally and we anticipate California's request will be reviewed and approved soon. CDE is hosting a webinar on April 23 to discuss the waiver—[click here](#) to register for it.

Posted: 04/20/2020

[Charter Schools Development Center](#)



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Rules and Regulations

Federal Register

Vol. 85, No. 73

Wednesday, April 15, 2020

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

[Docket No. SBA-2020-0015]

RIN 3245-AH34

Business Loan Program Temporary Changes; Paycheck Protection Program

AGENCY: U.S. Small Business Administration.

ACTION: Interim final rule.

SUMMARY: This interim final rule announces the implementation of sections 1102 and 1106 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act or the Act). Section 1102 of the Act temporarily adds a new product, titled the “Paycheck Protection Program,” to the U.S. Small Business Administration’s (SBA’s) 7(a) Loan Program. Section 1106 of the Act provides for forgiveness of up to the full principal amount of qualifying loans guaranteed under the Paycheck Protection Program. The Paycheck Protection Program and loan forgiveness are intended to provide economic relief to small businesses nationwide adversely impacted under the Coronavirus Disease 2019 (COVID-19) Emergency Declaration (COVID-19 Emergency Declaration) issued by President Trump on March 13, 2020. This interim final rule outlines the key provisions of SBA’s implementation of sections 1102 and 1106 of the Act in formal guidance and requests public comment.

DATES:

Effective date: This interim final rule is effective April 15, 2020.

Applicability date: This interim final rule applies to applications submitted under the Paycheck Protection Program through June 30, 2020, or until funds made available for this purpose are exhausted.

Comment Date: Comments must be received on or before May 15, 2020.

ADDRESSES: You may submit comments, identified by number SBA-2020-0015 through the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

SBA will post all comments on www.regulations.gov. If you wish to submit confidential business information (CBI) as defined in the User Notice at www.regulations.gov, please send an email to ppp-ifr@sba.gov. Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: Call Center Representative at 833-572-0502, or the local SBA Field Office; the list of offices can be found at <https://www.sba.gov/tools/local-assistance/districtoffices>.

SUPPLEMENTARY INFORMATION:

I. Background Information

On March 13, 2020, President Trump declared the ongoing Coronavirus Disease 2019 (COVID-19) pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, territories, and the District of Columbia. With the COVID-19 emergency, many small businesses nationwide are experiencing economic hardship as a direct result of the Federal, State, and local public health measures that are being taken to minimize the public’s exposure to the virus. These measures, some of which are government-mandated, are being implemented nationwide and include the closures of restaurants, bars, and gyms. In addition, based on the advice of public health officials, other measures, such as keeping a safe distance from others or even stay-at-home orders, are being implemented, resulting in a dramatic decrease in economic activity as the public avoids malls, retail stores, and other businesses.

On March 27, 2020, the President signed the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act or the Act) (Pub. L. 116-136) to provide emergency assistance and health care response for individuals, families, and businesses affected by the coronavirus pandemic. The Small Business Administration (SBA) received funding

and authority through the Act to modify existing loan programs and establish a new loan program to assist small businesses nationwide adversely impacted by the COVID-19 emergency.

Section 1102 of the Act temporarily permits SBA to guarantee 100 percent of 7(a) loans under a new program titled the “Paycheck Protection Program.” Section 1106 of the Act provides for forgiveness of up to the full principal amount of qualifying loans guaranteed under the Paycheck Protection Program. A more detailed discussion of sections 1102 and 1106 of the Act is found in section III below.

II. Comments and Immediate Effective Date

The intent of the Act is that SBA provide relief to America’s small businesses expeditiously. This intent, along with the dramatic decrease in economic activity nationwide, provides good cause for SBA to dispense with the 30-day delayed effective date provided in the Administrative Procedure Act. Specifically, small businesses need to be informed on how to apply for a loan and the terms of the loan under section 1102 of the Act as soon as possible because the last day to apply for and receive a loan is June 30, 2020. The immediate effective date of this interim final rule will benefit small businesses so that they can immediately apply for the loan with a full understanding of loan terms and conditions. This interim final rule is effective without advance notice and public comment because section 1114 of the Act authorizes SBA to issue regulations to implement Title 1 of the Act without regard to notice requirements. This rule is being issued to allow for immediate implementation of this program. Although this interim final rule is effective immediately, comments are solicited from interested members of the public on all aspects of the interim final rule, including section III below. These comments must be submitted on or before May 15, 2020. The SBA will consider these comments and the need for making any revisions as a result of these comments.

III. Temporary New Business Loan Program: Paycheck Protection Program

Overview

The CARES Act was enacted to provide immediate assistance to individuals, families, and businesses

affected by the COVID-19 emergency. Among the provisions contained in the CARES Act are provisions authorizing SBA to temporarily guarantee loans under a new 7(a) loan program titled the "Paycheck Protection Program." Loans guaranteed under the Paycheck Protection Program (PPP) will be 100 percent guaranteed by SBA, and the full principal amount of the loans may qualify for loan forgiveness. The following outlines the key provisions of the PPP.

1. General

SBA is authorized to guarantee loans under the PPP through June 30, 2020. Congress authorized a program level of \$349,000,000,000 to provide guaranteed loans under this new 7(a) program. The intent of the Act is that SBA provide relief to America's small businesses expeditiously, which is expressed in the Act by giving all lenders delegated authority and streamlining the requirements of the regular 7(a) loan program. For example, for loans made under the PPP, SBA will not require the lenders to comply with section 120.150 "What are SBA's lending criteria?." SBA will allow lenders to rely on certifications of the borrower in order to determine eligibility of the borrower and use of loan proceeds and to rely on specified documents provided by the borrower to determine qualifying loan amount and eligibility for loan forgiveness. Lenders must comply with the applicable lender obligations set forth in this interim final rule, but will be held harmless for borrowers' failure to comply with program criteria; remedies for borrower violations or fraud are separately addressed in this interim final rule. The program requirements of the PPP identified in this rule temporarily supersede any conflicting Loan Program Requirement (as defined in 13 CFR 120.10).

2. What do borrowers need to know and do?

a. Am I eligible?

You are eligible for a PPP loan if you have 500 or fewer employees whose principal place of residence is in the United States, or are a business that operates in a certain industry and meet the applicable SBA employee-based size standards for that industry, and:

i. You are:

A. A small business concern as defined in section 3 of the Small Business Act (15 U.S.C. 632), and subject to SBA's affiliation rules under 13 CFR 121.301(f) unless specifically waived in the Act; or

B. A tax-exempt nonprofit organization described in section

501(c)(3) of the Internal Revenue Code (IRC), a tax-exempt veterans organization described in section 501(c)(19) of the IRC, Tribal business concern described in section 31(b)(2)(C) of the Small Business Act, or any other business; and

ii. You were in operation on February 15, 2020 and either had employees for whom you paid salaries and payroll taxes or paid independent contractors, as reported on a Form 1099-MISC.

You are also eligible for a PPP loan if you are an individual who operates under a sole proprietorship or as an independent contractor or eligible self-employed individual, and you were in operation on February 15, 2020.

You must also submit such documentation as is necessary to establish eligibility such as payroll processor records, payroll tax filings, or Form 1099-MISC, or income and expenses from a sole proprietorship. 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.

SBA intends to promptly issue additional guidance with regard to the applicability of affiliation rules at 13 CFR 121.103 and 121.301 to PPP loans.

b. Could I be ineligible even if I meet the eligibility requirements in (a) above?

You are ineligible for a PPP loan if, for example:

i. You are engaged in any activity that is illegal under Federal, state, or local law;

ii. You are a household employer (individuals who employ household employees such as nannies or housekeepers);

iii. An owner of 20 percent or more of the equity of the applicant is incarcerated, on probation, on parole; presently subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction; or has been convicted of a felony within the last five years; or

iv. You, or any business owned or controlled by you or any of your owners, has ever obtained a direct or guaranteed loan from SBA or any other Federal agency that is currently delinquent or has defaulted within the last seven years and caused a loss to the government.

The Administrator, in consultation with the Secretary of the Treasury (the Secretary), determined that household employers are ineligible because they are not businesses. 13 CFR 120.100.

c. How do I determine if I am ineligible?

Businesses that are not eligible for PPP loans are identified in 13 CFR 120.110 and described further in SBA's Standard Operating Procedure (SOP) 50 10, Subpart B, Chapter 2, except that nonprofit organizations authorized under the Act are eligible. (SOP 50 10 can be found at <https://www.sba.gov/document/sop-50-10-5-lender-development-company-loan-programs>.)

d. I have determined that I am eligible. How much can I borrow?

Under the PPP, the maximum loan amount is the lesser of \$10 million or an amount that you will calculate using a payroll-based formula specified in the Act, as explained below.

e. How do I calculate the maximum amount I can borrow?

The following methodology, which is one of the methodologies contained in the Act, will be most useful for many applicants.

i. Step 1: Aggregate payroll costs (defined in detail below in f.) from the last twelve months for employees whose principal place of residence is the United States.

ii. Step 2: Subtract any compensation paid to an employee in excess of an annual salary of \$100,000 and/or any amounts paid to an independent contractor or sole proprietor in excess of \$100,000 per year.

iii. Step 3: Calculate average monthly payroll costs (divide the amount from Step 2 by 12).

iv. Step 4: Multiply the average monthly payroll costs from Step 3 by 2.5.

v. Step 5: Add the outstanding amount of an Economic Injury Disaster Loan (EIDL) made between January 31, 2020 and April 3, 2020, less the amount of any "advance" under an EIDL COVID-19 loan (because it does not have to be repaid).

The examples below illustrate this methodology.

i. Example 1—No employees make more than \$100,000

Annual payroll: \$120,000

Average monthly payroll: \$10,000

Multiply by 2.5 = \$25,000

Maximum loan amount is \$25,000

ii. Example 2—Some employees make more than \$100,000

Annual payroll: \$1,500,000

Subtract compensation amounts in excess of an annual salary of \$100,000: \$1,200,000

Average monthly qualifying payroll: \$100,000

Multiply by 2.5 = \$250,000

Maximum loan amount is \$250,000

iii. Example 3—No employees make more than \$100,000, outstanding EIDL loan of \$10,000.

Annual payroll: \$120,000

Average monthly payroll: \$10,000

Multiply by 2.5 = \$25,000

Add EIDL loan of \$10,000 = \$35,000

Maximum loan amount is \$35,000

iv. Example 4—Some employees make more than \$100,000, outstanding EIDL loan of \$10,000

Annual payroll: \$1,500,000

Subtract compensation amounts in excess of an annual salary of

\$100,000: \$1,200,000

Average monthly qualifying payroll:

\$100,000

Multiply by 2.5 = \$250,000

Add EIDL loan of \$10,000 = \$260,000

Maximum loan amount is \$260,000

f. What qualifies as “payroll costs?”

Payroll costs consist of compensation to employees (whose principal place of residence is the United States) in the form of salary, wages, commissions, or similar compensation; cash tips or the equivalent (based on employer records of past tips or, in the absence of such records, a reasonable, good-faith employer estimate of such tips); payment for vacation, parental, family, medical, or sick leave; allowance for separation or dismissal; payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums, and retirement; payment of state and local taxes assessed on compensation of employees; and for an independent contractor or sole proprietor, wages, commissions, income, or net earnings from self-employment, or similar compensation.

g. Is there anything that is expressly excluded from the definition of payroll costs?

Yes. The Act expressly excludes the following:

i. Any compensation of an employee whose principal place of residence is outside of the United States;

ii. The compensation of an individual employee in excess of an annual salary of \$100,000, prorated as necessary;

iii. Federal employment taxes imposed or withheld between February 15, 2020 and June 30, 2020, including the employee’s and employer’s share of FICA (Federal Insurance Contributions Act) and Railroad Retirement Act taxes, and income taxes required to be withheld from employees; and

iv. Qualified sick and family leave wages for which a credit is allowed under sections 7001 and 7003 of the Families First Coronavirus Response Act (Pub. L. 116–127).

h. Do independent contractors count as employees for purposes of PPP loan calculations?

No, independent contractors have the ability to apply for a PPP loan on their own so they do not count for purposes of a borrower’s PPP loan calculation.

i. What is the interest rate on a PPP loan?

The interest rate will be 100 basis points or one percent.

The Administrator, in consultation with the Secretary, determined that a one percent interest rate is appropriate. First, it provides low cost funds to borrowers to meet eligible payroll costs and other eligible expenses during this temporary period of economic dislocation caused by the coronavirus. Second, for lenders, the 100 basis points offers an attractive interest rate relative to the cost of funding for comparable maturities. For example, the FDIC’s weekly national average rate for a 24-month CD deposit product for the week of March 30, 2020 is 42 basis points for non-jumbo and 44 basis points for jumbo (<https://www.fdic.gov/regulations/resources/rates/>). Third, the interest rate is higher than the yield on Treasury securities of comparable maturity. For example, the yield on the Treasury two-year note is approximately 23 basis points. This higher yield combined with the fact that the loans are 100 percent guaranteed by the SBA and the fact that lenders will receive a substantial processing fee from the SBA provide ample inducement for lenders to participate in the PPP.

j. What will be the maturity date on a PPP loan?

The maturity is two years. While the Act provides that a loan will have a maximum maturity of up to ten years from the date the borrower applies for loan forgiveness (described below), the Administrator, in consultation with the Secretary, determined that a two year loan term is sufficient in light of the temporary economic dislocations caused by the coronavirus. Specifically, the considerable economic disruption caused by the coronavirus is expected to abate well before the two year maturity date such that borrowers will be able to re-commence business operations and pay off any outstanding balances on their PPP loans.

k. Can I apply for more than one PPP loan?

No. The Administrator, in consultation with the Secretary, determined that no eligible borrower may receive more than one PPP loan. This means that if you apply for a PPP

loan you should consider applying for the maximum amount. While the Act does not expressly provide that each eligible borrower may only receive one PPP loan, the Administrator has determined, in consultation with the Secretary, that because all PPP loans must be made on or before June 30, 2020, a one loan per borrower limitation is necessary to help ensure that as many eligible borrowers as possible may obtain a PPP loan. This limitation will also help advance Congress’ goal of keeping workers paid and employed across the United States.

l. Can I use e-signatures or e-consents if a borrower has multiple owners?

Yes, e-signature or e-consents can be used regardless of the number of owners.

m. Is the PPP “first-come, first-served?”

Yes.

n. When will I have to begin paying principal and interest on my PPP loan?

You will not have to make any payments for six months following the date of disbursement of the loan. However, interest will continue to accrue on PPP loans during this six-month deferment. The Act authorizes the Administrator to defer loan payments for up to one year. The Administrator determined, in consultation with the Secretary, that a six-month deferment period is appropriate in light of the modest interest rate (one percent) on PPP loans and the loan forgiveness provisions contained in the Act.

o. Can my PPP loan be forgiven in whole or in part?

Yes. The amount of loan forgiveness can be up to the full principal amount of the loan and any accrued interest. That is, the borrower will not be responsible for any loan payment if the borrower uses all of the loan proceeds for forgivable purposes described below and employee and compensation levels are maintained. The actual amount of loan forgiveness will depend, in part, on the total amount of payroll costs, payments of interest on mortgage obligations incurred before February 15, 2020, rent payments on leases dated before February 15, 2020, and utility payments under service agreements dated before February 15, 2020, over the eight-week period following the date of the loan. However, not more than 25 percent of the loan forgiveness amount may be attributable to non-payroll costs. While the Act provides that borrowers are eligible for forgiveness in an amount equal to the sum of payroll costs and

any payments of mortgage interest, rent, and utilities, the Administrator has determined that the non-payroll portion of the forgivable loan amount should be limited to effectuate the core purpose of the statute and ensure finite program resources are devoted primarily to payroll. The Administrator has determined in consultation with the Secretary that 75 percent is an appropriate percentage in light of the Act's overarching focus on keeping workers paid and employed. Further, the Administrator and the Secretary believe that applying this threshold to loan forgiveness is consistent with the structure of the Act, which provides a loan amount 75 percent of which is equivalent to eight weeks of payroll (8 weeks/2.5 months = 56 days/76 days = 74 percent rounded up to 75 percent). Limiting non-payroll costs to 25 percent of the forgiveness amount will align these elements of the program, and will also help to ensure that the finite appropriations available for PPP loan forgiveness are directed toward payroll protection. SBA will issue additional guidance on loan forgiveness.

p. Do independent contractors count as employees for purposes of PPP loan forgiveness?

No, independent contractors have the ability to apply for a PPP loan on their own so they do not count for purposes of a borrower's PPP loan forgiveness.

q. What forms do I need and how do I submit an application?

The applicant must submit SBA Form 2483 (Paycheck Protection Program Application Form) and payroll documentation, as described above. The lender must submit SBA Form 2484 (Paycheck Protection Program Lender's Application for 7(a) Loan Guaranty) electronically in accordance with program requirements and maintain the forms and supporting documentation in its files.

r. How can PPP loans be used?

The proceeds of a PPP loan are to be used for:

- i. payroll costs (as defined in the Act and in 2.f.);
- ii. costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums;
- iii. mortgage interest payments (but not mortgage prepayments or principal payments);
- iv. rent payments;
- v. utility payments;
- vi. interest payments on any other debt obligations that were incurred before February 15, 2020; and/or

vii. refinancing an SBA EIDL loan made between January 31, 2020 and April 3, 2020. If you received an SBA EIDL loan from January 31, 2020 through April 3, 2020, you can apply for a PPP loan. If your EIDL loan was not used for payroll costs, it does not affect your eligibility for a PPP loan. If your EIDL loan was used for payroll costs, your PPP loan must be used to refinance your EIDL loan. Proceeds from any advance up to \$10,000 on the EIDL loan will be deducted from the loan forgiveness amount on the PPP loan.

However, at least 75 percent of the PPP loan proceeds shall be used for payroll costs. For purposes of determining the percentage of use of proceeds for payroll costs, the amount of any EIDL refinanced will be included. For purposes of loan forgiveness, however, the borrower will have to document the proceeds used for payroll costs in order to determine the amount of forgiveness. While the Act provides that PPP loan proceeds may be used for the purposes listed above and for other allowable uses described in section 7(a) of the Small Business Act (15 U.S.C. 636(a)), the Administrator believes that finite appropriations and the structure of the Act warrant a requirement that borrowers use a substantial portion of the loan proceeds for payroll costs, consistent with Congress' overarching goal of keeping workers paid and employed. As with the similar limitation on the forgiveness amount explained earlier, the Administrator, in consultation with the Secretary, has determined that 75 percent is an appropriate percentage that will align this element of the program with the loan amount, 75 percent of which is equivalent to eight weeks of payroll. This limitation on use of the loan funds will help to ensure that the finite appropriations available for these loans are directed toward payroll protection, as each loan that is issued depletes the appropriation, regardless of whether portions of the loan are later forgiven.

s. What happens if PPP loan funds are misused?

If you use PPP funds for unauthorized purposes, SBA will direct you to repay those amounts. If you knowingly use the funds for unauthorized purposes, you will be subject to additional liability such as charges for fraud. If one of your shareholders, members, or partners uses PPP funds for unauthorized purposes, SBA will have recourse against the shareholder, member, or partner for the unauthorized use.

t. What certifications need to be made?

On the Paycheck Protection Program application, an authorized representative of the applicant must certify in good faith to all of the below:¹

i. The applicant was in operation on February 15, 2020 and had employees for whom it paid salaries and payroll taxes or paid independent contractors, as reported on a Form 1099-MISC.

ii. Current economic uncertainty makes this loan request necessary to support the ongoing operations of the applicant.

iii. The funds will be used to retain workers and maintain payroll or make mortgage interest payments, lease payments, and utility payments; I understand that if the funds are knowingly used for unauthorized purposes, the Federal Government may hold me legally liable such as for charges of fraud. As explained above, not more than 25 percent of loan proceeds may be used for non-payroll costs.

iv. Documentation verifying the number of full-time equivalent employees on payroll as well as the dollar amounts of payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities for the eight week period following this loan will be provided to the lender.

v. Loan forgiveness will be provided for the sum of documented payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities. As explained above, not more than 25 percent of the forgiven amount may be for non-payroll costs.

vi. During the period beginning on February 15, 2020 and ending on December 31, 2020, the applicant has not and will not receive another loan under this program.

vii. I further certify that the information provided in this application and the information provided in all supporting documents and forms is true and accurate in all material respects. I understand that knowingly making a false statement to obtain a guaranteed loan from SBA is punishable under the law, including under 18 U.S.C. 1001 and 3571 by imprisonment of not more than five years and/or a fine of up to \$250,000; under 15 U.S.C. 645 by imprisonment of not more than two years and/or a fine of not more than \$5,000; and, if submitted to a federally insured institution, under 18 U.S.C. 1014 by imprisonment of not more than thirty years and/or a fine of not more than \$1,000,000.

¹ A representative of the applicant can certify for the business as a whole if the representative is legally authorized to do so.

viii. I acknowledge that the lender will confirm the eligible loan amount using tax documents I have submitted. I affirm that these tax documents are identical to those submitted to the Internal Revenue Service. I also understand, acknowledge, and agree that the Lender can share the tax information 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.

3. What do lenders need to know and do?

a. Who is eligible to make PPP loans?

i. All SBA 7(a) lenders are automatically approved to make PPP loans on a delegated basis.

ii. The Act provides that the authority to make PPP loans can be extended to additional lenders determined by the Administrator and the Secretary to have the necessary qualifications to process, close, disburse, and service loans made with the SBA guarantee. Since SBA is authorized to make PPP loans up to \$349 billion by June 30, 2020, the Administrator and the Secretary have jointly determined that authorizing additional lenders is necessary to achieve the purpose of allowing as many eligible borrowers as possible to receive loans by the June 30, 2020 deadline.

iii. The following types of lenders have been determined to meet the criteria and are eligible to make PPP loans unless they currently are designated in Troubled Condition by their primary Federal regulator or are subject to a formal enforcement action with their primary Federal regulator that addresses unsafe or unsound lending practices:

I. Any federally insured depository institution or any federally insured credit union;

II. Any Farm Credit System institution (other than the Federal Agricultural Mortgage Corporation) as defined in 12 U.S.C. 2002(a) that applies the requirements under the Bank Secrecy Act and its implementing regulations (collectively, BSA) as a federally regulated financial institution, or functionally equivalent requirements that are not altered by this rule; and

III. Any depository or non-depository financing provider that originates, maintains, and services business loans or other commercial financial receivables and participation interests; has a formalized compliance program; applies the requirements under the BSA as a federally regulated financial

institution, or the BSA requirements of an equivalent federally regulated financial institution; has been operating since at least February 15, 2019, and has originated, maintained, and serviced more than \$50 million in business loans or other commercial financial receivables during a consecutive 12 month period in the past 36 months, or is a service provider to any insured depository institution that has a contract to support such institution's lending activities in accordance with 12 U.S.C. 1867(c) and is in good standing with the appropriate Federal banking agency.

iv. Qualified institutions described in 3.a.iii.I and II. will be automatically qualified under delegated authority by the SBA upon transmission of CARES Act Section 1102 Lender Agreement (SBA Form 3506) unless they currently are designated in Troubled Condition by their primary Federal regulator or are subject to a formal enforcement action by their primary Federal regulator that addresses unsafe or unsound lending practices.

b. What do lenders have to do in terms of loan underwriting?

Each lender shall:

i. Confirm receipt of borrower certifications contained in Paycheck Protection Program Application form issued by the Administration;

ii. Confirm receipt of information demonstrating that a borrower had employees for whom the borrower paid salaries and payroll taxes on or around February 15, 2020;

iii. Confirm the dollar amount of average monthly payroll costs for the preceding calendar year by reviewing the payroll documentation submitted with the borrower's application; and

iv. Follow applicable BSA requirements:

I. Federally insured depository institutions and federally insured credit unions should continue to follow their existing BSA protocols when making PPP loans to either new or existing customers who are eligible borrowers under the PPP. PPP loans for existing customers will not require re-verification under applicable BSA requirements, unless otherwise indicated by the institution's risk-based approach to BSA compliance.

II. Entities that are not presently subject to the requirements of the BSA, should, prior to engaging in PPP lending activities, including making PPP loans to either new or existing customers who are eligible borrowers under the PPP, establish an anti-money laundering (AML) compliance program equivalent to that of a comparable federally regulated institution. Depending upon

the comparable federally regulated institution, such a program may include a customer identification program (CIP), which includes identifying and verifying their PPP borrowers' identities (including *e.g.*, date of birth, address, and taxpayer identification number), and, if that PPP borrower is a company, following any applicable beneficial ownership information collection requirements. Alternatively, if available, entities may rely on the CIP of a federally insured depository institution or federally insured credit union with an established CIP as part of its AML program. In either instance, entities should also understand the nature and purpose of their PPP customer relationships to develop customer risk profiles. Such entities will also generally have to identify and report certain suspicious activity to the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN). If such entities have questions with regard to meeting these requirements, they should contact the FinCEN Regulatory Support Section at FRC@fincen.gov. In addition, FinCEN has created a COVID-19-specific contact channel, via a specific drop-down category, for entities to communicate to FinCEN COVID-19-related concerns while adhering to their BSA obligations. Entities that wish to communicate such COVID-19-related concerns to FinCEN should go to www.FinCEN.gov, click on "Need Assistance," and select "COVID19" in the subject drop-down list.

Each lender's underwriting obligation under the PPP is limited to the items above and reviewing the "Paycheck Protection Application Form." Borrowers must submit such documentation as is necessary to establish eligibility such as payroll processor records, payroll tax filings, or Form 1099-MISC, or income and expenses from a sole proprietorship. 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.

c. Can lenders rely on borrower documentation for loan forgiveness?

Yes. The lender does not need to conduct any verification if the borrower submits documentation supporting its request for loan forgiveness and attests that it has accurately verified the payments for eligible costs. The Administrator will hold harmless any lender that relies on such borrower documents and attestation from a borrower. The Administrator, in

consultation with the Secretary, has determined that lender reliance on a borrower's required documents and attestation is necessary and appropriate in light of section 1106(h) of the Act, which prohibits the Administrator from taking an enforcement action or imposing penalties if the lender has received a borrower attestation.

d. What fees will lenders be paid?

SBA will pay lenders fees for processing PPP loans in the following amounts:

- i. Five (5) percent for loans of not more than \$350,000;
- ii. Three (3) percent for loans of more than \$350,000 and less than \$2,000,000; and
- iii. One (1) percent for loans of at least \$2,000,000.

e. Do lenders have to apply the "credit elsewhere test"?

No. When evaluating an applicant's eligibility lenders will not be required to apply the "credit elsewhere test" (as set forth in section 7(a)(1)(A) of the Small Business Act (15 U.S.C. 636) and SBA regulations at 13 CFR 120.101)).

4. What do both borrowers and lenders need to know and do?

a. What are the loan terms and conditions?

Loans will be guaranteed under the PPP under the same terms, conditions and processes as other 7(a) loans, with certain changes including but not limited to:

- i. The guarantee percentage is 100 percent.
- ii. No collateral will be required.
- iii. No personal guarantees will be required.
- iv. The interest rate will be 100 basis points or one percent.
- v. All loans will be processed by all lenders under delegated authority and lenders will be permitted to rely on certifications of the borrower in order to determine eligibility of the borrower and the use of loan proceeds.

b. Are there any fee waivers?

- i. There will be no up-front guarantee fee payable to SBA by the Borrower;
- ii. There will be no lender's annual service fee ("on-going guaranty fee") payable to SBA;
- iii. There will be no subsidy recoupment fee; and
- iv. There will be no fee payable to SBA for any guarantee sold into the secondary market.

c. Who pays the fee to an agent who assists a borrower?

Agent fees will be paid by the lender out of the fees the lender receives from

SBA. Agents may not collect fees from the borrower or be paid out of the PPP loan proceeds. The total amount that an agent may collect from the lender for assistance in preparing an application for a PPP loan (including referral to the lender) may not exceed:

- i. One (1) percent for loans of not more than \$350,000;
- ii. 0.50 percent for loans of more than \$350,000 and less than \$2 million; and
- iii. 0.25 percent for loans of at least \$2 million.

The Act authorizes the Administrator to establish limits on agent fees. The Administrator, in consultation with the Secretary, determined that the agent fee limits set forth above are reasonable based upon the application requirements and the fees that lenders receive for making PPP loans.

d. Can PPP loans be sold into the secondary market?

Yes. A PPP loan may be sold on the secondary market after the loan is fully disbursed. A PPP loan may be sold on the secondary market at a premium or a discount to par value. SBA will issue guidance regarding any advance purchase for loans sold in the secondary market.

e. Can SBA purchase some or all of the loan in advance?

Yes. A lender may request that the SBA purchase the expected forgiveness amount of a PPP loan or pool of PPP loans at the end of week seven of the covered period. The expected forgiveness amount is the amount of loan principal the lender reasonably expects the borrower to expend on payroll costs, covered mortgage interest, covered rent, and covered utility payments during the eight week period after loan disbursement. At least 75 percent of the expected forgiveness amount shall be for payroll costs, as provided in 2.o. To submit a PPP loan or pool of PPP loans for advance purchase, a lender shall submit a report requesting advance purchase with the expected forgiveness amount to the SBA. The report shall include: the Paycheck Protection Program Application Form (SBA Form 2483) and any supporting documentation submitted with such application; the Paycheck Protection Program Lender's Application for 7(a) Loan Guaranty (SBA Form 2484) and any supporting documentation; a detailed narrative explaining the assumptions used in determining the expected forgiveness amount, the basis for those assumptions, alternative assumptions considered, and why alternative assumptions were not used; any information obtained from the

borrower since the loan was disbursed that the lender used to determine the expected forgiveness amount, which should include the same documentation required to apply for loan forgiveness such as payroll tax filings, cancelled checks, and other payment documentation; and any additional information the Administrator may require to determine whether the expected forgiveness amount is reasonable. The Administrator, in consultation with the Secretary, determined that seven weeks is the minimum period of time necessary for a lender to reasonably determine the expected forgiveness amount for a PPP loan or pool of PPP loans, since the PPP is a new program and the likelihood that many borrowers will be new clients of the lender. The expected forgiveness amount may not exceed the total amount of principal on the PPP loan or pool of loans. The Administrator will purchase the expected forgiveness amount of the PPP loan(s) within 15 days of the date on which the Administrator receives a complete report that demonstrates that the expected forgiveness amount is indeed reasonable.

5. Additional Information

All loans guaranteed by the SBA pursuant to the CARES Act will be made consistent with constitutional, statutory, and regulatory protections for religious liberty, including the First Amendment to the Constitution, the Religious Freedom Restoration Act, 42 U.S.C. 2000bb-1 and bb-3, and SBA regulation at 13 CFR 113.3-1h, which provides that nothing in SBA nondiscrimination regulations shall apply to a religious corporation, association, educational institution or society with respect to the membership or the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution or society of its religious activities. SBA intends to promptly issue additional guidance with regard to religious liberty protections under this program.

SBA may provide further guidance, if needed, through SBA notices and a program guide which will be posted on SBA's website at www.sba.gov.

Questions on the Paycheck Protection Program 7(a) Loans may be directed to the Lender Relations Specialist in the local SBA Field Office. The local SBA Field Office may be found at <https://www.sba.gov/tools/local-assistance/districtoffices>.

Compliance With Executive Orders 12866, 12988, 13132, and 13771, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

E.O. 12866 and E.O. 13563

This interim final rule is economically significant for the purposes of Executive Orders 12866 and 13563. SBA, however, is proceeding under the emergency provision at Executive Order 12866 Section 6(a)(3)(D) based on the need to move expeditiously to mitigate the current economic conditions arising from the COVID–19 emergency. This rule’s designation under Executive Order 13771 will be informed by public comment.

This rule is necessary to implement Sections 1102 and 1106 of the CARES Act in order to provide economic relief to small businesses nationwide adversely impacted under the COVID–19 Emergency Declaration. We anticipate that this rule will result in substantial benefits to small businesses, their employees, and the communities they serve. However, we lack data to estimate the effects of this rule.

Executive Order 12988

SBA has drafted this rule, to the extent practicable, in accordance with the standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988, to minimize litigation, eliminate ambiguity, and reduce burden. The rule has no preemptive or retroactive effect.

Executive Order 13132

SBA has determined that this rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various layers of government. Therefore, SBA has determined that this rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act, 44 U.S.C. Chapter 35

SBA has determined that this rule will impose recordkeeping or reporting requirements under the Paperwork Reduction Act (“PRA”). SBA has obtained emergency approval under OMB Control Number 3245–0407 for the information collection (IC) required to implement the program described above. This IC consists of Form 2483 (Paycheck Protection Program Application Form), SBA Form 2484 (Paycheck Protection Program Lender’s Application for 7(a) Loan Guaranty), and SBA Form 3506 (CARES Act

Section 1102 Lender Agreement), and SBA Form 3507 (CARES Act Section 1102 Lender Agreement—Non-Bank and Non-Insured Depository Institution Lender). The collection is approved for use until September 30, 2020.

Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a proposed rule, or a final rule pursuant to section 553(b) of the APA or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the **Federal Register**. 5 U.S.C. 603, 604. Specifically, the RFA normally requires agencies to describe the impact of a rulemaking on small entities by providing a regulatory impact analysis. Such analysis must address the consideration of regulatory options that would lessen the economic effect of the rule on small entities. The RFA defines a “small entity” as (1) a proprietary firm meeting the size standards of the Small Business Administration (SBA); (2) a nonprofit organization that is not dominant in its field; or (3) a small government jurisdiction with a population of less than 50,000. 5 U.S.C. 601(3)–(6). Except for such small government jurisdictions, neither State nor local governments are “small entities.” Similarly, for purposes of the RFA, individual persons are not small entities.

The requirement to conduct a regulatory impact analysis does not apply if the head of the agency “certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” 5 U.S.C. 605(b). The agency must, however, publish the certification in the **Federal Register** at the time of publication of the rule, “along with a statement providing the factual basis for such certification.” If the agency head has not waived the requirements for a regulatory flexibility analysis in accordance with the RFA’s waiver provision, and no other RFA exception applies, the agency must prepare the regulatory flexibility analysis and publish it in the **Federal Register** at the time of promulgation or, if the rule is promulgated in response to an emergency that makes timely compliance impracticable, within 180 days of publication of the final rule. 5 U.S.C. 604(a), 608(b).

Rules that are exempt from notice and comment are also exempt from the RFA requirements, including conducting a regulatory flexibility analysis, when among other things the agency for good cause finds that notice and public procedure are impracticable,

unnecessary, or contrary to the public interest. Small Business Administration’s Office of Advocacy guide: *How to Comply with the Regulatory Flexibility Act, Ch.1, p.9*. Accordingly, SBA is not required to conduct a regulatory flexibility analysis.

Authority: 15 U.S.C. 636(a)(36); Coronavirus Aid, Relief, and Economic Security Act, Public Law 116–136, Section 1114.

Jovita Carranza,
Administrator.

[FR Doc. 2020–07672 Filed 4–10–20; 4:15 pm]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

[Docket No. SBA–2020–0019]

RIN 3245–AH35

Business Loan Program Temporary Changes; Paycheck Protection Program

AGENCY: U.S. Small Business Administration.

ACTION: Interim final rule.

SUMMARY: Elsewhere in this issue of the **Federal Register**, the U.S. Small Business Administration (SBA) is publishing an interim final rule (the Initial Rule) announcing the implementation of sections 1102 and 1106 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act or the Act). Section 1102 of the Act temporarily adds a new program, titled the “Paycheck Protection Program,” to the SBA’s 7(a) Loan Program. Section 1106 of the Act provides for forgiveness of up to the full principal amount of qualifying loans guaranteed under the Paycheck Protection Program. The Paycheck Protection Program and loan forgiveness are intended to provide economic relief to small businesses nationwide adversely impacted by the Coronavirus Disease 2019 (COVID–19). This interim final rule supplements the Initial Rule with additional guidance regarding the application of certain affiliate rules applicable to SBA’s implementation of sections 1102 and 1106 of the Act and requests public comment.

DATES:

Effective date: This interim final rule is effective April 15, 2020.

Applicability date: This interim final rule applies to applications submitted under the Paycheck Protection Program through June 30, 2020, or until funds made available for this purpose are exhausted.