

CARES ACT FOR LENDERS

Becoming a Lender

Why should I become an SBA 7(a) approved lender?

Among additional benefits, the SBA provides a streamlined process for its certified partners to make loans under the 7(a) program, and the SBA guarantees those loans. For loans issued under the Paycheck Protection Program, the SBA guarantees 100% of the loan; regulations are expected from the SBA within 15 days of the CARES Act's enactment. More information can be found at:

- <https://www.sba.gov/partners/lenders/become-sba-lender>
- <https://www.sba.gov/partners/lenders/7a-loan-program/operate-7a-lender>

An approved 7(a) lender can opt to become a lender in the Paycheck Protection Program.

What are the eligibility requirements to become an approved 7(a) lender?

SBA 7(a) approved lenders must:

- Have a continuing ability to evaluate, process, close, disburse, service, and liquidate small business loans;
 - Be open to the public to issue loans (and not be a financing subsidiary, engaged primarily in financing the operations of an affiliate);
 - Have continuing good character and reputation, and otherwise meet and maintain the ethical requirements
- ;
- Be supervised and examined by a state or federal regulatory authority, satisfactory to the SBA; and
 - Maintain satisfactory performance, as determined by the SBA through on-site review/examination assessments, historical performance measures (such as default rate, purchase rate, and loss rate), and loan volume to the extent that it affects performance measures.

For more information, or to begin the application process, the SBA directs interested lenders to contact an SBA lender relations specialist at their local

SBA district offices. Local district offices can be found at <https://www.sba.gov/local-assistance/find/>.

Can only Small Business Administration 7(a) approved lenders participate in the Paycheck Protection Program?

No. While SBA 7(a) approved lenders can issue Paycheck Protection Program loans by opting into the program,

the CARES Act has made it easier for lenders that do not already participate to do so as well.

What are the eligibility requirements to lend under the Paycheck Protection Program?

Approved 7(a) lenders may choose to become a lender in the Paycheck Protection Program. The CARES Act also gives the Treasury Department the ability to enact new regulations

that will establish criteria for insured depository institutions and other lenders not already participating in SBA lending to participate in the Paycheck Protection Program.

The CARES Act does, however, provide that lenders may participate in the Paycheck Protection Program only if participation does not affect the "safety and soundness" of the institution or lender.

While the Treasury Department writes new regulations under the CARES Act, do the existing regulations for SBA loans apply?

Yes, except where the CARES Act specifically says otherwise.

Much of Title I of the CARES Act amends portions of the Small Business Act, 15 U.S.C. § 636 et seq. The portions of the Small Business Act, and its accompanying regulations, that are unaffected by these changes will remain in effect.

The CARES Act also directs the SBA to issue certain guidance and new regulations within 15 days of the enactment of the CARES Act to effectuate its provisions. Absent SBA guidance to the contrary, we anticipate these new regulations would supersede any general SBA background regulations (e.g., 12 CFR 121.302, which governs the date that a business concern's size status is determined).

Does a lender still need to provide TDR disclosures?

An insured depository institution or an insured credit union that modified a loan because of COVID-19-related difficulties in a troubled debt restructuring on or after March 13, 2020, is not required to comply with the Financial Accounting Standards Board Accounting Standards Codification Subtopic 310-40 ('Receivables - Troubled Debt Restructurings by Creditors'). This disclosure relief ends when a federal banking agency or the National Credit Union Administration Board determines it is appropriate.

Getting Compensated by the Federal Government

Will I be compensated for processing loans?

The SBA will reimburse authorized lenders at the following rates for Paycheck Protection Program loans:

- 5% for loans up to \$350,000
- 3% for loans \$350,001 - \$1,999,999
- 1% for loans \$2 million and more

The SBA must reimburse the lender within 5 days of loan disbursement.

Can the loan granted under the Paycheck Protection Program be forgiven?

In general, yes. The principal amount of the loan may be forgiven to the extent that it is used during the 8-week period following its origination (the "covered period") for payroll costs, interest on mortgage obligations incurred before February 15, 2020, rent payments for leases in force before February 15, 2020 and utility payments for service which began before February 15, 2020

When will the SBA Administrator pay lenders for the forgiven portion of a Paycheck Protection Program loan?

In general, the SBA Administrator will pay the amount forgiven, plus interest, not later than 90 days after the date on which the forgiven amount is determined. However, lenders may report in advance to the SBA Administrator the expected amount to be forgiven, and the SBA Administrator will purchase the expected forgiveness amount within 15 days of that report, as if the amount were the principal amount of a loan guaranteed under Section 7(a) of the Small Business Act.

How does a borrower apply for loan forgiveness?

To receive loan forgiveness, the borrower must apply to the lender. The application must include:

- Documentation (including payroll filings) verifying the number of full-time equivalent employees the borrower employs (and employed during the relevant periods), and the compensation that the borrower paid them, and documentation (including cancelled checks, payment receipts, transcript of accounts, etc.) verifying mortgage, rent, and utilities payments;
- A certification that the documentation is true and correct and that the amount of forgiveness being requested was used to retain employees and to pay covered mortgage interest, rent and utilities during the covered period; and
- Additional information that the SBA Administrator may require.

When do I need to issue a decision about loan forgiveness?

Lenders must issue decisions on the loan forgiveness within 60 days of receiving the borrower's complete application.

Will I be held harmless for my decision to forgive a loan?

In general, yes. If a lender receives the required documentation and determines that a borrower has accurately verified the qualified covered costs, there will be no enforcement action brought under Section 47(e) of the Small Business Act and the SBA Administrator will not subject the lender to any penalties relating to the forgiven loan.

Will there be further guidance regarding loan forgiveness?

Yes. The SBA Administrator is required to issue further guidance within 30 days of enactment of the CARES Act (by April 27, 2020).

How does a loan sold on the secondary market affect loan forgiveness?

The CARES Act recognizes there is a secondary market for 7(a) loans and provides that the loan purchaser is responsible for dealing with loan forgiveness issues as if it were the originator.