

# Paycheck Protection Program: Eligibility

This presentation is for general informational purposes only and is not legal advice. Viewers should consult their attorney, accountant, lender, and payroll provider to make determinations regarding their organization's specific eligibility and to ensure compliance with all applicable laws and regulations.

# PPP Eligibility

## What is the Paycheck Protection Program?

- The Paycheck Protection Program ("PPP") is a forgivable loan program that is administered by the Small Business Administration and delivered through financial institutions.
- Congress initially authorized \$349 Billion in PPP loans that we learned were exhausted on April 16, 2020. Congress subsequently authorized \$310 Billion in additional PPP loans on April 23, 2020 with some intentionality around ensuring that small lenders are able to participate more meaningfully .
- Applications will be accepted through June 30, 2020 or the earlier exhaustion of available funds.

# PPP Eligibility

Why is it  
important to  
get eligibility  
right?

- Applicants must make several good faith certifications, including the following:
  - “The Applicant is eligible to receive a loan under the rules in effect at the time this application is submitted that have been issued by the Small Business Administration (SBA)....”
  - “Current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant....”
  - “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.”
- SBA guidance has clarified that when certifying need, Borrowers must take into account their current business activity and their ability to access other sources of liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business.

# PPP Eligibility

## Three main eligibility questions

- Generally, prospective applicants need to answer three main questions prior to determining their eligibility:
  1. What type of organization is applying?
  2. Was the organization operating as of February 15, 2020?
  3. Does the organization satisfy the relevant size restrictions?

# PPP Eligibility

**What type of entity is applying?**

- Eligible organizations include:
  - small business concerns; AND
  - other for-profit business concerns;
  - 501(c)(3) nonprofit organizations;
  - 501(c)(19) veterans organizations;
  - tribal concerns under the Small Business Act;
  - self-employed individuals, sole proprietors, and independent contractors; and
  - faith-based organizations that satisfy the requirements of a 501(c)(3).

# PPP Eligibility

**Was the  
organization  
operating as of  
February 15,  
2020?**

- The organization must have been operating as of February 15, 2020 to be eligible.
- The organization must have either had employees for whom it paid salaries and payroll taxes or paid independent contractors.
- Self-employed individuals, sole proprietors, independent contractors, and partnerships are excluded from the requirement of having to have had employees or paid independent contractors.

# PPP Eligibility

**Does the organization satisfy the relevant size restrictions?**

- Generally, a Small Business Concern MUST:
  - be organized for profit
  - be independently owned and operated;
  - not be dominant in its field of operation;
  - be located in the US;
  - operate primarily in the US or contribute significantly to the US economy; AND satisfy
    - SBA industry size standards; OR
    - SBA “alternative size standard”

# PPP Eligibility

**Does the organization satisfy the relevant size restrictions?**

- Generally, business concerns; 501(c)(3) nonprofit organizations; 501(c)(19) veterans organizations; tribal concerns under the Small Business Act; self-employed individuals, sole proprietors, and independent contractors; and faith-based organizations MUST:
  - Employ no more than the greater of:
    - 500 employees OR
    - the SBA employee-count size standards applicable to its industry



# PPP Eligibility

**Does the organization satisfy the relevant size restrictions?**

- When counting employees, an organization MUST:
  - Include the average number of employees for each pay period for the preceding 12 months (with variations for seasonal businesses or organizations that were not operating from Feb.15, 2019- June 20, 2019);
  - Count all FTE, PTE, and temporary employees (but not independent contractors); and
  - Aggregate employees of affiliates unless subject to an exception.

# PPP Eligibility

**Does the organization satisfy the relevant size restrictions?**

- Applicable SBA Affiliation rules:
  1. Affiliation based on ownership;
  2. Affiliation arising under stock options, convertible securities, and agreements to merge;
  3. Affiliation based on common management; and
  4. Affiliation based on identity of interest (limited to close relatives).
- Applicants must include the employees of their affiliates UNLESS:
  - The applicant is in the accommodation or food business (NAICS 72) (limited to 500/location);
  - The applicant is listed in the SBA Franchise Directory (limited to 500 employees per franchise);
  - The applicant receives financial assistance from a Small Business Investment Company; or
  - The applicant is a faith-based organization affiliated on the basis or shared religious beliefs.

# PPP Eligibility

**What if I need help?**

- If you are interested in applying for a PPP loan, please consult with your organization's lender, accountant, attorney, and/or payroll provider to make a specific determination about your organization's eligibility.
- Because every organization's situation is unique it is important that you seek appropriate advice before taking or refraining from taking any action as a result of this presentation.



Jonathan Murphy  
Partner, Fortif Law Partners, LLC  
205-730-7130  
[jonathan@fortif.com](mailto:jonathan@fortif.com)