



The CARES Act and Dealerships

Frequently Asked Questions

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The CARES Act and Dealerships—Frequently Asked Questions

As of 12/14/2020

The Coronavirus Aid, Relief and Economic Security Act (CARES Act) was signed into law on March 27, 2020. On June 5, 2020, President Trump signed into law the Paycheck Protection Program Flexibility Act of 2020 (PPP Flexibility Act) which, as described below, significantly amends the PPP established by the CARES Act. This FAQ provides an overview of the CARES Act's impact on dealerships and of important information on federal loans programs, tax credits and provisions, and enhanced unemployment benefits. For more information, see the specific sections below.

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PAYCHECK PROTECTION PROGRAM (“PPP”)

The Small Business Administration (SBA) and U.S. Department of Treasury (Treasury) administer the PPP and maintain PPP rules, guidance, forms, and other information [here](#). The FAQs below attempt to reflect the latest SBA/Treasury information. NADA is continuing to work with SBA/Treasury to clarify unresolved issues and will continue to update these FAQs as more information and clarifications are received.

OVERVIEW AND APPLICABILITY

Q 1. What is the PPP?

A The PPP is a loan program for businesses designed to keep workers on the payroll during the downturn caused by the coronavirus outbreak. Generally, the SBA will forgive loans to the extent the number of employees and their compensation are maintained, and loan proceeds are used for payroll, rent, mortgage interest, or utilities.

Q 2. When may I apply for a PPP loan?

A Loans [applications](#) may be filed until 8/8/20, provided funds are not exhausted.

Q 3. Where do I apply for a PPP loan?

A Dealerships can apply through [a variety of lenders](#) including existing SBA 7(a) lenders, participating federally insured depository institutions, federally insured credit unions, and Farm Credit System institutions.

Q 4. Should I contact a lender now? And, what should I ask?

A If you are interested in pursuing a PPP loan and have not yet applied, reach out to prospective lenders as soon as possible to determine if they are participating and to discuss the loan application process. In addition to determining your potential eligibility for a PPP loan, seek advice on the timing of the application process and the lender’s capacity to process loans and disburse funds.

Q 5. What dealerships are eligible?

A Dealerships with 500 or fewer employees that were in operation on 2/15/20, and paid salaries and payroll taxes for employees. Larger dealer groups may also be able to participate (see discussion below).

Q 6. Can I apply for more than one PPP loan?

A No one borrower may receive more than one PPP loan. Consider applying for the maximum amount consistent with the required certifications. See *FAQ #18, below*.

Q 7. When applying for a loan, can e-signatures or e-consents be used for multiple owners?

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

Q 8. Are the funds available in the PPP “first-come, first-served?”

A Yes.

Q 9. What is the interest rate on a PPP loan?

A 100 basis points or one percent.

Q 10. What is the maturity date on a PPP loan?

A For loans made before 6/5/20, the maturity is 2 years unless borrowers and lenders mutually agree to extend to 5 years. For loans made on or after 6/5/20, the maturity is 5 years.

Q 11. When will I have to begin paying principal and interest on my PPP loan?

A Payments are deferred on PPP loans until forgiveness remittances are made to lenders. However, a borrower that fails to apply for forgiveness within 10 months after its forgiveness covered period ends must begin making loan payments immediately thereafter. Interest will continue to accrue during this deferment.

Q 12. What is the eligibility date?

A Eligible dealerships may apply for a PPP loan if they were harmed by COVID-19 between 2/15/20 and 12/31/20.

Q 13. When is the lookback for the 500-employee threshold?

A The term ‘employee’ includes individuals employed on a full-time, part-time, or other basis. Guidance on how to calculate a business concern’s size based on employee headcount is found in the SBA’s [affiliation guide for size standards](#). Applicants generally should use the average number of employees for each pay period during the past 12 calendar months. For more information, see [NADA’s affiliation guide](#) and the SBA’s [interim final rule](#) and [affiliation FAQ](#).

Q 14. What if I applied, or was approved, for a PPP loan prior to new guidance being released?

A The SBA has indicated that borrowers and lenders may rely on the laws, rules, and guidance available at the time of the relevant application. If a loan has not yet been approved, an applicant may wish to revise its application based on the latest SBA/Treasury clarifications or guidance. See *discussion of changed certification guidance in FAQ 18, below*.

Q 15. Can dealers in Puerto Rico, American Samoa, etc. apply?

A As used in the CARES Act, the term “United States” includes the States, the Territories and possessions of the United States, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and the District of Columbia.

Q 16. What if I purchased an existing dealership after 2/15/20?

A If a dealership was in business on 2/15/20, the purchaser may apply for a PPP loan regardless of the change in ownership. A purchaser that acquires ownership through an asset purchase may apply for a PPP loan even if the change in ownership resulted in a new tax ID number. If the operations of the pre-sale business are maintained, the purchaser may rely on its historical payroll costs and headcount.

Q 17. What allowable expenses may PPP loans be used for?

A The CARES Act, as amended, states that PPP loan proceeds may be used to pay for the following expenses:

- Payroll Costs, including salaries, wages and commissions below \$100,000; leave benefits; health care benefits; retirement benefits; and state and local payroll taxes;
- Salaries and commissions excluded from Payroll Costs (e.g., compensation in excess of \$100,000);
- Rent (including rent under a lease agreement and for equipment rental);
- Utilities (payments for the distribution of electricity, gas, water, transportation, telephone, or internet access for which service began before 2/15/20);
- Interest (but only interest) on any “mortgage” obligation; and
- Interest (but only interest) on any “other debt” obligations incurred before 2/15/20

The CARES Act also states that PPP proceeds may be used for other purposes generally allowed under SBA Section 7(a) programs.

Q 18. Is there a restriction on the amount of allowable Payroll Costs vs. Non-Payroll Costs a PPP loan may be used for?

A At least 60% of PPP loan proceeds must be used for Payroll Costs and not more than 40% of loan proceeds should be used for Non-Payroll Costs. These constraints are in addition to the 60% Payroll Cost minimum, 40% Non-Payroll Cost maximum requirements for loan forgiveness testing. See *FAQ #33 below*. With respect to the latter, the 60%/40% tests apply to loan proceed amounts *actually spent or incurred* during the forgiveness covered period.

Q 19. Has Treasury provided guidance to large companies seeking PPP loans?

A The CARES Act aims to incentivize business concerns to keep on or bring back to their payroll employees that would otherwise be let go or furloughed. Instead of the time-honored “no credit elsewhere” test traditionally applied to SBA loan applications (which can make such loans unavailable if a borrower has access to funds from other credit sources) the PPP program expressly employs a much looser standard – namely, that the “[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations” of the borrower. The PPP loan application form has from the outset required a good faith certification that such is the case.

SBA/Treasury issued [an FAQ on 4/23/20](#) and an [Interim Final Rule on 4/24/20](#) suggesting that certain entities with greater access to capital than others may not be able to make the required certification. The new FAQ asks the following question: “Do [businesses owned by large companies with adequate sources of liquidity to support the business’s ongoing operations](#) qualify for a PPP loan?” (Emphasis added.) The response states, in relevant part, the following:

Borrowers must make [the required] certification in good faith, taking 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. For example, it is unlikely that a public company with substantial market value and access to capital markets will be able to make the required certification in good faith, and such a company should be prepared to demonstrate to SBA, upon request, the basis for its certification.

This SBA/Treasury statement, which responds to a question about business concerns that have “adequate sources of liquidity to support the business’s ongoing operations,” indicates what the government thinks is a relevant factor (access to alternative capital sufficient to avoid significant detriment). It also suggests who, in the government’s estimation, is likely to not meet the test (public companies and those owned by private equity), given that both of these types of companies have access to sources of capital that are typically unavailable to traditional dealers. Ultimately, however, whether the certification can in good faith be made by a particular dealer requires an individual decision by that dealer informed by individual circumstances. This was true before the clarification came out and remains so today.

For dealer-applicants that previously made the certification regarding the necessity of a PPP loan but later changed their mind, SBA allowed for the repayment by 5/18/20 of any PPP funds disbursed without consequence.

Q 20. Has Treasury provided guidance to private equity firms seeking PPP loans for their portfolio companies?

A Yes, in addition to being subject to the affiliation rules and waivers, *see response to FAQ #19, above.*

Q 20.1 How will SBA review a borrower’s required good-faith certification concerning the necessity of their loan request?

A SBA has stated that,

Any borrower that, together with its affiliates, received PPP loans with an original principal amount of less than \$2 million will be deemed to have made the required certification concerning the necessity of the loan request in good faith.

This safe harbor targets borrowers with generally lower access to liquidity during the crisis. Borrowers with PPP loans over \$2 million must check a box alerting the SBA on their Forgiveness Applications and should plan for a potential SBA audit of their loans. Note: the affiliation rules are applied identically as under the CARES Act, meaning dealerships operating as franchisees that have been issued FICs by the SBA are not required to affiliate with related companies. Thus, it appears each dealership borrower looks only at its own funded loan amount when determining if it falls under the \$2 million safe harbor.

Businesses with PPP loans over \$2 million may still have had an adequate basis for making a “necessity” certification given their individual facts and circumstances. If the SBA determines that a borrower lacked an adequate basis for the required necessity certification, it will inform the loan recipient that it is ineligible for forgiveness and will seek repayment of the loan.

For more detailed information, please see NADA’s [analysis of certification issues](#).

AFFILIATION ISSUES

SEE THE DISCUSSION IN FAQ #13, ABOVE WITH RESPECT TO SBA GUIDANCE ON AFFILIATION.

Q 21. What is the typical application of the SBA affiliation rules to dealerships?

A Non-PPP SBA programs focus on the small business size definition of a loan applicant. For light-duty dealerships (NAICS 44111) the small business standard is 200 employees; 250 employees for commercial truck dealerships (NAICS 42311). The PPP sets a 500-employee cap for potential applicants. In addition, non-PPP SBA programs require a dealer-applicant to identify and combine the employees of its affiliated business concerns when determining if it meets its size standard. Business concerns are [defined by SBA](#) normally to be separate legal entities. Generally, affiliated business concerns are those under common ownership and control. But, *as discussed in FAQ 20 below*, the affiliation rules are *waived* for most dealerships.

Q 22. When do the PPP affiliation waivers apply?

A The SBA issues Franchise Identifier Codes (FICs) to franchisors (including vehicle manufacturers). The affiliation rules are waived for franchised dealerships whose franchisors have been assigned a FIC. Virtually all franchisors have [FICs](#).

Q 23. How does the affiliation waiver work for dealerships?

A First, determine how many separately organized business concerns are under common ownership and control. If any business concern in the group employs more than 500 people, it is not eligible to apply for a PPP loan, even if it has a FIC. For business concerns in the group with 500 or fewer employees, verify those that are covered by FICs. If so, each should be eligible to apply for its own a PPP loan.

Q 24. Do I need to sign any other special documents with my manufacturer to receive a loan?

A The PPP does not require dealers to sign any special manufacturer documents. As noted above, if your franchise has been issued a FIC then the affiliation rules are waived for your business concern and there is no need to sign SBA Form 2462. Contact an attorney before signing forms that could modify a franchise agreement.

Q 25. If I have more than 500 employees and cannot disaffiliate is there any other way to qualify for a loan?

A A business concern with over 500 employees can only qualify for a PPP loan if it met SBA's alternative size standard as of 3/27/20. To qualify under the alternative size standard, a dealership must have had: (1) a maximum tangible net worth not more than \$15 million; and (2) an average net income after federal income taxes (excluding any carry-over losses) for the two full fiscal years before the date of the PPP application of not more than \$5 million.

Q 26. We have a body shop that is commonly owned with, but a separate legal entity from, our franchised dealerships. The franchised dealerships are separate business concerns covered by FICs. The 500-employee body shop is not a "franchise" and thus is not eligible for exemption from the affiliation rules. Together, the body shop and the dealerships have more 500 employees. Is the body shop a "business concern" with less than 500 employees and thus eligible to apply for a PPP loan?

A No. In the example above, the body shop is subject to the affiliation rules which, when applied, would put it over the 500 employee limit. The FIC-based affiliation waiver only applies to the business concern making the PPP loan application. This analysis is similarly applicable to dealer management firms and related service companies.

Q 27. Can a single corporate group receive unlimited PPP loans?

A No. For loans disbursed after 4/30/20, business concerns that are part of a "single corporate group" are limited to receiving no more than \$20 million of PPP loan proceeds in the aggregate. SBA/Treasury have imposed this limitation to preserve finite appropriations for PPP loans and to ensure broad access for eligible borrowers. Business concerns are part of a "single corporate group" if they are majority owned, directly or indirectly, by a common parent. Note: this limit is in addition to the 500 employee and 1-loan-per-borrower restrictions, and that it applies notwithstanding application of the affiliation waiver discussed in FAQs 20-26, above.

For a group of loans that have been partially disbursed, this limitation applies to any additional loan disbursements that would cause the total for a single corporate group to exceed \$20 million. An applicant that receives or applies for a loan in excess of the \$20 million limit, should either withdraw or cancel the amounts in excess of the limit. Any amount over the \$20,000,000 limit will be treated as an unauthorized use of loan proceeds and will not be forgiven.

The foregoing limitations do not apply to loans disbursements that were made prior to 4/30/20. Even if those prior disbursements together totaled more than \$20 million, they do not need to be returned. Of course, the amount of those loans is subject to other limitations, as discussed elsewhere in this FAQ.

Q 28. If I have specific questions about how the affiliation rules apply, how should I get them addressed?

A Contact your attorney, CPA, prospective lender, or [local SBA office](#) to address specific affiliation and waiver questions.

For more detailed information, please see NADA's [analysis of affiliation issues](#).

BORROWING LIMITATIONS AND COMPENSATION ISSUES

Q 29. How much can I borrow?

A The lesser of \$10 million or 2.5 times a borrower's average monthly payroll costs. A borrower's number of employees and total revenue are not relevant to this limit.

Q 30. What is the relevant time-period to determine average monthly payroll? Are employer or employee taxes included?

A Calculate the monetary compensation portion of Payroll Costs on a gross basis, meaning that it is neither (1) reduced by taxes imposed on an employee and required to be withheld by the employer or (2) increased by the employer-side federal payroll taxes imposed on wages. This applies regardless of date, including during the covered period. To illustrate, the SBA provides the following example:

For example, an employee who earned \$4,000 per month in gross wages, from which \$500 in federal taxes was withheld, would count as \$4,000 in payroll costs. . . However, the employer-side federal payroll taxes imposed on the \$4,000 in wages are excluded from payroll costs under the statute.

The SBA's guidance appears to be inconsistent with the language of the CARES Act. However, it provides a simple method to calculate average monthly Payroll Costs.

Q 31. What if I was not in business for the past year?

A Dealerships without 2019 payroll data can calculate their average monthly payroll using payroll data from 1/1/20 to 2/29/20.

Q 32. How are the limits applied?

A The \$10 million and compensation-based limits apply to "business concern" PPP loan applicants. As discussed above, rooftops that are separate corporate entities generally are considered different business concerns and have separate limits.

Q 33. What if a dealer contracts with a third-party payer such as a payroll provider or a Professional Employer Organization (PEO) to process payroll and report payroll taxes?

A If a dealer uses a PEO in a state that requires the PEO to report wage and other data under the EIN of the PEO, payroll documentation provided by the payroll provider that indicates the amount of wages and payroll taxes reported to the IRS by the payroll provider for the borrower's employees will be considered acceptable PPP loan payroll documentation. In addition, employees of the eligible borrower will not be considered employees of the eligible borrower's payroll provider or PEO.

Q 34. Should payments that an eligible borrower made to an independent contractor or sole proprietor be included in calculations of the eligible borrower's payroll costs?

A No. Notwithstanding contrary language in the CARES Act and in SBA's rules, SBA guidance indicates that any amounts that an eligible borrower has paid to an independent contractor or sole proprietor should be excluded from the eligible business's payroll costs.

FORGIVENESS ISSUES

Q 35. What portion of PPP loan proceeds are forgivable?

A As discussed in [PPP Loans: Use of Proceeds and Forgiveness, NADA Preliminary Guidance](#), PPP loan proceeds spent on qualifying costs during the 24 or 8-week period following the origination of the loan are eligible for "forgiveness." As described below, borrowers must initiate the forgiveness process by applying to their lender. To receive full loan forgiveness, a borrower must use at least 60% of the PPP loan for Payroll Costs, and not more than 40% for Non-Payroll costs. For example, if a borrower with a \$100,000 PPP loan spends \$54,000 (or 54%) on Payroll Costs during its forgiveness covered period, since it used less than 60% of its loan on Payroll Costs, the maximum amount of loan forgiveness it may receive is \$90,000 (with \$54,000 in Payroll Costs constituting 60% of that amount, and \$36,000 in Non-Payroll costs constituting 40%).

Potentially forgivable costs include:

- Payroll Costs (but not including other salaries and commissions above \$100,000)
- Rent (on a leasing agreement in force before 2/15/2020). Whether “rent” includes amounts due on equipment and other non-real estate leases is an unresolved issue.
- Utilities (for which service began before 2/15/2020). Forgivable transportation utility costs are limited to those imposed by state and local governments.
- Interest (but only interest) on mortgages (originated before 2/15/2020) on real estate; or personal property. (SBA has yet to clarify whether a floorplan line of credit qualifies as a “mortgage on . . . personal property.”)

Q 36. When does a forgiveness covered period begin?

A A forgiveness covered period begins on the date a lender disburses the PPP loan to a borrower. A lender must disburse the entire loan amount no later than ten calendar days from the date of approval.

Q 36.1 Can I retain my original 8-week PPP loan forgiveness covered period?

A Yes, the PPP Flexibility Act provides for a 24-week forgiveness covered period unless a borrower elects to retain its original 8-week covered period. Loans originated after 6/5/2020 must use a 24-week forgiveness period.

Q 37. Can a borrower take multiple draws from a PPP loan and thereby delay the start of the forgiveness covered period?

A No, the lender must make a one-time, full disbursement of the PPP loan within ten calendar days of loan approval. A loan is considered approved when the loan is assigned a loan number by SBA.

Q 38. What happens if the loan is spent on non-qualifying costs?

A Loan proceeds spent on non-qualifying costs are not forgivable. Loan proceeds spent on non-qualifying costs remain subject to the PPP loan terms described above

Q 39. Is there anything else that could reduce jeopardize the ability to have the loan forgiven?

A Yes. The amount of the loan eligible for forgiveness is reduced proportionally by any reduction in employee headcount by the end of the covered period or 12/31/20, compared to a prior period which can be either: (1) the period beginning on 2/15/19 and ending on 6/30/19, or (2) the period beginning on 1/1/20 and ending on 2/29/20. Since business concerns with a lower number of employees may be subject to a loan forgiveness reduction, borrowers should carefully consider decisions involving the rehiring, termination or furloughing of employees.

Substantial reductions in employee compensation rates may also reduce the amount of loan forgiveness. Reducing an employee’s compensation rate by more than 25 percent of their standard pay rate may result in a corresponding decrease in loan forgiveness. Note that reducing high earners’ salaries to \$100,000 per year is not considered reducing compensation.

For detailed information on these potential forgiveness reductions, see [PPP Loans: Use of Proceeds and Forgiveness, NADA Preliminary Guidance](#).

Q 40. What if my employee levels change throughout the year? For example, what if I need to fire an employee for cause or an employee quits?

A Generally, a determination of employee retention is made by looking at a business’s average number of employees per month employed during the covered period. The CARES Act provides three options for this calculation. Because the calculation of employees is made using averages, a change of one employee likely will not have a significant impact on these numbers, however dealerships should work with their CPA and lender to assess how employment retention can impact loan forgiveness.

Note that forgiveness is not tied to retaining *specific* employees. For example, if employee X leaves and they are replaced by new employee Y within the same calendar month, this should not impact a dealership’s forgiveness as long as the pay for the position is equivalent to the level that existed for that position prior to 2/15/20.

A borrower’s PPP loan forgiveness amount may also not be reduced if the borrower has laid off an employee and has offered to rehire the same employee, but the employee declined the offer. Employees and employers should be aware that employees who reject offers of re-employment may forfeit eligibility for continued unemployment compensation under state law.

Alternatively, loan forgiveness may not be reduced if the employer is unable to find qualified employees or is unable to restore business operations to pre-2/15/20 levels due to ongoing COVID-19 related operating restrictions.

Q 41. How do I determine what to pay commissioned and flat rate personnel with a substantial decrease in business?

A What a dealership pays its employees is impacted by several factors that each dealership needs to consider such as, the overall financial health of the business, state/local business closure orders, the number of employees, etc. As noted above, the amount of PPP loan forgiveness may be reduced if an employer reduces the salary or wage rate paid to an employee by more than 25% during the covered period (compared to the most recent quarter). Reductions in commissions or bonuses do not count as reductions in compensation for purposes of forgiveness. Borrowers should work with their CPAs and lenders to assess specific business and loan forgiveness impacts related to compensation rates and total compensation.

Q 41.1 What if the forgiveness covered period for a PPP loan ends in the middle of a pay period?

A The CARES Act allows for the forgiveness of payroll expenses properly “paid and incurred” during the forgiveness covered period. Payroll is considered paid when paychecks are distributed or an ACH credit is originated. Payroll costs are incurred on the day an employee works and earns payment. Payroll costs incurred but not yet paid by the end of a covered period are forgivable if paid by the next regular payroll date.

Q 41.2 What other options do I have for payroll flexibility?

A Businesses on a biweekly or more frequent payroll schedule can use the “Alternative Payroll Covered Period.” The Alternative Payroll Covered Period is an 8- or 24-week period beginning on the first day of the first pay period which starts during the Covered Period. Payroll costs paid or incurred before the Alternative Payroll Covered Period begins are not eligible for forgiveness. Additionally, the Alternative Payroll Covered Period applies only to payroll. Other forgivable costs use the standard covered period.

Q 42. Are federal employment taxes paid forgivable?

A Similar to calculating maximum loan amounts, employee-side payroll taxes are forgivable, but employer-side payroll taxes are not.

Q 43. What documentation is required?

A PPP loan borrowers must apply to their lenders for loan forgiveness using [SBA's Forgiveness Application](#). The application must include documentation verifying the number of employees on payroll and pay rates, such as IRS and state payroll tax filings and payroll and unemployment insurance filings. Other qualified expenses must be verified through documentation showing mortgage obligations and utility bills.

Q 44. Do forgiven PPP loan proceeds count as income for federal income tax purposes?

A No, but there may be state income tax implications. Expenses paid with PPP loan proceeds and subsequently forgiven are not deductible.

Q 45. Will loan forgiveness include floor plan financing expenses?

A Interest payments on floorplan loans that existed before 2/15/20 made using PPP loan proceeds may be allowable as “interest on any other debt obligation incurred before the covered period” with respect to vehicles purchased before 2/15/20. Borrowers are eligible for loan forgiveness on interest paid on a “mortgage on real or personal property” incurred in the ordinary course of business before 2/15/20, but it is unclear if floor plan loans are personal property mortgages.

Q 46. How are dividend disbursements to ownership treated?

A Only wages, limited to \$100,000/year, are eligible for forgiveness.

Q 46.1 How much pay to ownership is forgivable?

A PPP allows payments to owners to be forgiven, but the amount is limited to either \$100,000 per year ratably or the 8-week equivalent of the owners applicable 2019 compensation, whichever is lower.

Q 47. Does receiving the tax credits for qualified leave wages under the Families First Coronavirus Response Act (FFCRA) affect loan forgiveness?

A Yes. If a dealer receives tax credits for qualified leave wages under the FFCRA, those wages are not eligible as “payroll costs” for purposes of loan forgiveness under the CARES Act.

Q 47.1 Are rent payments to related real estate companies forgivable?

A Rent payments to a related real estate entity owned by the borrower are forgivable only in the amount that the real estate entity also pays in mortgage (or lease) expenses to a third party. When the related real estate entity does not have any mortgage (or lease) expenses to a third party, payments to related real estate entities are not forgivable.

For more detailed information, please see NADA's analysis on [Use of Proceeds and Forgiveness](#).

Q 47.2 What if a change of ownership is scheduled to occur before a PPP loan has been forgiven?

A SBA has issued a notice effective on October 2, 2020, addressing ownership changes occurring prior to obtaining loan forgiveness. Note: if a PPP loan has been repaid in full, or if the PPP loan forgiveness process has been completed, SBA's approval is not required prior to a change of ownership. A “change of ownership” is considered to have occurred when:

- (1) at least 20 percent of the common stock or other ownership interest of a borrower (including a publicly traded entity) is sold or otherwise transferred, whether in one or more transactions, including to an affiliate or an existing owner of the entity, (2) the borrower sells or otherwise transfers at least 50 percent of its assets (measured by fair market value), whether in one or more transactions, or (3) a borrower is merged with or into another entity.

Generally, SBA approval is not required when a change of ownership is structured as a sale of common stock or other ownership interest, or as a merger, and either the

- (1) sale or transfer of stock is 50 percent or less of the ownership interest; or,
- (2) borrower completes a forgiveness application and the lender establishes an interest-bearing escrow account controlled by it equal to the PPP loan balance.

SBA approval also is not required for a change of ownership structured as a sale of more than 50 percent of a business's assets if the borrower submits a forgiveness application and the lender establishes an interest-bearing escrow account controlled by it equal to the PPP loan balance.

If the above conditions *cannot* be met, SBA approval must be obtained prior to a change in ownership. For detailed information on obtaining SBA approval and on other issues related to changes of ownership and PPP loans, please see the [SBA's Procedural Notice](#).

For more detailed information, please see NADA's analysis on [Use of Proceeds and Forgiveness](#).

Q 47.3 What should I do if I receive SBA Form 3509 (“Loan Necessity Questionnaire”)?

A Businesses with large loan sizes above \$2 million may receive SBA Form 3509 from their PPP lender after filing for forgiveness. SBA has clarified that the form is not meant to challenge the certification of loan necessity borrowers made when they applied for their loans. SBA has stated that the loan certification will be judged based on the conditions present when the loan was applied for, and that the necessity certification could well have been made in good faith even if subsequent developments suggest that the loan may not have been necessary.

On Nov. 25, 2020, NADA urged the Small Business Administration and Office of Management and Budget to streamline Form 3509 to reduce the information collection burden associated with several of its questions and information requests. Since then, SBA has issued a notice asking for additional comment on the form but has yet to modify it aside from assigning a new expiration date of Dec. 31, 2023. Versions of Form 3509 with expiration dates of Oct. 31, 2020, Nov. 30, 2020, or Dec. 31, 2020 are no longer valid, so if a PPP loan borrower receives an expired Form 3509 from its lender it should request one with the Dec. 31, 2023 expiration date in the top right corner.

A large PPP loan borrower that receives an unexpired Form 3509 from its lender must complete and return it within 10 days after receipt. A failure to accurately complete the form or to provide associated documentation may result in a determination by SBA that the borrower is ineligible for PPP loan forgiveness.

For more information on loan forgiveness, see NADA's analysis on [Use of Proceeds and Forgiveness](#).

ECONOMIC INJURY DISASTER LOANS AND LOAN ADVANCE

Q 48. What is the Economic Injury Disaster Loan (“EIDL”) Program?

A The CARES Act also [expands the SBA’s existing EIDL Program](#) by relaxing the eligibility requirements under the program and increasing the funding available through 12/31/2020.

Prior to the CARES Act, the SBA offered EIDL loans of up to \$2 million for qualifying businesses (including qualifying dealers) to recover from temporary losses following a statewide economic injury declaration. EIDL loans are not forgivable and loan proceeds can only be used for certain purposes, such as for working capital necessary until resumption of normal operations and expenditures necessary to alleviate economic injury, but not beyond that which the business could have provided had the injury not occurred (fixed debts, payroll, accounts payable and other bills that cannot be otherwise paid.)

Q 49. What are the changes to the EIDL Program under the CARES Act?

A Until 12/31/20, the key provisions of the EIDL Program will be changed in the following ways:

EIDL Eligibility: The eligibility requirements will be relaxed. Specifically, in addition to small businesses, entities eligible for an EIDL loan will be expanded to include *any business with not more than 500 employees*,¹ as well as: private nonprofit organizations; small agricultural cooperatives; sole proprietorships, with or without employees, and; independent contractors.

In addition, the following requirements will be waived:

- the personal guarantee for loans over \$200,000;
- that the business be in operation for at least a year prior to the COVID-19 outbreak, and;
- that the business or its affiliates be unable to obtain credit elsewhere.

Eligible businesses will be permitted to apply for an EIDL if the business was in existence on 1/31/20 and has suffered substantial economic injury as a direct result of COVID-19.

¹ Note that this size limitation for EIDL Loans still applies under the CARES Act, and this limitation should not be confused with the discussion outlined in the PPP section about aggregation, franchises, and franchise codes.

Q 50. How can a borrower use the EIDL Loan proceeds under the revised program?

A The CARES Act expands the currently permitted uses of EIDL loan proceeds to include:

- Paying sick leave to employees unable to work due to the direct effect of COVID-19;
- Maintaining payroll to retain employees;
- Meeting increased costs to obtain materials unavailable from the business’s original source because of supply chain issues
- Rent or mortgage payments; and
- Repaying certain obligations that cannot be met due to revenue losses.

Q 51. What is the cost of borrowing under the EIDL Loan program?

A The maximum interest rate for EIDL loans is 4%. However, for small businesses impacted by COVID-19, the rate is 3.75%.²

Q 52. Can I get any money while my EIDL application is pending?

A Yes, there are EIDL Grants available under the CARES Act. The CARES Act appropriates \$10 billion for emergency EIDL Grants. That is, while a business’s application for an EIDL Loan is pending, the applicant may apply for a grant of up to \$10,000 (EIDL Grant), which shall be paid to the applicant within three days of application. On July 13, 2020, EIDL grant funding officially depleted its available funding and is unavailable unless more money is appropriated by Congress.

Q 53. Will EIDL Grants need to be repaid?

A No. Awarded EIDL Grants will not need to be repaid, even if the business’s application for an EIDL Loan is denied.

² For nonprofit organizations impacted by COVID-19, the interest rate will be 2.75%

Q 54. Can I obtain a Paycheck Protection Program Loan and an EIDL Loan?

A In limited circumstances, yes, but generally it is unclear. If a borrower has received an EIDL Loan *unrelated* to the current COVID-19 disaster declaration, it may apply for a PPP Loan under the CARES Act. NOTE HOWEVER, that it is unclear whether borrowers that have received an EIDL Loan in connection with the COVID-19 outbreak may receive a PPP Loan for the same purpose. Borrowers may refinance their existing EIDL Loan with a PPP Loan if they meet the eligibility requirements. NOTE ALSO that any EIDL Grants awarded under the EIDL Program would be subtracted from amounts ultimately forgiven under the PPP.

The interim final rule addressed this issue but did not clarify it entirely. Under the section entitled “How can PPP loans be used?” It states:

“Proceeds of a PPP loan are to be used for... 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.”

It is unclear at this time whether this is expressing a limitation or restriction on one borrower obtaining both a PPP and an EIDL loan for payments related to COVID-19. Clarification has been sought. In any event, dealerships considering both the PPP and EIDL loan and grant should work with closely their lender and CPA to ensure permitted uses for these loans do not overlap and they are taking proper advantage of each loan programs benefits.

Q 55. Are there territorial issues for eligibility (can dealers in Puerto Rico, American Samoa, etc. apply)?

A Small businesses suffering substantial economic injury in all 50 states, DC, and the territories may apply for an EIDL.

ADDITIONAL SMALL BUSINESS LENDING PROGRAMS

Q 56. Are there other programs available if a dealership does not qualify for EIDL or Paycheck Protection Program loans?

A Yes. If a dealership does not qualify for these SBA programs, or seeking different relief, it might consider:

- **The Main Street Business Lending Program.** This is a separate program administered by the Federal Reserve that is aimed at helping small- and medium-sized business. Details about the Main Street Lending Program can be found [here](#).
- **SBA Section 504 Real Estate Loans.** Dealers should also be aware of the possible availability of an SBA [Section 504 real estate loan](#) or real estate refinancing. These real estate loans provide approved small businesses with long-term, fixed-rate financing used to acquire fixed assets for expansion or modernization. 504 loans are made available through Certified Development Companies (CDCs), SBA's community-based partners for providing 504 Loans. A CDC is a nonprofit corporation that promotes economic development within its community through 504 Loans. 504 Loans are typically structured with SBA providing 40% of the total project costs, a participating lender covering up to 50% of the total project costs, and the borrower contributing 10% of the project costs. Under certain circumstances, a borrower may be required to contribute up to 20% of the total project costs. To find a CDC in your area, contact your [local SBA District Office](#).

Work with your CPA, attorney, and lender to explore and pursue the loan options that work best for your business situation.

TAX CREDITS AND PROVISIONS

Q 57. What is the new employee retention tax credit?

A The CARES Act provides for a new employee retention tax credit. This credit is unavailable to employers who receive PPP loans.

The employee retention tax credit provides eligible employers with a refundable payroll tax credit for 50 percent of the qualified wages paid by the employer between 3/13/20 and 12/31/20. This credit is available to employers whose operations were fully or partially shut down by a government COVID-19 related shutdown order or whose gross receipts have declined by more than 50 percent compared to the same quarter in 2019 and ends in the quarter where gross receipts are greater than 80% of gross receipts for the same quarter in 2019. The tax credit is provided for the first \$10,000 (including health benefits) of compensation.

For employers with more than 100 employees, qualified wages are only wages paid when an employee is not working. For employers with 100 employees or less, qualified wages are wages paid regardless of whether the worker is actively working or not.

These credits are applied to offset employment taxes not covered by other credits, including the payroll tax credits for required paid sick leave and family leave under the [FFCRA](#).

Dealers with cash flow concerns can request an advancement on their tax credits by filing [Form 7200](#) with the IRS. The IRS expects to process these forms within two weeks.

Q 58. What changes were made to interest deductibility limitations?

A The Tax Cuts and Jobs Act of 2017 (TCJA) generally limited the deductibility of business interest to 30% of a dealership's adjusted taxable income, except for floor plan financing interest, which remained 100% deductible. The CARES Act allows dealers formed as corporations to deduct up to 50% of their adjusted taxable income for 2019 and 2020, and it allows dealers formed as partnerships to deduct up to 50% of their adjusted taxable income for 2020. Dealers should note that, coupled with the proposed IRS rules on the interplay between bonus depreciation and floor plan financing interest, if their total business interest, including floor plan financing interest, amounts to less than 50% of adjusted taxable income for these years, they may also be able to avail themselves of the 100% bonus depreciation provisions in the TCJA. Dealers formed as corporations that were unable to use full expensing in 2019 because their interest expenses were between 30% and 50% of their adjusted taxable income may be able to generate refunds by filing a superseded or an amended 2019 return. Dealers which are formed as partnerships will be allowed to deduct 50% of their 2019 disallowed excess business interest expense in 2020.

Q 59. What changes were made to net operating losses (NOLs)?

A Dealers are permitted to offset losses in 2018, 2019, and 2020 against profits from the prior five years. NOL carryback was previously eliminated by the TCJA in 2017. This provision may provide dealers with losses in 2020 with substantial refunds. Losses that are used to offset pre-TCJA profits, which were taxed at a higher rate, will be refunded at pre-TCJA tax rates, providing an additional benefit.

The TCJA also generally limited the amount of losses noncorporate taxpayers, including pass through entities, could claim to \$500,000. This limitation is suspended until the 2021 tax year, allowing dealers to utilize excess business losses along with the new NOL carryback provisions to access critical cashflow.

Q 60. What are the new deadlines for payroll taxes?

A In order to assist employers with immediate cash-flow issues, the CARES Act also provides that employers may defer payment of their portion of Social Security taxes they would otherwise be obligated to pay beginning 3/27/20 and ending 12/31/20. Any deferred payroll taxes would be required to be paid over the next two years – with half of the owed amount required to be paid by 12/31/21, and the remaining half by 12/31/22.

Dealers may also be able to delay the payment of certain payroll taxes under the FFCRA. Please see NADA's FFCRA FAQ [here](#).

Q 61. Did the CARES Act fix the “QIP Glitch” from the Tax Cuts and Jobs Act?

A Yes, the CARES Act made technical corrections to the TCJA allowing for qualified improvement property to utilize bonus depreciation. The TCJA originally intended for businesses to deduct improvements made to retail property immediately under the TCJA's bonus depreciation provisions, but due to a drafting error the depreciation lifespan was set at 39 years. The CARES Act corrects this error retroactive to 2018. Dealers with significant outlays on QIP during this timeframe should consider amending their 2018 and 2019 returns to claim the deductions and receive a refund.

Q 62. If we are a C Corp, what changes did the CARES Act make to corporate AMT credits?

A Under the TCJA, corporate AMT credits were refundable over a four-year period from tax years beginning in 2018-2021. The CARES Act makes any remaining corporate AMT credit fully refundable for the tax year beginning in 2019. Alternatively, an election may be made to make the tax credit fully refundable for the tax year beginning in 2018. The CARES Act directs Treasury to provide procedures where a taxpayer electing to make the credit refundable in 2018 can file for a tentative refund of the additional credit amount, which should be granted within 90 days.

UNEMPLOYMENT BENEFITS

Q 63. Will additional unemployment protection be available under the CARES Act?

A Yes. The CARES Act temporarily supplements unemployment insurance (UI) amounts and extends the duration of those benefits. It also provides an estimated \$260 billion in enhanced and expanded unemployment insurance to workers who are being furloughed, laid off, or finding themselves without work due to the public health crisis.

Q 64. What are the changes to unemployment insurance that we should be aware of?

A The CARES Act creates three new UI programs: Pandemic Unemployment Compensation (“PUC”), Pandemic Emergency Unemployment Compensation (“PEUC”), and Pandemic Unemployment Assistance (“PUA”). All three programs are fully federally funded but require state action.

Q 65. What is Pandemic Unemployment Compensation (PUC)?

A PUC would provide additional (\$600/week) UI benefits from the federal government through the state unemployment agencies. Any state may enter into an agreement with the Secretary of Labor that the state will make payments of regular compensation to individuals in amounts and to the extent they would under state law with respect to any week for which the individual is otherwise entitled under state law to receive regular compensation, as if such state law had been modified in a manner such that the amount of regular compensation (including dependents’ allowances) payable for any week shall be equal to the amount determined under state law plus an additional amount of \$600/week.

Q 66. When will the additional \$600/week be available and for how long?

A The PUC will not be available until the date the employee’s state enters into an agreement with the Secretary of Labor to provide these benefits and then will be available through 7/31/20. Following that, an employee would need to exhaust state and federal unemployment benefits (without the extra \$600 a week), if the state or federal government provide additional weeks of unemployment benefits beyond that date. After exhausting all state and federal unemployment benefits, employees may become eligible for Pandemic Emergency Unemployment Benefits (described below).

From the date the bill is signed through 7/31/20, all UI claimants (both regular claimants and Pandemic Unemployment Assistance described below) will receive the weekly benefit amount authorized under the unemployment compensation law of the state where the covered individual was employed their usual calculated benefit plus an additional \$600 per week in compensation.

To encourage states to waive the customary 7-day waiting period to receive benefits, the federal government will reimburse states for the full amount of unemployment benefits paid to individuals during their first week of unemployment. PUC may be paid either with the regular UI payment or at a separate time, but it must be paid on a weekly basis.

Q 67. Is there any extension of the time that UI is available?

A Yes. The CARES Act also provides that an individual who has already exhausted their state unemployment benefits is eligible to receive an additional 13 weeks of Pandemic Emergency Unemployment Compensation (PEUC) through 12/31/20. This means an individual may receive unemployment benefits for 39 weeks rather than the 26 weeks provided by most states.³

Q 68. What is the maximum number of weeks unemployment assistance is available to a covered individual?

A Subject to the 12/31/20 expiration date, unemployment assistance may continue for as long as an individual’s unemployment, partial unemployment, or inability to work is caused by COVID-19. However, the total number of weeks for which a covered individual may receive assistance shall not exceed 39 weeks, and such total shall include any week for which the covered individual receives regular compensation or extended benefits under any federal or state law. If the duration of extended benefits is extended after the enactment of the CARES Act, the 39-week period shall be extended by the applicable number of weeks.

³ During these 13 weeks, the recipient is eligible for their regular benefit amount under state law plus – until 7/31/20 -- an additional \$600 per week. In order for individuals who previously exhausted their unemployment benefits to qualify for additional unemployment (including the \$600 supplement for the next four months), they must be otherwise eligible for benefits under state law, meaning they are able to work, available to work, and actively seeking work.

Q 69. Could this reduce the amount of state UI an applicant would have received?

A It should not. There is a “non-reduction rule” in the Act, which means that as long as the states are participating in these programs, they may not do anything to decrease the maximum number of weeks of UI or the weekly benefits available under state law as of 1/1/20.

Q 70. Is there any additional protection for workers who may not otherwise be eligible for UI benefits?

A Yes. Pandemic Unemployment Assistance (PUA) provides emergency unemployment assistance only to applicants who are not generally eligible for regular state UI or who have exhausted their state UI benefits (including any Extended Benefits that might become available in the future). Up to 39 weeks of PUA are available to workers who are immediately eligible to receive PUA. The program will expire on 12/31/20, unless otherwise extended.

Those eligible for PUA include self-employed workers, including independent contractors, freelancers, workers seeking part-time work, and workers who do not have a long-enough work history to qualify for state UI benefits.

Q 71. What do applicants for this expanded (PUA) unemployment coverage need to provide?

A Applicants for PUA will need to provide self-certification that they are (1) partially or fully unemployed, OR (2) unable and unavailable to work because of one of the following circumstances:

- They have been diagnosed with COVID-19 or have symptoms of it and are seeking diagnosis;
- A member of their household has been diagnosed with COVID-19;
- They are providing care for someone diagnosed with COVID-19;
- They are providing care for a child or other household member who can't attend school or work because it is closed due to COVID-19;
- They are quarantined or have been advised by a health care provider to self-quarantine;
- They were scheduled to start employment and do not have a job or cannot reach their place of employment as a result of a COVID-19 outbreak;

- They have become the breadwinner for a household because the head of household has died as a direct result of COVID-19;
- They had to quit their job as a direct result of COVID-19;
- Their place of employment is closed as a direct result of COVID-19; or
- They meet other criteria established by the Secretary of Labor.

Workers are not eligible for PUA if they can either telework with pay or are receiving paid sick days or paid leave.

The PUA program will run from 1/27/20 through 12/31/20. Applicants may receive retroactive benefits and can access benefits for a maximum of 39 weeks, including any weeks for which the person received regular UI. But eligibility will sunset on 12/31/20 absent any extensions.

Q 72. Is there any relief for employees placed on part time schedules?

A Yes. Short-time compensation (STC), also known as work-sharing, programs help employers avoid layoffs by putting workers on part-time schedules with partial unemployment benefits to help make up for some of the lost income. Under the CARES Act, the federal government will fully reimburse states for all STC programs already in place that conform with the certain requirements. The Act also provides \$100 million in grants to states to implement, improve, and promote STC programs. More information on STC programs can be found [here](#).

Q 73. What is the role of the states?

A The CARES Act is funded with federal money, but the benefits will still be administered by state unemployment offices after entering into agreements with the Department of Labor (DOL). States currently are taking different approaches, with some beginning to administer benefits under the new law and some awaiting guidance from DOL. For states that enter into agreements with the DOL to provide benefits, the federal government will reimburse 100% of their extra benefits costs (that is, those costs above what they would have paid in regular state unemployment benefits), plus administrative expenses. Accordingly, it is expected that most, if not all, states will participate, but the timing of these state agreements is not immediately clear. The DOL has not yet issued guidance to states on how to enter into these agreements.

Q 74. Where can employees find information about potential unemployment benefits?

A Employees should contact their [state unemployment insurance program](#) as soon as possible after becoming unemployed.

Q 75. Can an employee who would make more from UI simply quit in order to claim the benefits?

A No. While it may be true that in some situations, employees who receive the extra \$600 a week payment will be entitled to more compensation than they would otherwise be entitled to if they remained employed. Employees who simply quit because they think it will make sense for them financially to do so and then collect unemployment benefits will not be eligible for PUA benefits.

Note that states may have some discretion in determining which claimants are eligible for benefits and the amount to which they are entitled, and it is not clear what it means for an employee to quit as a result of COVID-19. For an employee to be eligible for Expanded Unemployment Benefits, for example, covered individuals must have “had to quit their job as a direct result of COVID-19,” which suggests they must have essentially been forced to quit for reasons directly related to COVID-19. General concerns about exposure to COVID-19 is not one of the permitted reasons under the CARES Act (outlined in FAQ 71), nor is the relative financial benefit of continuing UI benefits.

Q 76. Can an individual refuse to return to work when called back by an employer and still receive PUA?

A No. If an individual refused work in order to file for unemployment benefits, he or she is not unemployed, partially unemployed, or not able or not available to work for one of the permitted COVID-19 related reasons (FAQ 71). Thus, the individual would not qualify for PUA. See DOL FAQs [here](#).

Q 76.1 Is an individual who refuses an offer of work eligible for PUA?

A No, unless the individual is unable to work as a direct result of COVID-19. Eligibility for PUA requires that the individual be able to work and available to work within the meaning of applicable state law, unless the individual is unable or unavailable to accept the offer of work because of a permitted reason (FAQ 71), he or she would not be eligible for PUA.

Q 76.2 If the jurisdiction’s stay at home order due to the COVID-19 emergency is lifted and an employer has called his or her employees back to work, is an individual who refuses to return to work due to a general fear of exposure to the coronavirus still eligible for PUA?

A No. To qualify for PUA, the individual must be unemployed, partially unemployed, or unable or unavailable to work because of a COVID-19 related reason listed in above. An individual who does not go to work due to general concerns about exposure to COVID-19, and who does not meet any of the other COVID-19 related criteria for PUA, is not eligible for PUA because general concerns about exposure to COVID-19 is not one of the permitted reasons under the CARES Act (FAQ 71).

OTHER EMERGENCY OPTIONS FOR EMPLOYEES

Q 77. Are there any other emergency options in the CARES Act that are available to employees that we should be aware of?

A The CARES Act allows individuals to make early withdrawals from their retirement accounts without penalty. Specifically, the 10 percent early withdrawal penalty for distributions up to \$100,000 from qualified retirement accounts for coronavirus-related purposes made on or after 1/1/20 is waived. In addition, income attributable to such distributions would be subject to tax over three years, and the taxpayer may recontribute the funds to an eligible retirement plan within three years without regard to that year’s cap on contributions.

Q 78. What qualifies as a coronavirus-related distribution?

A A coronavirus-related distribution is a one made to an individual: (1) who is diagnosed with COVID-19, (2) whose spouse or dependent is diagnosed with COVID-19, or (3) who experiences adverse financial consequences as a result of being quarantined, furloughed, laid off, having work hours reduced, being unable to work due to lack of child care due to COVID-19, closing or reducing hours of a business owned or operated by the individual due to COVID-19, or other factors as determined by the Treasury secretary.

Q 79. Is there any other relief for individuals who need to withdraw funds from their retirement plans and IRAs?

A Yes, there is a waiver for the required minimum distribution rules for certain defined contribution plans and IRAs for calendar year 2020. The contribution plans and IRAs that qualify include: (1) employee annuity plans under 26 U.S.C. §403(a) or 403(b); (2) certain deferred compensation plans under 26 U.S.C. §457(b); and (3) individual retirement plans.