

# COVID-19 Crisis: Highlights of the Paycheck Protection Program in the Keeping American Workers Paid and Employed Act

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# Overview

- **Title I of CARES – Keeping American Workers Paid and Employed Act**
- **Section 1102 – Paycheck Protection Program**
- **Section 1106 – Loan Forgiveness**
- **Interim Rules Issued by the SBA April 2, 2020**

# Paycheck Protection Program – What is it?

- The new, \$349 billion Federal program to provide ***non-recourse, forgivable loans*** (in whole or in part) guaranteed to the U.S. Small Business Administration (“SBA”).
- The program is designed to incentivize employers to keep their employees on the payroll, bring back employees who were laid off or furloughed, and restore salary and pay cuts.
- If the proceeds are used correctly, the full loan amount will be forgiven.

# Deferral of Loan Repayment

- Each borrower shall be presumed to be an “impacted borrower,” which requires lenders to provide complete payment deferment for a period of not less than six months and not more than one year.

# The Details of the Loan

The loan shall be a non-recourse, no personal guarantee, and no collateral loan

- The SBA shall have no recourse against any individual shareholder, member, or partner of an eligible recipient of a covered loan for non-payment of any covered loan, **EXCEPT** where the shareholder, member, or partner uses the covered loan proceeds for a purpose not authorized in the prior bullet.
- Borrowers may, however, receive an SBA Section (b)(2) loan (economic injury disaster loan) in addition to the paycheck protections loans and use those loan proceeds for purposes other than payroll and other costs described above.

# Paycheck Protection Program – Eligible Recipients of the Loan

- Any SBA defined “small business concern”
- Any business, for-profit or non-profit, that employs up to 500 employees, counting all employees engaged on a full-time, part-time, or any other basis
- Veterans organizations and tribal businesses
- Sole proprietors, independent contractors, and “eligible self-employed individuals” are eligible for these loans.
- Eligible self-employed individuals are those who regularly carry on any trade or business within the meaning of Section 1402 of the Internal Revenue Code, and who would be entitled to receive paid leave pursuant to the Emergency Paid Sick Leave Act if the individual were an employee of an employer (other than himself or herself)

# Prior Economic Injury Disaster Loans

- If you already obtained a Section (b)(2) SBA loan (economic injury disaster loans) during the period beginning Jan. 30, 2020, that loan may be refinanced as one of the paycheck protection program loans

# Lender Considerations for the Loans

- In determining eligibility of the borrower, the lender will consider whether the borrower:
  - Was in operation on Feb. 15, 2020; and
  - Had employees for whom the borrower paid salaries and payroll taxes, or paid independent contractors as reported on Form 1099-MISC.
  - There is no requirement that the business be unable to obtain credit elsewhere, which is normally part of the SBA process.



# Maximum Loan Amount

The Lesser of:

- \$10,000,000

**OR**

- 2.5 times the average total monthly payments by the applicant for **payroll costs** incurred during the one-year period before the date on which the loan is made, plus the amount of any outstanding SBA loan previously made under Section (b)(2) during the period beginning Jan. 31, 2020.

# Maximum Loan Amount – New Businesses

- If the recipient of the loan was not in business during the period Feb. 15, 2019 and ending Jun. 30, 2019, the maximum loan amount is:
  - 2.5 times the average total monthly payments by the applicant for **payroll costs** incurred during the period beginning Jan. 1, 2020 and ending Feb. 29, 2020, plus the amount of any outstanding SBA loan previously made under Section (b)(2) during the period beginning Jan. 31, 2020.

# Payroll Costs

Payroll costs includable in the loan amount request are any payments of any compensation with respect to an employee that is a:

- Salary, wage, commission, or similar compensation;
- Payment of cash tip or equivalent;
- Payment for vacation, parental, family, medical, or sick leave;
- Allowance for dismissal or separation;
- Payment required for provision of group healthcare benefits, including health insurance premiums;
- Payment of any retirement benefit;
- Payment of State and local tax assessed on the compensation of employees.

# Payroll Costs *(continued)*

- Payroll costs **in the statute** include the sum of payments of any compensation to or income of a sole proprietor or independent contractor that is a wage, commission, income, net earnings from self-employment, or similar compensation that is not more than \$100,000 in one year, as prorated for the covered period.
- But the recently issued interim rule by the SBA excludes independent contractor payments; instead the SBA expects each independent contractor to apply for its own loan.

# Payroll Costs *(continued)*

Payroll costs do **NOT** include:

- Compensation of an individual employee in excess of an annual salary of \$100,000, as prorated for the covered period;
- Taxes imposed or withheld by the Internal Revenue Code, Chapters 21, 22, and 24 (federal payroll and withholdings taxes) from Feb. 15, 2020-June 30, 2020;
- Any compensation of an employee whose principal place of residence is outside of the United States;
- Qualified sick leave wages paid pursuant to the Federal Emergency Paid Sick Leave Act for which a payroll tax credit is allowed; and
- Qualified family leave wages paid pursuant to the Emergency Family and Medical Leave Expansion Act.

# Allowable Uses of the Loans

During the period beginning Feb. 15, 2020 and ending June 30, 2020, loan recipients may use the loan proceeds for:

- Payroll costs (as described previously);
- Payments of ***interest*** on any mortgage obligation (excluding principal and prepayment of principal);
- Rent (including rent under a lease agreement);
- Utilities; and
- Interest on any other debt obligations that were incurred prior to Feb. 15, 2020.

# The Application Process for the Loan

Borrowers shall be required, during the application process, to make a good faith certification:

- That the uncertainty of the current economic conditions makes necessary the loan request to support the ongoing operations of the recipient;
- Acknowledging that the funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments;
- That the eligible recipient does not have an application pending for a loan under this subsection for the same purpose and duplicative of amounts applied for or received under a covered loan; and

# The Application Process for the Loan

*(continued)*

- During the period beginning Feb. 15, 2020 and ending Dec. 31, 2020, the eligible recipient has not received amounts under this program for the same purpose and duplicative of amount applied for and received under a covered loan.



# Forgiveness of the Loan Proceeds

The loan forgiveness amount shall equal to the sum of all costs and payments made by the borrower during the **eight-week period following loan origination** for:

- Payroll costs (as discussed earlier);
- Payments on mortgage obligations for ***any*** indebtedness or debt instrument on ***real or personal property*** incurred in the ordinary course of business that was incurred before Feb. 15, 2020, but excluding prepayment of or payment of principal;
- Payments on rent obligations for a leasing agreement in force before Feb. 15, 2020; and
- Payments on utility payments for a service for the distribution of electricity, gas, water, transportation, telephone, or internet access which service began before Feb. 15, 2020

# Limitation on Use of Proceeds

- The interim rule issued by the SBA requires that no more than 25% of the loan proceeds be spend on non-payroll expenses
- Therefore, you must spend at least 75% of the loan proceeds on payroll costs
- This is not required by the statute but, rather, is a limit written by the SBA into its interim rules

# Tax Treatment of Forgivable Portion of Loan Proceeds

- The forgivable loan amounts shall not be includable in the gross income of the borrower by virtue of the forgiveness under this law.

# Limitations on Forgivable Loan Amounts Based Upon Reduction of Employees

The amount of the loan forgiven shall be reduced by:

- **Multiplying** the amounts paid by the borrower for allowable costs  
**X**
- The quotient obtained by:
  - Dividing the average number of FTE per month\* during the eight-week period beginning on the date of the origination of the loan  
**÷**
  - The average number of FTE per month employed during the period beginning Feb. 15, 2019 and ending Jun. 30, 2019 (or, at the recipient's election, the period Jan. 1, 2020 and ending Feb. 29, 2020).

*\*The average number of FTE shall be determined by calculating the average number of FTE for each pay period falling within a month.*

# Limitations On Forgivable Loan Amounts Based Upon Salary/Wage Reductions

The amount of the loan forgiven shall be reduced by:

- The amount of wages of any employee who did not receive, in any single pay period in 2019, wages or salary at an annualized rate of pay in an amount more than \$100,000; and
- Whose total salary or wages are reduced more than 25% as compared to that employee's total salary and wages during the most recent full quarter during which the employee was employed before the loan was originated.

# Exceptions to the Limitation on Forgiveness

- The amount of loan forgiveness shall be determined ***without regard to a reduction in the number of FTE or reduction in the salary*** of one or more employees during the period Feb. 15, 2020 and ending 30 days after the enactment of this law if:
  - With respect to the reduction of FTE, the employer has eliminated the reduction of FTE by Jun. 30, 2020; and
  - With respect to a reduction in the salary or wages of one or more employees, the employer has eliminated the reduction in salary or wages.

# Forgiveness Application Process

After you have spent the money during the eight-week period beginning with loan origination, the lender shall have 60 days to grant or deny a forgiveness application, which is the borrower's submission of:

- Documentation verifying the number of FTE on payroll and pay rates for the eight-week period commencing on the loan origination date, including:
  - Payroll tax filings reported to the IRS; and
  - State income, payroll, and unemployment insurance filings.
- Documentation, including cancelled checks, payment receipts, transcripts of accounts, or other documentation verifying payments on covered mortgage obligations, covered lease obligations, and covered utility payments;

# Forgiveness Application Process *(continued)*

- A certification of a representative of the borrower that:
  - The documentation is true and correct;
  - The amount for which forgiveness is requested was used to retain employees, make interest payments on a covered mortgage obligation, make payments on a covered rent obligation, or make covered utility payments.
- Any other documentation the SBA Administrator determines is necessary.
- ***No borrower shall receive forgiveness without submitting the documentation above.***



# Maturity of Unforgiven Balance of Loan

- For any portion of the covered loan that is not forgiven, the balance shall be guaranteed by the SBA; and
- The covered loan shall have a maturity of two years from the date of the application by the borrower for forgiveness.
- The interest rate on any unforgiven balance shall be 1%.
- There shall be no prepayment penalty for any unforgiven balance of a covered loan.

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