



# TaxNewsFlash

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## Updated FAQs concerning PPP loans, nonprofits in Puerto Rico

The U.S. Treasury Department posted an updated version of a set of “frequently asked questions” (FAQs) concerning the Paycheck Protection Program (PPP) as administered by the Small Business Administration (SBA).

The new FAQ addresses PPP eligibility rules for certain nonprofit organizations in Puerto Rico.

### Background

The PPP is a program providing financial support lending for small and large businesses pursuant to measures originally included in the *Coronavirus Aid, Relief, and Economic Security Act* (CARES Act) (Pub. L. No. 116-136). Additional measures concerning the program were enacted under the *Consolidated Appropriations Act, 2021* (Pub. L. No. 116-260) (the *Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act* is one of the titles of the legislation enacted December 27, 2020). That legislation effectively opened up the availability for a “second draw” for PPP loans.

Subsequently, President Biden on March 11, 2021, signed into law the “American Rescue Plan Act of 2021” (Pub. L. No. 117-2).

The PPP was scheduled to expire March 31, 2021. President Biden on March 30, 2021, signed legislation (Pub. L. No. 117-6) that extends the PPP through June 30, 2021 (that is, the program is extended through June 30, 2021, but the PPP extension legislation provides that for the final 30 days of the PPP (from June 1 through June 30, 2021), the SBA can only process applications submitted before June 1, 2021, and cannot accept any new loan applications).

### New FAQ

The [FAQs](#) [PDF 507 KB] were most recently updated June 8, 2021, with the addition of FAQ 68 (text of which is provided below). A header added to these FAQs states:

*These FAQs are in the process of being revised and do not yet reflect changes made by the American Rescue Plan Act of 2021 enacted on March 11, 2021.*

## **Text of FAQ 68**

**68. Question:** *Does a nonprofit organization qualify as a “nonprofit organization” under section 7(a)(36)(A)(vii) of the Small Business Act (15 USC 636(a)(36)(A)(vii)) if:*

- The nonprofit organization has received approval of an application for tax exemption from the Puerto Rico Departamento de Hacienda; but*
- has not applied for and received recognition from the Internal Revenue Service as an organization described in section 501(c)(3) of the Internal Revenue Code?*

**Answer:** *The Administrator will treat a nonprofit organization that meets the description set forth in section 501(c)(3) of the Internal Revenue Code and that has obtained approval of its application for tax exemption from the Puerto Rico Departamento de Hacienda as meeting the definition of “nonprofit organization” under section 7(a)(36)(A)(vii) of the Small Business Act (15 USC 636(a)(36)(A)(vii)) under the conditions described below.*

*Section 7(a)(36)(A)(vii) of the Small Business Act (15 USC 636(a)(36)(A)(vii)) defines the term “nonprofit organization” as “an organization that is described in section 501(c)(3) of the Internal Revenue Code of 1986 and that is exempt from taxation under section 501(a) of such Code.” To be described in section 501(c)(3) of the Internal Revenue Code, an organization must be organized and operated exclusively for exempt purposes set forth in section 501(c)(3). The exempt purposes set forth in section 501(c)(3) are charitable, religious, educational, scientific, literary, testing for public safety, fostering national or international amateur sports competition, and preventing cruelty to children or animals.*

*The Administrator understands that some nonprofit organizations in Puerto Rico that have applied for and received tax exempt status locally from the Puerto Rico Departamento de Hacienda may meet the description set forth in section 501(c)(3) of the Internal Revenue Code, but may not have sought to be recognized by the Internal Revenue Service as exempt from taxation under section 501(a) of the Internal Revenue Code on such basis. Because these organizations may not otherwise be subject to U.S. federal income tax, for example, due to Puerto Rico being treated as a foreign jurisdiction for most U.S. federal income tax purposes, these organizations may not have sought exemption under section 501(a).*

*In order to accomplish Congress’s intent of ensuring a broad range of borrowers may qualify for PPP loans, the Administrator will treat a nonprofit organization that has obtained approval of its application for tax exemption from the Puerto Rico Departamento de Hacienda as meeting the definition of “nonprofit organization” under section 7(a)(36)(A)(vii) of the Small Business Act (15 USC 636(a)(36)(A)(vii)) if the nonprofit organization reasonably determines, in a written record maintained by the nonprofit organization, that it would be an organization described in section 501(c)(3) of the Internal Revenue Code (without regard to the notification requirement in section 508(a) of the Internal Revenue Code) and is therefore within a category of organizations that are eligible to be exempt from taxation under section 501(a), regardless of whether the nonprofit organization has applied for recognition from the Internal Revenue Service.*

*For more information, please visit [www.irs.gov/charities-non-profits/charitable-organizations/exemption-requirements-501c3-organizations](https://www.irs.gov/charities-non-profits/charitable-organizations/exemption-requirements-501c3-organizations).*

*This guidance is solely for purposes of qualification as a “nonprofit organization” under section 7(a)(36)(A)(vii) of the Small Business Act (15 USC 636(a)(36)(A)(vii)) and related purposes of the*

*CARES Act, and does not have any consequences for any federal tax purposes. Puerto Rico nonprofit organizations must also meet all other applicable eligibility criteria to receive a PPP loan and loan forgiveness.*

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