

Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") Executive Summary

Paycheck Protection Program

How Does It Work?

The plan provides \$349 billion in cash flow assistance through 100% federally guaranteed loans to small businesses and 501(c)(3) nonprofit organizations during this emergency. To help bring workers who may have already been laid off, the program can be retroactive to February 15, 2020, so employees can return onto payrolls. The loan's covered period is February 15 to June 30, 2020. The *expected forgiveness amount* can be expended on payroll costs, payments of interest on a mortgage obligation, rent obligations, and utility payments. The loan can pay for:

- The sum of payments of any compensation with respect to employees that is a salary or wage;
- Payment of cash tip or equivalent;
- Payment for vacation, parental, family, medical, or sick leave;
- Allowance for dismissal or separation;
- Payment required for the provisions of group health care benefits, including insurance premiums;
- Payment of any retirement benefit; or
- Payment of state or local tax assessed on the compensation of employees.

The maximum loan amount must be the lesser of:

- *Two and a half months payroll*, as calculated by taking the average total monthly payments by the business for payroll costs incurred during the 1-year period before the date on which the loan is made. For a seasonal employer, the business calculates the average total monthly payments for payroll during the 12-week period beginning February 15, 2019, or at the choice of the business, March 1, 2019, and ending June 30, 2019. Multiply this number by 2.5 for two and a half months payroll.
- *\$10,000,000*

Restricted from being included in the payroll calculation are:

- Any salaries above \$100,000 per year; and
- Any qualified sick leave wages for which a tax credit is allowed under section 7001 or 7003 of the *Families First Coronavirus Response Act*.

What Businesses Are Eligible?

For eligibility purposes, it requests lender to, instead of determining repayment ability, which is not possible during this crisis, to determine whether a business was operational on February 15, 2020, and had employees for whom it paid salaries and payroll taxes or paid an independent contractor.

- Only small businesses that employ less than 500 employees are eligible for Paycheck Protection Program and SBA Loan Forgiveness.
 - Businesses with more than one physical location that employs no more than 500 employees per physical location in certain industries are eligible.

- The program enacted by this legislation *would remove* the “Credit Elsewhere Test,” which requires an extensive analysis to determine whether the borrower has the ability to obtain some, or all, of the requested loan funds from alternative sources, without causing undue hardship. That test could also have required them to utilize those alternative sources – rather than obtain the Small Business Administration (SBA) loan – if so.
- Requires eligible borrowers to make a good faith certification that the loan is necessary due to the uncertainty of current economic conditions caused by COVID-19; they will use the funds to retain workers and maintain payroll, lease, and utility payments; and are not receiving duplicative funds for the same uses from another SBA program.
- Allows complete deferment of payments on loans under the program for at least six months and not more than one year.
- No collateral or personal guarantee shall be required for the covered loan.

What is Loan Forgiveness?

- The borrower is eligible for loan forgiveness equal to the amount spent by the borrower during an eight week period after the origination date of the loan on payroll costs, interest payment on any mortgage incurred prior to February 15, 2020, payment of rent on any lease in force prior to February 15, 2020, and payment on any utility for which service began before February 15, 2020.
 - Amounts forgiven may not exceed the principal amount of the loan.
- Forgiveness on a covered loan is equal to the sum of the following payroll costs incurred during the covered eight-week period compared to the previous year or time period, proportionate to maintaining employees and wages:
 - Payroll costs **plus** any payment of interest on any covered mortgage obligation (which shall not include any prepayment of or payment of principal on a covered mortgage obligation) **plus** any payment on any covered rent obligation + any covered utility payment.
 - The amount forgiven will be reduced proportionally by any reduction in employees retained compared to the prior year and reduced by the reduction in pay of any employee beyond 25% of their prior year compensation.
- To encourage employers to rehire any employees who have already been laid off due to the COVID-19 crisis, borrowers that re-hire workers previously laid off will not be penalized for having a reduced payroll at the beginning of the period.
- The SBA Administrator and the Treasury Secretary may prescribe regulations granting de minimis exemptions from the requirements under this subsection.
- Borrowers will verify through documentation to lenders their payments during the period. Lenders that receive the required documentation will not be subject to an enforcement action or penalties by the Administrator relating to loan forgiveness for eligible uses.
- Any loan amounts not forgiven at the end of one year is carried forward as an ongoing loan with terms of a max of 10 years, at max 4% interest. The 100% loan guarantee remains intact.
- The calculation for an average monthly number of full-time equivalent employees is about 30 hours per week, under the Affordable Care Act. The forgiveness amount is reduced according to the amount of full-time employees on staff compared to the previous year, February 15, 2019 to June 30, 2019.
- Loan forgiveness may also cover any additional wages paid by businesses to tipped employees (as defined in the *Fair Labor Standards Act*).