

CARES ACT – SEC. 1102 PAYCHECK PROTECTION PROGRAM – QUICK REFERENCE

In General

The CARES Act creates a new loan product under the SBA's 7(a) Loan Program, the "Paycheck Protection Program" (PPP). The loan is available for employers and 501(c)(3) organizations under 500 employees, is 100% guaranteed by the SBA with a 4% interest rate, and can be used to cover payroll costs, mortgage interest, rent, utilities, and interest on certain other debt. The maximum loan amount is \$10mm.

Details

Employer Eligibility & Certification

- Generally limited to businesses with 500 or fewer employees (exceptions for some industries).
 - Very narrow exceptions apply for businesses with multiple locations¹ and to the affiliation rules.²
- Also eligible are sole proprietors, independent contractors, and "eligible self-employed individuals."³
 - Such individuals must submit documentation sufficient to establish eligibility.⁴
- Lenders will consider whether borrower was in operation on 2/15/20 and had employees or paid independent contractors.
- Borrowers must make good faith certification that the loan is needed to support ongoing operations, that funds will be used to retain workers and maintain payroll or for mortgage, lease, and utility payments, and that the borrower isn't seeking or hasn't already received a loan under the PPP.⁵

Loan Terms

- PPP loans are available from Feb 15 to June 30 (the "covered period"), are 100% guaranteed by the SBA, and are non-recourse to the extent the loan is used for authorized purposes.
- Principal, interest, and fees are deferred for a minimum of six months to a maximum of 1 year.
- Interest rate maxes at 4%, with a 10 year term for portions of the loan not forgiven.
- SBA fees, the credit elsewhere requirement, and the personal guarantee requirement are all waived.

¹ Only applies to food, drink, and hospitality service businesses (NAICS Code beginning 72).

² Only applies to NAICS 72 businesses, franchises, or businesses receiving financial assistance from a Small Business Investment company.

³ "Eligible self-employed individuals" are defined in reference to the FFCRA (i.e. eligible for sick or family leave if they were an employee), and essentially require the SEI to be unable to work due to Covid.

⁴ E.g. payroll tax filings, Forms 1099-MISC, income and expenses.

⁵ Effectively makes the PPP loan a one-time deal. Borrowers who had received a disaster loan can refinance to a PPP loan.

- The SBA, SBA qualified lenders, and certain other newly authorized lenders can lend under the PPP.
- Loans are eligible for forgiveness to the extent they are used for payroll costs, interest, rent, and utilities.

Allowable Uses of Loans

- During the “covered period” (Feb 15 to June 30), loan recipients can use the loan for:
 - Payroll costs;
 - Costs to continue group health care during paid sick, family, or medical leave;
 - Insurance premiums;
 - Employee salaries, commissions or similar compensation;
 - Mortgage interest and interest on debt incurred prior to Feb 15;
 - Rent and utilities⁶.
- Use of proceeds for non-authorized purposes isn’t strictly prohibited but does limit loan forgiveness and non-recourse provisions.

Calculating Loan Amount

- Maximum loan provided is the lesser of:
 - \$10,000,000; or
 - 2.5 x average total monthly payments for payroll costs incurred during the twelve months prior to the date the loan is made.^{7,8}

“Payroll Costs” Defined

- For purposes of the PPP loans, “payroll costs” are defined as the sum of employee compensation that is a:
 - Salary, wage, commission;
 - Cash tip or equivalent;
 - Vacation, paternal, family, medical, or sick leave;⁹
 - Allowance for dismissal or separation;
 - Payment required for group health benefits, including insurance premiums;
 - Retirement benefits;
 - State or local tax assessed on compensation;
- Includes compensation to or income of a sole proprietor or independent contractor that is wage, commission, income, or net earnings from self-employment, under \$100,000 in 1 year.
- Doesn’t include:

⁶ Utilities are not defined in the PPP section, but in the loan forgiveness section (1106) they include electricity, gas, water, transportation, telephone, and internet access.

⁷ Businesses not in operation between 2/15/19 and 6/30/19 use average monthly payroll costs from 1/1/20 to 2/29/20.

⁸ Also add in the amount of any outstanding disaster loan obtained prior to the date PPP loans are made available. Such loans can be refinanced to a PPP loan.

⁹ Excluding sick or family leave paid under the FFCRA.

- Compensation of individual employees in excess of an annual \$100,000 salary, as prorated for the covered period.
- Social Security and Medicare taxes, Railroad Retirement Act taxes, or Federal tax withholding.
- Sick or family leave wages for which a FFCRA credit is allowed.

Coordination with Disaster Loans and Express Loan Provisions

- Receipt of a SBA Disaster Loan between 1/31/20 and the date when covered loans are made available does not preclude receipt of a PPP loan.
- Disaster Loans can be refinanced as part of a PPP loan.
- SBA Express Loan maximum amounts are increased from \$350,000 to \$1,000,000.¹⁰

Loan Forgiveness

- Recipients of a Paycheck Protection Program loan are eligible to have a portion of their loan forgiven, generally equal to the amount of payroll costs, interest, rent, and utility payments made during an eight-week period beginning on the day the loan proceeds are received.
 - This amount may be decreased for employers who have reduced their number of full-time employees or who have reduced employee wages and salaries, but not if such workforce or wage reduction is eliminated by June 30, 2020.¹¹

¹⁰ No other changes were made to the Express Loan provisions.

¹¹ See Sec. 1106 Loan Forgiveness Quick Reference for details.