

CARES Act Keeping Workers Paid

Part of the CARES Act's relief authorizes federally guaranteed loans to qualifying small and medium businesses, which are intended to help the businesses continue to provide their employees with payroll and allow them to retain their employees during the COVID-19 emergency. It is expected that the U.S. Department of Treasury and the SBA will release guidance in the coming weeks to provide further detail on the program. This guidance may make changes to the summary below.

What is the Paycheck Protection Program?

The Paycheck Protection Program allows credit unions and other insured lenders to issue Paycheck Protection Loans, which are backed by the Small Business Administration (SBA) under section 7(a) of the Small Business Act. The CARES Act modifies the SBA guarantee of loans made under Paycheck Protection Program to 100%. The provisions create a 'covered period,' which began on Feb. 15, 2020, and ends on June 30, 2020.

Those eligible for the Paycheck Protection Loans include:

- Small businesses with 500 or fewer employees;
- 501(c)(3) nonprofit organizations with 500 or fewer employees;
- 501(c)(19) veterans' organizations with 500 or fewer employees;
- Tribal business concerns with 500 or fewer employees;
- Sole-proprietors;
- Independent contractors; and
- Self-employed individuals.

Business with more than one physical location, but that do not employ more than 500 and are assigned a North American Industry Classification System code beginning with 72 at the time of disbursement are eligible to receive a Paycheck Protection Loan. In addition, the CARES Act waives certain affiliation rules for businesses in the hospitality and restaurant industries, franchises that are approved on the SBA's Franchise Directory, and small businesses that receive financing through the Small Business Investment Company (SBIC) program.

The SBA is required to register the Paycheck Protection Loans not later than 15 days after the date on which the loan is made using the TIN assigned to the borrower.

In general the Paycheck Protection Loans may be used for:

- Payroll costs;
- Costs related to the continuation of group health care benefits, paid sick leave, paid family or medical leave, and insurance premiums;
- Employee salaries, commissions, or similar compensation;
- Payments of interest on any mortgage obligation, provided that it does not include any prepayment of or payment of principal on the mortgage obligation;
- Rent or lease payments;
- Utilities; and

- Interest on any debt obligation incurred before the covered period.

The maximum loan amount is set at the lesser of \$10 million or the calculation based on payroll costs over a designated period or time multiplied by 2.5. For the purposes of determining forgiveness amounts, payroll costs will exclude the compensation of any employees in excess of \$100,000 in annualized compensation, including qualified sick leave and qualified family leave wages.

The Paycheck Protection Program provides for the delegation of authority. This is the ability for lenders to make determinations on a borrower's eligibility and creditworthiness without going through all of the SBA's channels. This delegation of authority is extended to all current 7(a) lenders who make these loans to small businesses and will provide the same authority to lenders who join the program to make these loans.

In evaluating the eligibility of a borrower, a lender shall consider if the business:

- Was in operation on Feb. 15, 2020;
- Had employees for whom the borrower paid salaries and payroll taxes; or
- Paid independent contractors, as reported on Form 1099-MISC.

The program provides a limitation on a borrower from receiving both a Paycheck Protection Loan and an Economic Injury Disaster Loan through the SBA for the same purpose. However, a borrower who has an EIDL loan unrelated to the COVID-19 emergency may apply for a Paycheck Protection Loan with an option to refinance the EIDL loan into the Paycheck Protection Loan.

Borrowers applying for a Paycheck Protection 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;
- The eligible recipient does not have an application pending for a loan under the Paycheck Protection Program for the same purpose and duplicative amounts applied for; and
- During the period from Feb. 15, 2020 to Dec. 31, 2020, that the eligible recipient has not received amounts under the Paycheck Protection Program for the same purpose and duplicative amount as is being applied for.

The Paycheck Protection Program also waives a number of 7(a) program requirements, such as:

- Borrower and lender fees for participation in the program;
- The credit elsewhere test for funds provided under the program; and
- Collateral and personal guarantee requirements under the program.

Other characteristics of the program include:

- For any portion of a loan that was not used for forgiveness purposes, the remaining loan balance will have a maturity of not more than 10 years, and the guarantee for that portion of the loan will remain intact;

- The maximum interest rate is set at 4% APR;
- Borrowers may not be charged any prepayment fees.

Under the Paycheck Protection Program the SBA will consider that each borrower could require the lender to defer loan payments for a period of 6 to 12 months.

The SBA's issued guidance to lenders and agents is to ensure that the processing and disbursement of covered loans prioritizes small business concerns and entities in underserved and rural markets, including veterans and members of the military community, small business concerns owned and controlled by socially and economically disadvantaged individuals.

Does the CARES Act provide for SBA loan forgiveness?

The CARES Act establishes that a Paycheck Protection Loan may receive forgiveness equal to the amount spent by the borrower during an 8-week period after the loan origination date for payroll costs, interest on any mortgage, payment of rent or any lease, and payment for utility services. The mortgage interest, rent or lease, and utility services must have been in place prior to Feb. 15, 2020.

The amounts forgiven may not exceed the principal amount of the Paycheck Protection. In addition, as encouragement to maintain or even bring back workers, 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.

Borrowers that re-hire employees who have already been laid off due to the COVID-19 emergency will not be penalized for having a reduced payroll at the beginning of the period and the payroll costs of any such employee is eligible for loan forgiveness. The payroll forgiveness extends to additional wages paid to tipped employees.

Each borrower seeking loan forgiveness must apply with the lender servicing the loan. The application will need to include:

- Documentation verifying the number of full-time equivalent employees on payroll and pay rates for current year and the prior year periods 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;
- A certification from the representative who is authorized to make a certification on behalf of the business that:
 - The documentation presented is true and correct; and
 - 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; and
 - Any other documentation that the SBA determines as necessary.

The borrowers must submit the documentation since the CARES Act prohibits forgiveness without documentation. Credit unions will have up to 60 days after receiving an application for loan forgiveness to make a decision on the application.

The amounts forgiven will be treated as a cancellation of debt by the lender and included in an application to loan guaranteed under section 7(a) of the Small Business Act. Upon receiving the lender's report of an expected loan forgiveness for a loan or a pool of loans, the SBA will purchase such amount of the loan from the lender. The SBA has 90 days after the date of forgiveness to remit to the lender the amount equal to the forgiveness, plus any interest accrued through the date of payment.

The cancellation of indebtedness resulting from the loan forgiveness will not be included in the borrower's taxable income.

The SBA is required to issue guidance and regulations for the loan forgiveness of Paycheck Protection Loans not later than 30 days after the CARES Act is enacted. The CARES Act was enacted on March 27, 2020, which gives the SBA until April 26, 2020, to issue the guidance and regulations.

We're not currently offering SBA 7(a) lending. Can we participate in the Paycheck Protection Loan Program?

Yes, the CARES Act establishes the authority of the U.S. Department of Treasury, and other federal financial regulatory agencies (including the NCUA), to authorize banks and insured credit unions to participate in loans made under the Paycheck Protection Program.

For credit unions admitted under this authority, they will give the Treasury the authority to issue regulations and guidance for terms concerning lender compensation, underwriting standards, interest rates, and maturities. Interest rates are capped at 4% under the Paycheck Protection Program.

What are the Emergency EIDL grants and loans, and what can they be used for?

The CARES Act expands the eligibility for access to Economic Injury Disaster Loans (EIDL) to include:

- A business with not more than 500 employees;
- Any individual who operates under a sole proprietorship, with or without employees, or as an independent contractor;
- A cooperative with not more than 500 employees;
- An Employee Stock Ownership Plan organization with not more than 500 employees; or
- A tribal small business concern with not more than 500 employees.

The CARES Act also adds to the list of eligible entities:

- Private nonprofit organizations
- Small agricultural cooperatives

The CARES Act requires that for any SBA EIDL loans made in response to the COVID-19 emergency, that the SBA waive any personal guarantee on advances and loans below \$200,000 as long as the applicant has been in business for at least 1 year prior to the disaster. In addition, there are provisions that allow

the SBA to approve and offer EIDL loans based solely on the applicant's credit score or to use an alternative method to determine the applicant's ability to repay.

The EIDL provisions establish an Emergency Grant to allow an eligible entity that has applied for an EIDL loan to request an advance on the loan of not more than \$10,000, which the SBA must distribute within 3 days. The applicant is not required to repay advance payments, even if the EIDL loan is denied after the advance was made. The advance payments must be used for providing paid sick leave to employees, maintaining payroll, meeting increased costs to obtain materials, making rent or mortgage payments, and repaying obligations that cannot be met due to revenue losses.

The advance payment is considered loan forgiveness if the applicant transfers into a loan made under the Paycheck Protection Program.