

CARES Act
PAYCHECK PROTECTION PROGRAM, LOAN FORGIVENESS,
AND EMERGENCY EIDL GRANTS
Signed into law March 27, 2020

PAYCHECK PROTECTION PROGRAM (SECTION 1102)

Businesses eligible for the program

- 1) Any small business as defined by the Small Business Act
- 2) Any business (including nonprofits) with 500 or fewer employees (or more if SBA size-standard is larger for the industry – visit SBA website for industry-by-industry details): <https://www.sba.gov/document/support-table-size-standards>
 - a. For the accommodations and food/beverage industries, 500 employee limit is per location rather than as a whole (NAICS classification numbers starting with “72” qualify for this exception).
 - b. Certain franchises are exempt from the 500 employee rule.
 - c. Must include employees of “Affiliates” in headcount for 500-employee test.
 - i. Generally, affiliation exists when one business controls or has the power to control another or when a third party (or parties) controls or has the power to control both businesses. Control may arise through ownership, management, or other relationships or interactions between the parties.
 - ii. Affiliation rules generally do not apply to NAICS “72” classification businesses.

Full-time and part-time employees are included for 500-employee test. Generally, the SBA uses the average number of employees of the business based upon number of employees for each of the pay periods for the preceding completed 12 calendar months.

- 3) Sole proprietorship/independent contractors/self-employed (additional documentation may be requested to confirm eligibility)
- 4) Any business receiving assistance from a company licensed under the Small Business Investment Act of 1958
Loans under this program must be taken out between 2/15/2020 and 6/30/2020.

Maximum covered loan amount

Lesser of:

Sum of:

- 1) [Average total monthly payments for payroll costs (“payroll costs” defined below) incurred during the 1 year period before date of loan*] x 2.5
- 2) SBA disaster loans made from 1/31/20 to when covered loans are made available

Or

\$10mm

*Seasonal employers can use the date range of 2/15/2019 – 6/30/2019 as opposed to the date range shown above. Businesses can also request to use 1/1/2020-2/29/2020 as the date range if it was not in business during the period 2/15/2019-6/30/2019.

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Allowable uses of covered loans

Use for 1) payroll costs; 2) health care benefits during paid sick, medical or family leave, and insurance premiums; 3) employee salaries; commissions, or similar compensations; 4) payments of interest on any mortgage obligation (not including prepayment); 5) rent/lease agreement payments; 6) utilities; 7) interest on any other debt obligations incurred prior to covered period.

LOAN FORGIVENESS (SECTION 1106)

Paycheck Protection Program loans qualify for loan forgiveness (not to exceed principal) in an amount equal to the payroll costs (defined below); interest on covered mortgages; rent; and utilities incurred **during the 8 weeks following receipt of loan (“covered period” for purposes of this section).**

Amount to be forgiven will be reduced by a relative amount for reduced workforce. Computation of adjustment for workforce reduction is:

Either:

- 1) $(\text{Forgiveness-eligible costs}) \times (\text{average \# of employees per month during 8-week period beginning with loan origination}) / (\text{average \# of employees between 2/15/19 and 6/30/19})$

Or

- 2) $(\text{Forgiveness-eligible costs}) \times (\text{average \# of employees per month during 8-week period beginning with loan origination}) / (\text{average \# of employees per month between 1/1/20 and 2/29/20})$

Either method above is acceptable.

Loan forgiveness is also reduced for a greater than 25% salary reduction for employees earning 100k or less during the 8-week period beginning with loan origination. Will need to submit documentation supporting amount to be forgiven. Decision to forgive will be made within 60 days of submission.

In determining the adjustment for workforce reduction, employees that are rehired within a certain timeframe are exempt and do not lower the amount of loan forgiveness.

Loan forgiveness is NOT TAXABLE for Federal tax purposes.

Any amounts not forgiven will have a maximum maturity of 10 years from date on which loan forgiveness is applied for, with interest rate not to exceed 4% (terms set by the lender).

Also allowed in this Section: Deferment of principal and interest payments for not less than six months or more than one year from date of loan origination.

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Payroll Costs

Includes:

- 1) Salary, wage, commission or similar compensation
- 2) Cash tips
- 3) Pay for vacation, parental, family, medical or sick leave
- 4) Pay for dismissal or separation
- 5) Payment for group health care benefits, including insurance premiums
- 6) Payment of any retirement benefit
- 7) Payment for state and local tax assessed on compensation of employees
- 8) 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 that is in an amount that is not more than \$100k per year (1099 payments could possibly be covered)

Does not include:

- 1) Compensation of an individual employee in excess of \$100k per year
- 2) Social security tax
- 3) Medicare tax
- 4) Income tax withholding
- 5) Compensation of an employee outside of the U.S.
- 6) Qualified sick or family leave eligible for a credit under Families First Act

Other Notes:

- Authority to make loans to be extended by SBA and Treasury Secretary. Loans will be guaranteed by SBA.
- SBA disaster loans made between 1/30/20 and date covered loans made available can be re-financed as part of this program.
- Program loans will be non-recourse, except if proceeds are used for a purpose other than described above.
- Borrower will need to make good faith certification regarding the need for a loan given uncertain economic conditions, acknowledge that the funds will be used for prescribed purposes, and that no other application for a similar covered loan exists.
- No personal guarantees or collateral are required to secure the loan.
- No fees (“fee waiver”)
- No requirement that a small business concern is unable to obtain credit elsewhere.
- \$349 billion available for loans

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EMERGENCY EIDL GRANTS (SECTION 1110)

EIDL = “Economic Injury Disaster Loan”

EIDL loans are a pre-existing SBA program, and have generally been available to businesses in declared disaster areas that have suffered, or are likely to suffer, substantial economic injury as a result of the disaster. Disaster areas are designated online at the following website: <https://disasterloan.sba.gov/ela/Declarations>

The CARES Act has added the following for the covered period 1/31/2020 through 12/31/2020:

- Expands eligibility for EIDL loans to include businesses with fewer than 500 employees, sole proprietors, and independent contractors.
- Waives requirements that:
 - borrower provide personal guarantee for loans up to \$200,000
 - the eligible business be in operation for one year prior to the disaster, and
 - the borrower be unable to obtain credit elsewhere.
- Borrowers can receive a \$10,000 emergency advance within three days after applying for EIDL loan, and even if the EIDL loan is denied, the \$10k advance does not need to be repaid. **It will, however, reduce any amounts eligible to be forgiven under Section 1106.**
 - Emergency advance funds can be used for payroll costs, material costs, rent or mortgage payments or for repaying obligations that cannot be met due to revenue losses.
- Borrowers can apply for an EIDL loan in addition to a loan under the Paycheck Protection Program, provided the loans are not used for the same purpose. If a borrower received an EIDL loan after 1/31/2020, it may refinance the outstanding balance as part of a loan under the Paycheck Protection Program.
- SBA EIDL loans are loans of up to \$2mm that carry interest rates up to 3.75%, and principal/interest deferment for up to 4 years. Loans could be re-paid over a thirty-year period.
 - Used for expenses that could have been met had the disaster not occurred, including payroll and other operating expenses.