

# **SMALL BUSINESS ADMINISTRATION'S PAYCHECK PROTECTION LOAN PROGRAM**

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# BENEFITS OF PAYCHECK PROTECTION LOANS

AVAILABLE APRIL 3 FOR SMALL BUSINESSES AND SOLE PROPRIETORS & APRIL 10 FOR INDEPENDENT CONTRACTORS AND SELF-EMPLOYED INDIVIDUALS

## 100% GUARANTEED

The loans are 100% federally guaranteed. No collateral, personal guarantees, or SBA fees are required.

## \$10 MILLION LOAN CAP

Loan amounts of up to \$10 million per eligible entity.

## 2 YEAR MATURITY

Loans have a maturity of 2 years, but there is no penalty for prepayment.

## LOAN FORGIVENESS

Full loan forgiveness for employers that maintain or restore pre-crisis payroll.

## DEFERMENT RELIEF

Loan payments are automatically deferred for 6 months, but interest will accrue during the deferral period.

## 1% INTEREST RATE

The interest rate will be fixed at 1%.

## NO RECOURSE

SBA has no recourse against individuals, shareholders, members, or partners or loan recipients for non-payment, unless loan dollars are used for impermissible purposes.

# ELIGIBILITY FOR PAYCHECK PROTECTION LOANS

ENTITIES—INCLUDING SOLE PROPRIETORS, INDEPENDENT CONTRACTORS, AND SELF-EMPLOYED INDIVIDUALS—THAT WERE OPERATING AND PAYING WORKERS ON FEBRUARY 15, 2020 ARE ELIGIBLE, PROVIDED THEY ARE EITHER—

## SMALL BUSINESS CONCERNS BY EMPLOYEE SIZE

“Small business concerns” as defined in existing SBA laws and rules (based on SBA employee size standard for the industry).

OR

## OTHER ELIGIBLE RECIPIENTS

For-profit “business concerns,” 501(c)(3) non-profits, 501(c)(19) veterans organizations, and Tribal businesses with not more than the greater of—

- 500 employees; or
- The SBA’s “small” size standard in number of employees for the entity’s industry.

(or special rules for faith-based applicants)

DEPENDING ON YOUR INDUSTRY, YOUR BUSINESS MAY QUALIFY, EVEN IF YOU HAVE MORE THAN 500 EMPLOYEES.

# INELIGIBLE ENTITIES

**EXCEPT “NONPROFITS AUTHORIZED BY THE CARES ACT,” BUSINESSES THAT NORMALLY ARE EXCLUDED FROM SBA BUSINESS LOANS ARE INELIGIBLE. EXAMPLES INCLUDE —**

- ✘ Household employers of nannies, housekeepers, etc. (not a normal SBA exclusion, but excluded under SBA rules).
- ✘ Financial businesses primarily engaged in the business of lending.
- ✘ Passive businesses owned by developers/landlords that do not actively use or occupy the assets acquired or improved by the loan proceeds.
- ✘ Life insurance companies.
- ✘ Businesses located in a foreign country.
- ✘ Private membership clubs and businesses.
- ✘ Businesses deriving more than 1/3 of gross annual revenue from legal gambling activities.
- ✘ Businesses primarily engaged in political or lobbying activities.

# DETERMINING EMPLOYER SIZE

## GENERAL RULES

- In general, all entities count full-time, part-time, and “other basis” employees of the entity and all U.S. and foreign affiliates.
- 4 affiliation tests apply for loan applicants (to show “control or power to control”):
  - 50%+ equity ownership
  - Common management by CEO, Board, or similar
  - Identity of interest between close relatives
  - Stock options, convertible securities, and agreements to merge (given present effect as if rights exercised)

## SPECIAL COUNTING RULES

Business concerns with NAICS codes starting with 72 (accommodations or food service - use “primary industry” code) are eligible if they have 500 or fewer employees per location.

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SBA affiliation rules waived (i.e., only the employee count of the entity, not the entity’s affiliates, should count) for any business concern:

- With a **72 NAICS code**;
- Operating as a franchise under an **SBA franchise identifier code**; or
- Receiving financial assistance from Small Business Investment Act licensees.

Per SBA, affiliation rules also will not apply to faith-based organizations.

# MORE ON SPECIAL COUNTING RULES

## “BUSINESS CONCERNS” UNDER THE SBA

- “A business entity organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor.”
- May be in the legal form of an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust or cooperative, except that where the form is a joint venture there can be no more than 49 percent participation by foreign business entities in the joint venture.

## SPECIAL COUNTING RULES APPLY AT THE “BUSINESS CONCERN” LEVEL

- Any business concern with a 72 NAICS code may count per location and affiliation rules are waived
- Any business concern operating as a franchise under an SBA franchise identifier code – affiliation rules are waived

## IMPACT OF AN AFFILIATION RULE WAIVER?

If you have a waiver, applicant affiliations and affiliate employees should not be considered by SBA when determining business size. Therefore, it likely is worth evaluating eligibility for paycheck protection loans from the perspective of each separately organized business concern.

# THE APPLICATION PROCESS

**MUST FILE A STANDARD, STREAMLINED PAYCHECK PROTECTION LOAN APPLICATION (SBA FORM 2483). IT GENERALLY REQUIRES—**

- ✓ Basic business identification information;
- ✓ A list of all owners of the applicant with 20% or greater ownership stake;
- ✓ A list of any businesses under common ownership or management with the applicant;
- ✓ Details on any EIDLs received by the business between January 1, 2020 and April 3, 2020;
- ✓ Information about individual applicants' and 20%-plus<sup>7</sup> owners' criminal history; **and**
- ✓ Good faith certifications by a business representative.

**APPLICANTS MUST ALSO SUBMIT PAYROLL DOCUMENTATION. IT APPEARS THAT LENDERS WILL USE PAYROLL DOCUMENTATION FROM CALENDAR YEAR 2019 TO MAKE LOAN AMOUNT CALCULATIONS, EVEN THOUGH THE RULES REFERENCE THE “LAST 12 MONTHS” AS THE LOOK-BACK PERIOD.**

# THE APPLICATION PROCESS

## GOOD-FAITH CERTIFICATIONS INCLUDE, AMONG OTHER THINGS —

- ✓ The applicant was in operation on February 15, 2020 and paid workers at that time, and is otherwise eligible for a PPL.
- ✓ The loan is needed to "support ongoing operations" during the COVID-19 emergency.
- ✓ Funds will be used to retain workers and maintain payroll or make mortgage, lease, and utility payments.
- ✓ The borrower will provide the lender documentation that verifies the number of full-time equivalent employees on payroll and the dollar amounts of forgiveness-eligible payments during the eight weeks after getting the loan.
- ✓ Loan forgiveness will be for the sum of documented payroll costs, covered rent and mortgage payments, and covered utilities, but "not more than 25% of the forgiven amount may be for non-payroll costs."
- ✓ The applicant has not and will not receive another PPL from now until December 31, 2020.
- ✓ All the information provided by the borrower is true and accurate.
- ✓ The lender will calculate the eligible loan amount using the tax documents submitted.

**CERTIFICATIONS AND DOCUMENTATION GENERALLY SATISFY BANK UNDERWRITING OBLIGATIONS FOR PPLS.  
E-SIGNATURES AND E-CONSENTS ARE PERMITTED.**

# MAXIMUM LOAN AMOUNT

LOANS ARE CAPPED AT THE LESSER OF—

**\$10 MILLION**

**OR**

**250% OF AVERAGE MONTHLY  
"PAYROLL COSTS" DURING THE  
LAST 12 MOS (OR 2019?)\***

**(OR ALTERNATIVE LOOK-BACK  
PERIODS FOR NEW AND  
SEASONAL BUSINESSES)**

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Plus any outstanding EIDL amounts to be refinanced,  
less any advances taken under a COVID-19 EIDL loan

**\*Loan application and rules  
reference 2019 payroll  
documentation**

# USES FOR LOANS

## LOAN DOLLARS MAY BE USED FOR—

### GROUP HEALTH CARE BENEFITS & INSURANCE PREMIUMS

Group health care benefits during periods of paid sick, medical, or family leave.

Any insurance premiums.

### MORTGAGE INTEREST

Payments of interest on mortgage obligations.

### PAYROLL COSTS

This includes employee compensation (e.g., salary, wages, commissions, cash tips, etc.) up to annualized compensation of \$100,00; paid leave; severance payments; payment for group health benefits, including insurance premiums; retirement benefits; and state and local payroll taxes.

\* For an independent contractor or sole proprietor, it includes wages, commissions, income, or net earnings from self-employment or similar compensation. **Independent contractors do not count as employees<sup>10</sup> because they apply for their own loans under the program.**

It excludes excess compensation above the \$100,000 threshold; certain federal taxes; compensation to non-U.S. employees; and sick/family leave wages for which credit is allowed under the Families First Coronavirus Relief Act.

**AT LEAST 75% OF THE PPL PROCEEDS MUST BE USED FOR PAYROLL COSTS.**

### EXISTING SBA USES

Any uses already permitted for SBA Business Loans (e.g., inventory, supplies, building or land purchases, construction, site improvements, etc.).

### INTEREST ON OTHER OBLIGATIONS

Interest on any other debt obligations incurred before February 15, 2020.

### RENT & UTILITIES

Rent (including rent under a lease agreement) and utilities.

### ECONOMIC INJURY DISASTER LOAN

Refinancing of an SBA Economic Injury Disaster Loan (EIDL) made between January 1, 2020 and April 3, 2020.

# MAXIMUM LOAN FORGIVENESS AMOUNT

**THE MAXIMUM AVAILABLE FORGIVENESS AMOUNT (CAPPED AT PRINCIPAL AMOUNT OF THE LOAN PLUS ANY ACCRUED INTEREST) IS THE SUM OF THE FOLLOWING INCURRED AND PAID WITHIN 8 WEEKS OF YOUR LOAN ORIGINATION —**

- Payroll costs;
- Interest on mortgage obligations incurred before February 15, 2020;
- Rent obligations in place since before February 15, 2020; and
- Utility payments for services that began before February 15, 2020.

**THE FORGIVENESS PROVISIONS INCENTIVIZE QUICK DEPLOYMENT OF LOAN DOLLARS TO THESE PRIORITY BUCKETS OF EXPENSES.**

- Not more than 25% of the loan forgiveness amount may be attributable to non-payroll costs; and
- Any dollars spent more than 8 weeks after your loan is originated, even for these forgiveness-eligible expenses, will not be included in your forgiveness amount.

# REDUCTIONS IN LOAN FORGIVENESS

## REDUCTIONS/PENALTIES

Maximum forgiveness amounts will be reduced:

- Proportionately for reductions in average full-time equivalent employees (FTEEs) between pre-crisis levels and the 8-week forgiveness period;
- Via a straight reduction for payroll reductions over 25% (compared to the prior completed quarter of employment) for workers making less than \$100,000 annually; and
- For any advances taken on SBA economic injury disaster loans (EIDLs).

## RELIEF FROM REDUCTIONS FOR PAYROLL ADJUSTMENTS MADE BY JUNE 30

The above reduction rules will not apply, if the employer eliminates by June 30, 2020:

- Reductions (compared to February 15, 2020) in the number of FTEES made between February 15, 2020 and April 26, 2020; and/or, as applicable,
- Salary reductions (compared to February 15, 2020) made between February 15, 2020 and April 26, 2020 for 1 or more employees.

## LONGER-TERM PAYROLL COMMITMENTS?

There do not appear to be any other longer-term payroll maintenance requirements to receive forgiveness amounts.

# APPLYING FOR LOAN FORGIVENESS

## TO RECEIVE LOAN FORGIVENESS, BORROWERS MUST APPLY WITH DOCUMENTATION —

Verifying full-time equivalent employees on payroll and their pay rates (via IRS payroll tax filings and state income, payroll, and unemployment filings);

On covered costs/payments (e.g., canceled checks, receipts, or other documents verifying mortgage, rent, and utility payments); and

Certifying (by an authorized business representative) that the documentation is true and correct and that forgiveness amounts requested were used to retain employees and make other forgiveness-eligible payments.

**FOR LOAN BALANCES REMAINING AFTER FORGIVENESS, IT APPEARS THAT THE INTENT OF THE CARES ACT IS FOR THE SAME LOAN TERMS TO REMAIN IN PLACE, BUT WE ARE AWAITING FURTHER SBA GUIDANCE.**

# INTERACTION WITH CARES ACT TAX BENEFITS

## NO EMPLOYEE RETENTION CREDIT FOR PPL RECIPIENTS

- Credit provides eligible employers a refundable credit against payroll tax (Social Security and Railroad Retirement) liability equal to 50% of the first \$10,000 in wages per employee (including value of health plan benefits). Eligible employers must have done business in 2020 and be experiencing either:
  - At least a partial suspension of operations due to government orders (e.g., limiting commerce, travel, group meetings, etc.); or
  - A year-over-year reduction in gross receipts of at least 50%.
- For employers with more than 100 full-time employees, only employees who are currently not providing services for the employer due to COVID-19 causes are eligible for the credit.

## NO EMPLOYMENT TAX DEFERRAL FOR RECIPIENTS OF PPL FORGIVENESS

- Postpones the due date for depositing employer payroll taxes and certain self-employment taxes attributable to wages paid during 2020. The deferred taxes are payable over the next two years—half due December 31, 2021 and half due December 31, 2022.

**BUSINESSES WILL HAVE TO COMPARE THE BENEFITS OF PPLs AND THESE TAX CREDITS/DEFERRALS TO DETERMINE WHICH PATH PROVIDES THE GREATER FINANCIAL BENEFIT (E.G., COMPARE IMMEDIATE LIQUIDITY NEEDS WITH LONGER-TERM TIME VALUE OF MONEY CALCULATIONS).**

# WHERE WE ARE & WHAT'S NEXT

## APRIL 2, 2020

SBA began issuing rules to implement the Paycheck Protection Loan Program, which are effective as soon as they are published in the Federal Register. We expect continuous updates to FAQ guidance.



## APRIL 3, 2020

Loans available for small businesses and sole proprietorships.



## APRIL 10, 2020

Loans available for independent contractors and self-employed individuals.



## APRIL 26, 2020

SBA has until April 26, 2020 to issue specific guidance on the loan payment deferment relief and the loan forgiveness provisions.

# OTHER FUNDING OPTIONS TO CONSIDER

## DIRECT LOAN PROGRAM FOR ELIGIBLE BUSINESSES

Eligible entities are businesses created or organized in the U.S. that have significant operations and a majority of employees based in the U.S.

## DIRECT LOAN PROGRAM FOR MID-SIZE BUSINESSES

Eligible entities are businesses with 500-10,000 employees who are domiciled in the U.S. with significant operations and a majority of employees based in the U.S. Other eligibility criteria include:

- The business must not be a debtor in bankruptcy; and
- The uncertainty of the economic conditions must make the loan<sup>16</sup> necessary to support ongoing operations.

## DIRECT LOAN PROGRAM FOR AIR CARRIERS, CARGO AIR CARRIES, AND BUSINESSES CRITICAL TO MAINTAINING NATIONAL SECURITY

Eligible entities are businesses created or organized in the U.S. with significant operations and a majority of employees based in the U.S. Other eligibility criteria include:

- Credit must not be reasonably available;
- The business must have incurred/be expected to incur covered losses such that continued operations of the business are jeopardized; and
- The intended obligation is prudently incurred.

## MAIN STREET BUSINESS LENDING PROGRAM

Eligible entities would be small- and mid-sized borrowers, though the Federal Reserve has not provided details on the Program's operation.

**COMPLEMENTS THE PAYCHECK PROTECTION LOAN PROGRAM WITH AN ADDED IMPACT ON MID-SIZE BUSINESSES.**

# QUESTIONS?



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