



Senate CARES Bill (HR 748) Update

Paycheck Protection Program (Sec 1102)

Loan Forgiveness (Sec 1106)

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Paycheck Protection Program

Increases the government guarantee of loans made for the Payment Protection Program under section 7(a) of the Small Business Act to 100 percent through December 31, 2020.

Who is making the loans?

Provided delegated authority to lenders in allowing them to determine eligibility and credit worthiness without going through SBA channels. A lender approved to make loans is deemed to have been delegated authority by the Administrator to make and approve covered loans.

How are banks evaluating the borrower?

In evaluating the eligibility of a borrower for a covered loan, a lender can consider whether the borrower:

- was in operation on February 15, 2020; and
- had employees for whom the borrower paid salaries and payroll taxes OR paid independent contractors as reported on a Form 1099-MISC.

Paycheck Protection Program

Employee Limit

- The term employee includes individuals employed on a full-time, part-time or other basis.
- Exception for Accommodation and Food Services: the 500 employees can be measured per physical location.
- Waives affiliation rules for franchises that are approved on the SBA's Franchise Directory and small businesses that receive financing through the Small Business Investment Company (SBIC) program.
- Individuals who operate under a sole proprietorship or as an independent contractor and eligible self-employed individuals may be eligible to receive a covered loan.

Paycheck Protection Program

Maximum Loan Amount

Beginning on February 15, 2020 and ending on June 30, 2020, the maximum loan amount is the lesser of:

- the **average total monthly payments** by the applicant for **payroll costs** incurred during the 1-year period before the date on which the loan is made **multiplied by 2.5**;
- plus the outstanding loan amounts that were made beginning on January 31, 2020 and ending on the date you receive this loan, eligible to be refinanced under this loan; OR
- \$10,000,000.

Special rules exist for seasonal employers and businesses not in existence beginning 2/15/2019 and ending on 6/30/2019.

Paycheck Protection Program

Maximum Loan Amount

Payroll Costs include:

- salary, wage, commission, or similar compensation;
- payment of cash tip or equivalent;
- payment of vacation, parental, family, medical or sick leave;
- allowance for dismissal or separation;
- payment required for the provision of group health care benefits, including insurance premiums;
- payment of any retirement benefits; or
- payment of state or local tax assessed on the compensation of employees;
- 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 and that is in an amount not exceeding more than \$100,000 in 1 year, as prorated for the period beginning on February 15, 2020 and ending on June 30, 2020.

Paycheck Protection Program

Maximum Loan Amount

Payroll Costs do **NOT** include:

- the compensation of an individual employee's in excess of an annual salary of \$100,000 as prorated for the period beginning on February 15, 2020 and ending on June 30, 2020;
- taxes imposed or withheld under FICA (Social Security and Medicare), Railroad Retirement Act, and IRC Chapter 24 (income tax at source);
- any compensation of an employee whose principal place of residence is outside the United States;
- qualified sick leave or family leave wages for which a credit is allowed under the Families First Coronavirus Response Act.

Paycheck Protection Program

What can I use the loan for?

Between February 15, 2020 and ending on June 30, 2020, the eligible recipient can use the proceeds from the loan for:

- payroll costs;
- costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums;
- employee salaries, commission, or similar compensations;
- payments of interest on any mortgage obligation;
- rent (including rent under a lease agreement);
- utilities; and
- interest on any other debt obligation that were incurred before the period.

Paycheck Protection Program

Recipient Good Faith Certifications

An eligible recipient applying for a covered loan must make a good faith certification that:

- the uncertainty of current economic conditions makes necessary the loan request to support the ongoing operations of the eligible recipient;
- acknowledging that 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
- during the period beginning on February 15, 2020 and ending on December 31, 2020, that the eligible recipient has not received amounts under this subsection for the same purpose and duplicative of amounts applied for or received under a covered loan.

Paycheck Protection Program

Nonrecourse

The administration has no recourse against any individual shareholder, member, or partner of an eligible recipient of a covered loan for nonpayment of any covered loan UNLESS it is used for a purposes not authorized.

No Guarantee

Between February 15, 2020 and ending on June 30, 2020, no personal guarantee is required for the covered loan AND no collateral is required for the cover loan.

No Fees

Between February 15, 2020 and ending on June 30, 2020, with respect to covered loan, the Administrator will not collect a fee.

Paycheck Protection Program

Deferral of Payment:

Between February 15, 2020 and ending on June 30, 2020, the Administration provides complete payment deferment relief for impacted borrowers with a loan for a period of not less than 6 months and not more than 1 year.

- Includes the payment of principal, interest, and fees

An impacted borrower is an eligible receipt who is in operation on February 15, 2020 and has an application for covered loan that is approved or pending after the date of enactment.

Loan Forgiveness

An individual or entity that is eligible to receive a covered loan is eligible for forgiveness of indebtedness on that loan in an amount equal to the sum of the following costs incurred and payments made during **the 8-week period beginning on the date of the origination of a covered loan:**

- payroll Costs (reference definition above);
- any payment of interest on any covered mortgage obligation
 - any indebtedness or debt instrument incurred in the ordinary course of business that is a liability of the borrower, is a mortgage on real or personal property and was incurred before 2/15/2020;
- any payment of a rent obligation made under a leasing agreement in force before 2/15/2020;
- any utility payment related to the distribution of electricity, gas, water, transportation, telephone or internet access for which service began before 2/15/2020.

Loan Forgiveness

Information that must be provided to the Lender:

- documentation verifying the number of full time equivalent employees on payroll and pay rates 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 documents verifying payments on covered mortgage obligations, payments on covered lease obligations, and covered utility payments.

Loan Forgiveness

Information that must be provided to the Lender:

- certification from a representative of the eligible recipient authorized to make such certifications that-
 - the documentation presented is true and correct; AND
 - 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 administrator determines is necessary.

No eligible recipient shall receive forgiveness without submitting to the lender that is servicing the covered loan the documentation required.

Loan Forgiveness

Timing of Loan Forgiveness Decision:

No later than 60 days after the date on which a lender receives an application for loan forgiveness from an eligible recipient, the lender will issue a decision on the an application.

Taxability

Any amount would be includible in gross income of the eligible recipient by reason of forgiveness is excluded from gross income.

Loan Forgiveness

Reduction of Loan Forgiveness

- The amount of loan forgiveness may be reduced if there is a reduction in full time equivalent employees when comparing to the average number of full time equivalent employees per month employed by the eligible recipient during the period beginning February 15, 2019 and ending on June 30, 2019 OR January 1, 2020 and ending on February 29, 2020.
- Reductions also exist for certain reductions in total salary or wages of any employees in excess of 25 percent.
 - Employees in this instance refer to employees who in 2019 did not receive a wage or salary at an annualized rate more than \$100,000.
- Special rules for tipped workers and rehires during a certain time period.