
April 2, 2020

The Honorable Steven Mnuchin
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable Jovita Carranza
Administrator
Small Business Administration
409 3rd Street, SW
Washington, DC 20416

Re: Clarifications of the CARES Act for the travel, lodging, and franchising industries

Dear Secretary Mnuchin and Administrator Carranza:

On behalf of the United States travel, lodging, and franchising industries, we are writing to thank you for your direct response to help America's small businesses through this economic emergency and to share with you the questions, concerns, and ideas of employers and employees in our sectors.

We are grateful for your swift action on the Coronavirus Aid, Relief, and Economic Security (CARES) Act and the subsequent guidance to help implement this new law. Our members' businesses are on the frontlines of this crisis, as the necessary social distancing requirements and travel bans have caused an historic disruption in operations. Each day that passes without relief, businesses are forced to close and employees are losing their jobs. The funding available under the CARES Act provides a critical lifeline for these companies in the short run; however, we are concerned that the solutions in the legislation will not be sufficient to protect our industries for more than a few weeks. Because the trajectory of the virus is unknown, travel will not return over the next few months at least, well after the covered period of the Paycheck Protection Program (PPP). Once the funding runs out, businesses will be in the same or worse position at that time.

Consequently, small business owners in our industries are currently deciding whether or not to explore combining capital access options under the CARES Act and other SBA products in order to remain open. Many small business owners are reluctant to accumulate more debt, as these businesses are already highly leveraged.

In order to help make these decisions, business owners have reached out to our organizations to understand how the new law can help them. While the text and guidance have provided some clarity, many questions remain, and the answers are critical as to whether our members will be able to access the programs.

We ask that you review the list below and provide us with definitive guidance that we can share with our members. Collectively, our industries employ 15.8 million Americans who rely on the travel and tourism. Our goals are to provide small business owners with the tools they need to weather this storm and keep as many people employed as possible during this tumultuous time. We appreciate your efforts and look forward to your insights.

PAYCHECK PROTECTION PROGRAM

Loan Size

1. Is a franchise owner eligible for a loan per physical location (establishment) or is their entire franchise enterprise capped at \$10 million?
2. Is a franchise owner eligible for the PPP if he or she has less than 500 employees, even if their brand isn't listed on the SBA Franchise Directory?
3. What is the loan size of a business which has added units and employees within the last 12 months?
4. How should a small business with more than one physical location calculate the average payroll if one of the locations was not operational for an extended period of time during the covered period?
5. If a small business has purchased a new location or changed ownership during the covered period, could payroll numbers from previous owners be reflected in the estimate?
6. For small business owners operating in jurisdictions with recent wage and labor cost increases (significant in some jurisdictions), is there an opportunity to use 2020 payroll data rather than 2019 for the purposes of PPP loan calculation? All of the look back periods are one-year certain periods in 2019/2020. Some of our franchisees are concerned the language will require them to file 2019 taxes to be eligible. Is this true?
7. Which definition of full-time employee will be used to aggregate full time employee equivalent? The FFCRA uses 40 hours for full-time as it relates to paid leave.
8. Why are non-payroll expenses capped at 25%? Is this a fixed number?
 - a. The guidance indicates that "it is anticipated that not more than 25%" may be forgiven for non-payroll purposes based on "likely high subscription." What will be the determining factor and when will business owners know what the exact percentage will be?
9. Business owners are already concerned that the "maximum loan amount" multiplier in Section 1102 of the CARES Act of 250% of average monthly payroll will be inadequate for businesses to survive throughout the covered period. PPP resources will likely be exhausted well before June. It is critical that at least four months of operating expenses be allocated to properly capitalize franchise businesses during the COVID-19 crisis.
10. Many small businesses, including independent and single property operators may earn less than \$100,000 in self-employment, would they be able to apply for the PPP?
 - a. The PPP provides for self-employed and independent contractor eligibility. Could members of an LLC that pays self-employment taxes be eligible to apply for PPP because their self-employed income is disrupted by the virus?
11. May I apply for EIDL and PPP funding simultaneously? Does the EIDL roll into the PPP? What happens to the 25% non-payroll cap requirement under PPP?

Loan Forgiveness

12. With the increased unemployment benefit available, if employers try to rehire/stay fully staffed, will there be any consideration for not being able to refill jobs because employees are not willing to work when it comes to calculating forgiveness?
13. It appears all PPP borrowers will need to prove their staffing and pay levels on June 30th in order to request loan forgiveness. Will they have to do it immediately on June 30th, or will they have a grace period to provide the information sometime after?

- a. Re-Hiring: You have until June 30, 2020, to restore your full-time employment and salary levels for any changes made between February 15, 2020 and April 26, 2020.
 - b. Will the average monthly staffing level be used to determine forgiveness or just the final number on June 30 compared to the staffing level at the beginning of the loan?
14. How will loan forgiveness work especially in high turn-over industries as it relates both to number of employees and pay rates?
 15. How will employees on family leave be calculated toward the aggregate number for loan forgiveness purposes?
 16. If a small business receives a lease or rent deferment, may the PPP loan still be counted toward lease/rent expenses for loan forgiveness purposes?
 17. Is interest on other debt a forgivable expense under the PPP loan? If a small business receives a deferment of interest on the debt, may the PPP loan still be counted toward debt interest expenses for loan forgiveness purposes?
 18. If a business were under construction, but could not open due to the crisis, and employees had already been hired in anticipation of opening, will they be covered to permit loan forgiveness?

Lender Related

19. What is being done to ensure authorized lenders can meet the demand for the loans? Business owners are looking to work with banks with whom they currently have relationships to ensure the easiest path towards accessing capital. While SBA-certified lenders will be prepared to process applications on April 3, there remain concerns about confusion or congestion with those banks.
20. While “[a]ll federally insured depository institutions, federally insured credit unions, and Farm Credit System institutions are eligible to participate in this program,” what is the process for them to be “approved” and “enrolled” in the program? How long will that approval process take?
21. Guidance instructs lenders to submit applications to DelegatedAuthority@sba.gov. Is Form 750 the application form, or is there another form created by SBA or Treasury specifically for the PPP lenders?
22. Since non-SBA-certified banks will become available to borrowers sometime after SBA-certified banks, will applicants to these banks be disadvantaged in the availability of funds (due to high demand)?
23. What criteria will banks be instructed to use to determine the creditworthiness of businesses without whom a prior relationship exists and how long is that process expected to take?
 - a. Borrowers are weighing whether to approach an unfamiliar SBA-certified bank in order to apply as quickly as possible, against the possibility that a lengthy creditworthiness assessment would delay the process more so than waiting for a familiar bank to become SBA-certified.
24. Why did Treasury limit the loan term to two years? Wasn't Congress's intent to extend the life of the loan to 10 years?
25. Why was the interest rate set at 0.5%?
 - a. While we understand the need to keep the cost of the loan low for our member businesses, lenders have expressed concern that the rate (coupled with the fee

arrangements) may be unappealing to many banks and would consequently limit those options to borrowers. The loss of private sector appetite for these loans may force lenders to ‘put’ the loan back to Treasury instantly. There needs to be an equilibrium.

26. May an applicant submit applications with multiple lenders to facilitate expedited processing?

Franchise Eligibility

27. Are franchisors whose franchise systems are registered on the Franchise Registry eligible for a covered loan, or is the language intended to be restricted to franchisees?

28. If a franchise company is not listed on the SBA registry will it be able to qualify for a PPP loan and should it turn in the (SBA Form 2483) on April 3rd?

a. This is needed to inform master and unit franchisees with less than 500 employees about which program they are eligible for.

29. Does the affiliation waiver language in clause (36)(D)(iv)(II) mean that *any* “business concern” (and *each* business concern) operating as a franchise in a system registered on the Franchise Registry should be eligible for a covered loan without regard to how many affiliated entities it might have?

30. Does the affiliation waiver language in clause (36)(D)(iv)(II) mean that *any* “business concern” (and *each* business concern) operating as a franchise in a system registered on the Franchise Registry should be eligible for a covered loan without regard to how many affiliated entities it might have?

31. Is *any* “business concern” (and *each* business concern) operating as a franchise in a system registered on the Franchise Registry eligible for a covered loan without regard to its number of employees (i.e., even if a single franchisee entity employs more than 500 people)?

32. Does the more expansive wording “any business concern” mean that franchises not currently on the Franchise Registry as an approved “small business concern” still are eligible for covered loans as long as they have no more than 500 employees, etc.?

33. Does the affiliation-waiver provision in clause (36)(D)(iv)(II) mean that franchise systems previously denied listing on the Franchise Registry because of perceived affiliation between franchisor and franchisee now have the right to apply for and be listed on the Franchise Registry immediately and automatically—at least for the duration of the covered period—so that their franchisees can obtain covered loans?

34. Is a restaurant/hotel (NAICS 72) with less than 500 employees eligible for a covered loan by virtue of clause (36)(D)(iv)(I) even if one or more of its affiliates employs more than 500 employees?

35. Do “eligible expenses” include initial franchise fees and royalties?

36. What documents will be required for businesses and self-employed individuals to apply for PPP loans?

37. Will businesses with management contracts be able to claim the cost of the contract for purposes of calculating payroll costs under the PPP?

a. Under such management contracts, a third-party company is in charge of managing employees, acting as the employer of record for such employees, but the cost of employment is ultimately passed on to the business that pays for the contract.

38. If the answer above is no, would the management company that is the employer of record be able to get an interruption loan, even if they are the employer of record for several different businesses across several different NAICS sectors (not just Sector 72)? (Note: in the case of hotels, some contract with management companies, who then act as the employer of record for the employees, but who may not qualify for the 500 employee per physical location exception to the employee limit, or may not qualify because they technically act as the employer of record for more than 500 employees for several different small businesses—some of whom would otherwise be eligible for an interruption loan for the passed-on cost of the employees.)
39. Will borrowers be able to request more than one Economic Injury Disaster Loans (EIDLs), particularly if funds from a previous EIDL are exhausted and the outbreak is still affecting their ability to cover ordinary expenses?
40. Please confirm each and any physical location with no more than 500 employees is eligible for a PPP loan.
- a. With regard to subsection (iii), “Business concerns with more than 1 Physical Location,” and “Increased eligibility for certain small businesses and organizations,” it is our understanding that PPP loan eligibility is assessed on an asset-by-asset basis, regardless of whether a single employer (i.e., hotel owner or management company) has in its portfolio of assets properties with more than 500 employees. For example, if a hotel owner owns ten properties, and four of those properties have no more than 500 employees each, that hotel owner may apply for four PPP loans – one for each property employing no more than 500 employees.
41. Please confirm that the eligible borrower for a PPP loan includes business entities ultimately responsible for employee payroll, benefit, and insurance expenses through employee management contracts.
- a. The lodging industry widely utilizes a unique ownership and management structure. In a typical arrangement, a property owner contracts with a third-party management company to operate a hotel property, acting as the employer of record and hiring property employees. The property owner remains legally responsible, via the management contract, for paying all operating expenses, including employee payroll, benefit, and insurance. PPP loans are intended to provide a bridge for critical operating expenses, including payroll expenses. In the example provided above, the eligible PPP borrower would be the property owner, even though employees are employed by the management company, is that correct?
 - b. Accordingly, we seek affirmation that the eligible borrower on a PPP loan is the entity ultimately responsible for the provision of employee payroll, benefit, and insurance expenses.
42. How is the SBA handling commonly owned/affiliation rules apply individually, as a parent company, or as a management company?
43. Does the parent organization or each “asset” (establishment) apply for the loan?
- a. Owners of properties in different states or regions should be able to utilize a single lender to secure PPP loans for all properties. This approach would streamline the loan process consistent with Congressional intent to provide swift financial relief to companies and their employees in hard-hit industries like the hotel industry. Hotel owners are requesting clarification for their properties in different states/regions, and whether a single lender in a location may be utilized for all properties, or whether different lenders/contacts need to be accessed for the multiple locations.

The PPP Information Sheet released by Treasury and SBA states that “All businesses – including nonprofits,” are eligible to receive a PPP loan. However, the CARES Act only refers to “501(c)(3) nonprofits” and “501(c)(19) nonprofits” as eligible for the loan. Are other categories of tax-exempt nonprofits under section 501(c) of the tax code eligible to receive a PPP loan, other than 501(c)(3) and 501(c)(19) organizations? Particularly, 501(c)(6) nonprofits?

ECONOMIC INJURY DISASTER LOAN PROGRAM

44. Will borrowers be able to request more than one Economic Injury Disaster Loan (EIDLs), particularly if funds from a previous EIDL are exhausted and the outbreak is still affecting their ability to cover ordinary expenses?
45. Under “Eligible Entity Verification” on the EIDL application website, eligible nonprofit applicants are defined as “...a private non-profit organization that is a non-governmental agency.” Would a Destination Marketing Organization with the following qualities be eligible to receive an EIDL under this definition?
 - a. If the Destination Marketing Organization is
 1. Tax-exempt under Section 501(c)(6) of the tax code; and
 2. Established through State or local enabling legislation; or
 3. Considered an instrumentality or a political subdivision of a State or locality, but not considered a State or government agency.
46. On the EIDL application website, an applicant must certify that it is “Not in the business of lobbying.” What is SBA’s threshold or definition of an organization that is considered to be in the business of lobbying? Are there thresholds for the amount of time or revenue that must be spent on activities directly related to lobbying in order to qualify as being in the business of lobbying?
47. Emergency EIDL Grants under Section 1110 allow for an eligible entity as “a business with not more than 500 employees.” Please confirm that eligibility is not also restricted to businesses with less than \$35 million in annual revenue.
48. Will borrowers of EIDLs be able to get any forbearance or deferral period before they are required to start repaying the loan?

We appreciate your attention to these questions and for your responses that will help small businesses in our industries to make informed decisions that will enable them to survive during this difficult time. We also anticipate that some of these issues will remain unresolved under the current statutory and regulatory frameworks and urge your support to address those issues sufficiently in a phase four stimulus package. We are grateful for your leadership of the American economy during this historic crisis and look forward to serving as a resource to you in helping our small businesses to recover.

Sincerely,

U.S. Travel Association
International Franchise Association

American Hotel & Lodging Association
Asian American Hotel Owners Association