



Small Business Paycheck Protection Program *Overview of Changes to Section 7(a) Loan Program*

Please find below a summary of the Paycheck Protection Program, which was a key provision for small business included in H.R. 748, the *Coronavirus Aid, Relief, and Economic Security (CARES) Act*. This is a preliminary analysis of key provisions and should be reviewed with caution, given that the underlying legislative language may be subject to some unintended drafting errors. Therefore, the forthcoming required guidance or regulations from the Small Business Administration (SBA) should be relied upon and any examples should be reviewed with caution.

Paycheck Protection Program

The *CARES Act* establishes a “Paycheck Protection Program” in Section 1102. The goal of this program is to enable employers to carry their payroll and other operating costs through this crisis. To accomplish the goal of fast disbursement of funds to struggling businesses, the bill plugs into an existing loan program created by section 7(a) of the Small Business Act, administered by the [Small Business Administration](#). However, the bill makes significant changes to that program to ensure the needs of businesses can be met quickly during this unprecedented time. Logistical details are as follows.

Timeframe

“Covered period” begins on February 15, 2020 and ends on June 30, 2020. The loans are unavailable after June 30, 2020.

Amount

The legislation establishes a cap of \$10 million per loan or 250% of the average monthly payroll, whichever is less.

Eligibility

Employers with up to 500 employees (full-time or part-time) will be eligible. For employers with more than one physical location, the 500-employee limit applies per location. Subject to certain documentation requirements, individuals who are self-employed, independent contractors, or sole proprietors are eligible. Nonprofits are eligible as well, but only 501(c)(3) nonprofits.

Payroll Costs Defined

“Payroll costs” are broadly defined, as including: a salary, wage, commission, or similar compensation, cash tips, leave payment, dismissal or separation allowance, payments for an employer’s group health benefits (including premiums), payment for retirement benefits, or payment of State or local tax assess on employee compensation.

For a sole proprietor or independent contractor: payment that is a wage, commission, income, net earnings from self-employment, or similar compensation, with a cap of \$100,000 in one year (pro-rated for the covered period).

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Payroll costs specifically exclude: compensation of an individual above \$100,000 annually (pro-rated for the covered period), taxes imposed or withheld under IRC Chapters 21, 22, or 24, any compensation of an employee with a principal place of residence outside the U.S., and any sick or family leave for which a credit is allowed under the Families First Coronavirus Response Act.

Allowable Uses

During the covered period, the recipient may use the loan for:

- Payroll costs (see above)
- Costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums
- Interest on any mortgage obligation (but not any principal payment)
- Rent
- Utilities
- Interest on any other debt obligations incurred before the covered period

Process

An eligible recipient shall make a good faith certification that the uncertainty of current economic conditions makes the loan necessary to support ongoing operations. The recipient must further certify that funds will be used to maintain payroll, make mortgage, lease, and utility payments. Finally, the recipient must certify that it does not have any duplicative applications. Fees are waived and the usual requirement that a small business cannot get credit elsewhere does not apply. The usual personal guarantee requirement is waived, and no collateral will be required. A covered loan can have interest up to 4%. Prepayment penalties are prohibited.

Deferment

Lenders are required to provide complete payment deferment relief for “impacted borrowers” for a minimum of six months and no more than a year. This includes interest and fees. Impacted borrowers are presumed to have been impacted adversely by COVID-19, and all recipients are presumed to be “impacted borrowers.”

Authorization

For the period February 15, 2020 until June 30, 2020, the amount authorized for commitments for general business loans under Small Business Act Section 7(a) is \$349 billion. Separately, the legislation provided the actual appropriations of \$349 billion for the program.

Loan Forgiveness

In section 1106, the bill creates “loan forgiveness” for loans described above (taken out pursuant to the new Payroll Protection Program). A recipient is eligible for forgiveness of indebtedness on a covered loan in amount equal to the sum of the costs incurred and payments made for one of the allowable uses, outlined above. Here, for purposes of loan forgiveness, a “covered period” is the eight-week period starting on the date of loan origination.

Amounts forgiven shall be considered “canceled indebtedness” by a lender authorized by Section 7(a). Within 90 days after the date on which the amount of forgiveness is determined, the SBA shall remit to the lender the amount of forgiveness, with any interest accrued through the date of payment.

The amount of forgiveness is reduced based on a formula for business owners who have laid off employees or reduced wages, as follows:

- **Lay-offs:** The forgiveness amount is offset by the percentage reduction in total number of FTEs. It seems that the intent of the legislation is that, if an employer has 100 employees and lays off 25, their forgiveness should be offset by an equivalent percentage. However, the legislative language is unclear here.
 - Example: A firm reduces the total amount of FTEs by 25%. As such, the total amount of the loan forgiveness is reduced by 25%.
- **Wage reductions:** The forgiveness amount is offset for each salary reduction of more than 25% (for employees making under \$100K annually). The total salary reduction amount would be subtracted from the forgiveness amount.
 - Example: A firm reduces the salary of a salaried employee who makes \$90,000 per year to \$60,000 per year, which is more than 25% of the annualized salary (i.e., more than \$67,500). Therefore, the loan forgiveness should be reduced by \$7,500.

However, there is an exemption for rehires or increasing the salary of an employee. The reduction in employees or the reduction in total salary is disregarded in any of the following circumstances:

- With respect to the reduction in employees, there was a reduction in employees during the period of February 15 and ending on the date that is 30 days after enactment, as compared to February 15. But, not later than June 30, 2020, the employer has eliminated the reduction in the number of full-time equivalent employees.
- With respect to the reduction in salary for certain employees, between February 15 and ending on the date that is 30 days after enactment, there is a reduction in the salary or wages of one or more employees, as compared to February 15. But, not later than June 30, 2020, the employer has eliminated the reduction in the salary to be less than, or equal to, a 25% reduction.
- Both of the above.

To obtain loan forgiveness, the recipient must submit an application to the lender. The bill specifically prohibits forgiveness without this documentation. The lender must make a decision with 60 days, and the application is to include:

- Documentation verifying the number of full-time equivalent employees on payroll and pay rates for the periods described in subsection (d), including payroll tax filings reported to the IRS and state income, payroll, and unemployment insurance filings.
- Documentation, including canceled checks, payment receipts, transcripts of accounts, or other documents verifying payments on covered mortgage obligations, payments on covered lease obligations, and covered utility payments.
- A certification that the documentation presented is true and correct and that the amount for which forgiveness is re-requested was used for allowable uses, and
- Any other documentation the Administrator determines necessary.

Timeline For Forgiveness

Within 60 days after a lender receives an application for loan forgiveness, the lender must issue a decision. Within 90 days after the date on which the amount of forgiveness is determined, the SBA shall remit that forgiveness amount, with interest, to the lender.

Implementation Timing

The SBA must issue guidance and regulations on the loan forgiveness aspect within 30 days of enactment.