

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 1% 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 through Dec 31 (the “covered period”), are 100% guaranteed by the SBA, and are non-recourse to the extent the loan is used for authorized purposes.
- Payment of principal and interest are deferred for a minimum of six months to a maximum of 1 year. Interest still accrues during deferment.
- Interest rate is 1% with a 2-year term for portions of the loan not forgiven (5 years for loans entered into after June 5, 2020).

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 See the SBA Interim Guidance Quick Reference for details on the PPP loan specific for self-employed individuals.

⁵ Borrowers who receive a loan of under \$2,000,000 are deemed to have made the certification in good faith.

- SBA fees, the credit elsewhere requirement, and the personal guarantee requirement are all waived.
- 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 Dec 31), loan recipients can use the loan for:
 - Payroll costs;
 - Costs to continue group health care during paid sick, family, or medical leave;
 - Health Insurance premiums;
 - Employee salaries, commissions or similar compensation;
 - Mortgage interest and interest on debt incurred prior to Feb 15;
 - Rent and utilities⁶.
- At least 60% of the forgiveness amount must be for payroll costs and no more than 40% of the forgiveness amount can be for non-payroll costs.

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:
 - Gross 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;

⁶ Interest, rent, and lease payments can be for real or personal property. Utilities 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.

- Partners, sole proprietors, and independent contractors calculate their payroll costs based on their net income from self-employment, as reported on their tax returns (Schedule C Line 31 or K-1 Box 14(a)).¹⁰
- Doesn't include:
 - Compensation of any individual in excess of an annualized equivalent of a \$100,000 salary, as prorated for the covered period.
 - Employer paid Social Security and Medicare taxes, Railroad Retirement Act taxes, or Federal taxes.
 - 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 used for payment of non-payroll costs does not preclude receipt of a PPP loan.
- Disaster Loans can be refinanced as part of a PPP loan.
 - Disaster Loans used for payroll costs must be refinanced into a PPP loan.
- SBA Express Loan maximum amounts are increased from \$350,000 to \$1,000,000.¹¹

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 a twenty-four week period beginning on the day the loan proceeds are received (eight weeks may be used at the election of the borrower).
 - 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 December 31, 2020.¹²

¹⁰ Business do not include payments to sole props or ICs in determining payroll costs, as these individuals will apply on their own. However, partnerships should include partner income and partners should not apply separately.

¹¹ No other changes were made to the Express Loan provisions.

¹² See Sec. 1106 Loan Forgiveness Quick Reference for details.