§ 232.301 [Amended]

4. Amend § 217.301 by:
   a. In paragraphs (b)(1) and (d) introductory, remove “U.S. GAAP” and add in its place “GAAP”; and
   b. In paragraph (c)(2) introductory text, add “or Category III” after the phrase “an advanced approaches” and “its applicable” after the words “its calculation of’’;
   c. In paragraph (d)(2)(i) introductory text, remove the phrase “in a first” and add in its place “in its first”; and
   d. In paragraph (d)(2)(ii) introductory text, add “or Category III” after the phrase “An advanced approaches” and “its applicable” after the words “its calculation of’’.

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the joint preamble, chapter III of title 12 of the Code of Federal Regulations is amended as follows:

PART 324—CAPITAL ADEQUACY OF FDIC-SUPERVISED INSTITUTIONS

5. The authority citation for part 324 continues to read as follows:


6. Amend § 324.301 as follows:

a. Revise paragraph (b)(1);

b. In paragraph (b)(2), remove the phrase “FDIC-supervised’s adoption” and add in its place “FDIC-supervised institution’s adoption’’;

c. In paragraph (c)(2) introductory text, add “or Category III” after the phrase “an advanced approaches” and “its applicable” after the words “its calculation of’’;

d. Revise paragraph (d) introductory text;

e. In paragraph (d)(2)(i) introductory text, remove the phrase “in its a” and add in its place “in its first”;

f. In paragraph (d)(2)(ii)(C), remove the phrase “fifty percent of its AACL transitional amount” and add in its place “fifty percent of its modified AACL transitional amount’’ and remove the phrase “twenty-five percent of its AACL transitional amount” and add in its place “twenty-five percent of its modified AACL transitional amount’’.

g. In paragraph (d)(2)(ii)(A), remove the phrase “five percent of its modified AACL transitional amount’’ and add in its place “twenty-five percent of its modified AACL transitional amount’’.

h. In paragraph (d)(2)(ii)(B), remove the phrase “fifty percent of its AACL transitional amount” and add in its place “twenty-five percent of its modified AACL transitional amount’’.

i. In paragraph (d)(2)(ii)(C), remove the phrase “fifty percent of its modified AACL transitional amount’’ and add in its place “twenty-five percent of its modified AACL transitional amount’’.

5. The authority citation for part 324 continues to read as follows:


6. Amend § 324.301 as follows:

a. Revise paragraph (b)(1);

b. In paragraph (b)(2), remove the phrase “FDIC-supervised’s adoption” and add in its place “FDIC-supervised institution’s adoption’’;

c. In paragraph (c)(2) introductory text, add “or Category III” after the phrase “an advanced approaches” and “its applicable” after the words “its calculation of’’;

d. Revise paragraph (d) introductory text;

e. In paragraph (d)(2)(i) introductory text, remove the phrase “in its a” and add in its place “in its first”;

f. In paragraph (d)(2)(ii)(C), remove the phrase “fifty percent of its AACL transitional amount” and add in its place “fifty percent of its modified AACL transitional amount’’ and remove the phrase “twenty-five percent of its AACL transitional amount” and add in its place “twenty-five percent of its modified AACL transitional amount’’.

5. The authority citation for part 324 continues to read as follows:


6. Amend § 324.301 as follows:

a. Revise paragraph (b)(1);

b. In paragraph (b)(2), remove the phrase “FDIC-supervised’s adoption” and add in its place “FDIC-supervised institution’s adoption’’;

c. In paragraph (c)(2) introductory text, add “or Category III” after the phrase “an advanced approaches” and “its applicable” after the words “its calculation of’’;

d. Revise paragraph (d) introductory text;

e. In paragraph (d)(2)(i) introductory text, remove the phrase “in its a” and add in its place “in its first”;

f. In paragraph (d)(2)(ii)(C), remove the phrase “fifty percent of its AACL transitional amount” and add in its place “fifty percent of its modified AACL transitional amount’’ and remove the phrase “twenty-five percent of its AACL transitional amount” and add in its place “twenty-five percent of its modified AACL transitional amount’’.
DATES:
Effective date: This rule is effective May 19, 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 June 18, 2020.
ADDRESSES: You may submit comments, identified by number SBA–2020–2028 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: A 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, tribal, 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 stay-at-home orders, are being implemented, resulting in a dramatic decrease in economic activity as the public limits activity at malls, retail stores, and other businesses.
On March 27, 2020, the President signed the Coronavirus Aid, Relief, and Economic Security Act (the CARES 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 CARES 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 CARES 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 CARES Act provides for forgiveness of up to the full principal amount of qualifying loans guaranteed under the Paycheck Protection Program (PPP). On April 24, 2020, the President signed the Paycheck Protection Program and Health Care Enhancement Act (Pub. L. 116–139), which provided additional funding and authority for the PPP.
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, it is critical to meet lenders’ and borrowers’ need for clarity concerning program requirements as rapidly as possible because the last day eligible borrowers can apply for and receive a loan is June 30, 2020.
This interim final rule supplements previous regulations and guidance on an important, discrete issue. The immediate effective date of this interim final rule will benefit lenders so that they can swiftly close and disburse loans to small businesses. 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 I of the Act without regard to notice requirements. In addition, SBA has determined that there is good cause for dispensing with advance public notice and comment on the ground that it would be contrary to the public interest. Specifically, SBA has determined that advance public notice and comment would delay the ability of certain businesses to obtain increases in their PPP loan amounts in order to ensure they obtain the maximum amount that they are eligible for under current guidance (guidance that was not available at the time their PPP loans were approved). 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 June 18, 2020. SBA will consider these comments and the need for making any revisions as a result of these comments.
III. Paycheck Protection Program Requirements for Loan Increases
Overview
The CARES Act was enacted to provide immediate assistance to individuals, families, and organizations affected by the COVID–19 emergency. Among the provisions contained in the CARES Act are provisions authorizing SBA to temporarily guarantee loans under the PPP. Loans under the PPP will be 100 percent guaranteed by SBA, and the full principal amount of the loans and any accrued interest may qualify for loan forgiveness. Additional information about the PPP is available in interim final rules published by SBA and the Department of the Treasury in the Federal Register (85 FR 20811, 85 FR 20817, 85 FR 21747, 85 FR 23450, 85 FR 23917, 85 FR 26321, 85 FR 26324, 85 FR 27287), and an additional SBA interim final rule entitled “Business Loan Program Temporary Changes; Paycheck Protection Program—Requirements—Extension of Limited Safe Harbor with Respect to Certification Concerning Need for PPP Loan Request,” which SBA posted on May 8, 2020, and is published elsewhere in this issue of the Federal Register (collectively, the PPP Interim Final Rules).
On April 14, 2020, SBA posted an interim final rule that, among other things, provided guidance for individuals with self-employment income (85 FR 21747). The interim final rule stated, “If you are a partner in a partnership, you may not submit a separate PPP loan application for yourself as a self-employed individual. Instead, the self-employment income of general active partners may be reported elsewhere in this issue of the Federal Register (collectively, the PPP Interim Final Rules).
On April 14, 2020, SBA posted an interim final rule that, among other things, provided guidance for individuals with self-employment income (85 FR 21747). The interim final rule stated, “If you are a partner in a partnership, you may not submit a separate PPP loan application for yourself as a self-employed individual. Instead, the self-employment income of general active partners may be reported in the partnership tax return as a payroll cost, up to $100,000 annualized, on a PPP loan application filed by or on behalf of the partnership.” On April 28, 2020, the Department of the Treasury posted an interim final rule that provided an alternative criterion for calculating the maximum loan amount for PPP loans issued to seasonal employers (85 FR 23917).
Some PPP loans were approved to partnerships or seasonal employers before the additional guidance was
can the increased loan amount exceed the maximum loan amount allowed under the PPP Program, which is $10 million for an individual borrower or $20 million for a corporate group. Additionally, the borrower must provide the lender with required documentation to support the calculation of the increase.

The interim final rule posted on April 14, 2020, describes how partnerships, rather than individual partners are eligible for a PPP loan. The interim final rule further explained that the self-employment income of general active partners could be reported as a payroll cost, up to $100,000 annualized, on a PPP loan application filed by or on behalf of the partnership. Guidance describing how to calculate partnership PPP loan amounts and defining the self-employment income of partners was posted on April 24, 2020 (see How to Calculate Maximum Loan Amounts, Question 4 at https://www.sba.gov/sites/default/files/2020-04/How-to-Calculate-Loan-Amounts.pdf).

b. If a seasonal employer received a PPP loan before the alternative criterion for determining the maximum loan amount for seasonal employers became available, can the loan amount be increased based on a revised calculation using the alternative criterion?

Yes. If a seasonal employer received a PPP loan under the alternative criterion for such employers was posted on April 28, 2020, and would be eligible for a higher maximum loan amount under the alternative criterion, the lender may electronically submit a request through SBA’s E-Tran Servicing site to increase the PPP loan amount, even if the loan has been fully disbursed, provided that the lender’s first SBA Form 1502 report to SBA on the PPP loan has not been submitted. After the initial SBA Form 1502 report has been submitted to SBA, or after the date the initial SBA Form 1502 report was required to be submitted to SBA, the loan cannot be increased. In no event can the increased loan amount exceed the maximum loan amount allowed under the PPP Program, which is $10 million for an individual borrower or $20 million for a corporate group. Additionally, the borrower must provide the lender with required documentation to support the calculation of the increase.

2. Disbursements and 1502 Reporting on Increased PPP Loans

a. If a borrower’s PPP loan has already been fully disbursed, can the lender make an additional disbursement for the increased loan proceeds?

Yes. Notwithstanding the requirement set forth in paragraph 1.a. of the interim final rule on disbursements posted on April 28, 2020, i.e., that lenders make a one-time, full disbursement of the PPP loan within ten calendar days of loan approval, if a PPP loan is increased under paragraphs 1.a. or b. above, the lender may make a single additional disbursement of the increased loan proceeds prior to submission of the initial SBA Form 1502 report for that loan.

b. How do lenders report disbursements on PPP loans that are increased and does the increase in the loan delay the timeframe to report the loan on the SBA Form 1502?

SBA set forth in the interim final rule on disbursements and 1502 reporting posted on April 28, 2020, the process lenders must follow to electronically upload SBA Form 1502 information on PPP loans. The interim final rule provided that lenders must submit the SBA Form 1502 information within 20 calendar days after a PPP loan is approved or, for loans approved before availability of the updated SBA Form 1502 reporting process, by May 22, 2020. Lenders must comply with the initial 1502 reporting deadline. SBA may review at any time an increase submitted by the lender to confirm that the increase was submitted within the required timeframe; increases submitted outside the required timeframe will not be forgiven and no processing fee will be earned on such amounts. Additionally, lenders are not entitled to processing fees on increases submitted outside of the required timeframe.

3. Additional Information

SBA may provide further guidance, if needed, through SBA notices that will be posted on SBA’s website at www.sba.gov. Questions on the Paycheck Protection Program 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, 13563, and 13771, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Orders 12866, 13563, and 13771

This interim final rule is economically significant for the purposes of Executive Orders 12866 and

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1 SBA extended the deadline for submission of the initial SBA Form 1502 for such loans from May 18, 2020 to May 22, 2020, in its interim final rule posted on May 8, 2020.

2 As set forth in the interim final rule posted on April 14, 2020, a partner in a partnership may not submit a separate PPP loan application as a self-employed individual. Instead, the self-employment income of general active partners may be reported as a payroll cost, up to $100,000 annualized, on a PPP loan application filed by or on behalf of the partnership.
neither State nor local governments are jurisdiction with a population of less proprietary firm meeting the size RFA defines a “small entity” as (1) a effect of the rule on small entities. The options that would lessen the economic impact analysis. Such analysis must small entities by providing a regulatory flexibility analysis that meets another law, the agency must prepare a pursuant to 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 not impose new or modify existing recordkeeping or reporting requirements under the Paperwork Reduction Act.

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. SBA 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.
Jovita Carranza,
Administrator.
[FR Doc. 2020–10658 Filed 5–18–20; 8:45 am]
BILLING CODE P

SMALL BUSINESS ADMINISTRATION
13 CFR Part 120
[Docket Number SBA–2020–0026]
RIN 3245–AH41
Business Loan Program Temporary Changes; Paycheck Protection Program—Requirements—Extension of Limited Safe Harbor With Respect to Certification Concerning Need for PPP Loan Request
AGENCY: U.S. Small Business Administration.
ACTION: Interim final rule.
SUMMARY: On April 24, 2020, the U.S. Small Business Administration (SBA) posted an interim final rule relating to promissory notes, authorizations, affiliation, and eligibility in connection with the implementation of a temporary new program, titled the “Paycheck Protection Program.” The Paycheck Protection Program was established under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act or the Act). This interim final rule revises the interim final rule posted on April 24, 2020, by extending the date by which certain Paycheck Protection Program borrowers may repay their loans from May 7, 2020 to May 14, 2020, in order to avail themselves of a safe harbor with respect to a certification required by the Act, and makes other conforming changes. This interim final rule supplements SBA’s implementation of the Act and requests public comment.

DATES:
Effective date: This rule is effective May 19, 2020.
Applicability date: This interim final rule applies to borrowers who applied for loans under the Paycheck Protection Program.
Comment date: Comments must be received on or before June 18, 2020.
ADDRESSES: You may submit comments, identified by number SBA–2020–0026 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: A 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, tribal, 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