

# PAYCHECK PROTECTION PROGRAM (BUSINESS INTERRUPTION LOANS)

Section 1102 of the CARES ACT

## OVERVIEW

The Paycheck Protection Program provides forgivable loans to small businesses through banks and credit unions. Loans must be \$10 million or less and can be used to cover the costs of payroll, group healthcare benefits, and other operating expenses from February 15, 2020 through December 31, 2020.

*NOTE: The program ceased accepting new loan applications on August 8, 2020, pending an extension enacted by Congress.*

## WHO QUALIFIES?

### GENERAL ELIGIBILITY

- **Self-employed individuals** that have documented evidence of their income, expenses, and payroll tax filings (as reported on IRS Form 1099-MISC).
- **Small Businesses:** Any businesses that have 500 or less employees, including tribe-owned businesses,<sup>1</sup> but also small businesses that exceed 500 employees if the applicable [SBA Size Standard](#) says they can have more than 500 employees.
- **501(c)(3) Nonprofits:** Nonprofit organizations that are tax exempt under [Section 501\(c\)\(3\)](#) of the tax code and have 500 or less total employees. Also includes 501(c)(3) nonprofits with more than 500 employees, but no more than the [SBA Size Standard Employee Limit](#) for their industry if higher than 500 employees.
- **501(c)(19) Nonprofits:** Nonprofit organizations that are tax exempt under [Section 501\(c\)\(19\)](#) of the tax code and have 500 or less total employees. Also includes 501(c)(19) nonprofits with more than 500 employees, but no more than the [SBA Size Standard Employee Limit](#) for their industry if higher than 500 employees.
- **Franchises and Certain Small Business Interests with Multiple Locations:** Food and accommodation businesses (according to [NAICS Code 72](#)) with multiple locations, that have more than 500 employees, but less than 500 employees at each physical location. Franchise affiliation rules are also waived, allowing individual franchise locations owned by a single business interest to each qualify for assistance.<sup>2</sup>

### ADDITIONAL ELIGIBILITY REQUIREMENTS (NOT EXHAUSTIVE)

- Borrowers must have been in operation on February 15, 2020. For seasonal businesses, they have the additional option of showing they were in operation for any 8-week period between May 1, 2019 and September 15, 2019.
- Borrowers must have had employees for whom the borrower paid Federal payroll taxes for or have evidence that they paid independent contractors (as reported on IRS Form 1099-MISC).
- Borrowers may only obtain one loan per Social Security Number or TAX ID

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- The borrower must certify that:
  - The current economic conditions necessitate the loan;
  - The funds will be used to retain workers and maintain wages, or make mortgage, lease, and utility payments; and
  - The borrower did not get an SBA 7(a) loan or another interruption loan for the same purpose or has one pending.

## WHAT ARE THE TERMS, CONDITIONS AND AMOUNTS OF THE LOANS?

### GENERAL OVERVIEW

- **Loans will be offered through local banks and credit unions:** The subsidized loans will be provided through an authorized lender, which includes both SBA approved lenders and any other bank that receives a designation by the SBA or Treasury.
- **Loans can be partially forgiven:** A portion of the loan can be forgiven tax free (more below).
- **Loan payments can be deferred for 16 months:** Loan repayment is deferred until the borrower receives loan forgiveness, but no more than 16 months.<sup>3</sup>
- **Interest rate is capped at 4%.**
- **Loan fees, certain credit requirements, and collateral are waived:** Borrowers do not have to pay any loan fees, prove they can't find credit elsewhere, provide collateral or a [personal guarantee](#), or pay a penalty for prepayment.
- **Refinancing available:** The loan can also be used to refinance an SBA Coronavirus Economic Injury Disaster Loan.

### ALLOWABLE USES OF LOAN PROCEEDS

- **Loan proceeds may be used for payroll, benefits and operating costs:** The primary purpose of the loan is to cover payroll costs, group healthcare benefits, paid leave, insurance premiums, debt interest, mortgage interest (but not prepayments), rent, and utilities. There's a safe harbor for the partners and shareholders of a company that fails to pay back a loan, ensuring they cannot be held liable for default if the company uses the loan for those primary purposes. However, the loan can also be used for anything a regular 7(a) loan can be used for.

### MAXIMUM LOAN AMOUNT

- **Loan amount can be 250% of "average monthly costs", but capped at \$10 million:** The loan is based on 2.5 times the "average total monthly cost" of employee compensation (including paid family and sick leave), employee severance, group health care benefits (including premiums), retirement benefits, state and local payroll taxes, and compensation to any independent contractor paid less than \$100,000 per

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year; plus any outstanding balance on an SBA Coronavirus Disaster Loan (for the purpose of refinancing the Disaster Loan). The loan amount is capped at \$10 million per borrower.

- To find out how to calculate “average total monthly cost”, please see **CALCULATING PAYROLL & EMPLOYEES** below.

### LOAN FORGIVENESS

- **Loan forgiveness available for up to 24 weeks of payroll and certain operating costs:** Tax-free loan forgiveness is available for any portion of the loan used to cover payroll (including additional wages paid to tipped employees), mortgage debt interest, rent, and utilities during the first **24** weeks of the loan. (include the footnote).<sup>4</sup>
- **Process for loan forgiveness:** In order to get loan forgiveness, borrowers must submit an application to the lender, with documentation verifying:
  - The number of full-time employees on payroll and their pay rates;
  - Federal payroll tax filings;
  - State income tax, payroll tax, and unemployment insurance filings; and
  - Mortgage, rent, and utility payments.
- **Loan forgiveness requests must be approved or denied by lender within 60 days.**
- **Amount of loan forgiveness may be reduced.** The loan forgiveness amount is reduced by the percentage of employment and amount of wages that is reduced over the first eight weeks of the loan for any employee making \$100,000 or less, compared to the applicable period last year.<sup>5</sup> However, the penalty doesn't apply if the borrower makes a good-faith effort to rehire employees, but is unable to do so due to any reason, including if the borrower is unable to fully restore operations due to ongoing health and safety restrictions. Loan forgiveness is also reduced by the amount of any grant provided through the SBA Coronavirus Disaster Loan program.
- **Borrower must repay any amount not forgiven:** After a borrower receives loan forgiveness, the remaining balance must be paid back within 2 years (for loans issued before June 5) or 5 years (for loans issued after June 5).
- Please see [here](#) for instructions on how to apply for loan forgiveness and [here](#) for answers to frequently asked questions.

### CALCULATING PAYROLL & EMPLOYEES

- Borrowers can calculate their payroll costs using data from either the previous 12 months of payroll or

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from calendar year 2019.

- For seasonal businesses, borrowers can use average monthly payroll costs occurring between February 15, 2019 and May 9, 2019, March 1, 2019 and June 30, 2019, or May 1, 2019 and September 15, 2019, at the choice of the borrower..
- New businesses can use average monthly payroll costs between January 1, 2020 and February 29, 2020.
- For more details, please see [SBA Guidance here](#).
- The same time periods are also used to determine the number of average monthly employees (which includes full-time, part-time, or other basis employees), for the purposes of applying employee-based size standards (i.e. the average number of employees per pay period between the aforementioned dates).
- For more information, please see the [Treasury Department's FAQ](#).

## FURTHER DETAILED INFORMATION

- [SBA Overview](#)
- [SBA Regulations](#)
- [SBA's FAQ](#)
- [SBA Affiliation Rules for Paycheck Protection Program](#)
- [SBA Appeals Process for Adverse Loan Review Decisions](#)
- [U.S. Travel's FAQ](#)

1. Employee is defined as anyone employed on a full-time, part-time, or other basis.
2. Businesses are considered on a consolidated basis if each establishment is controlled, or can be controlled, by a common owner or manager, or the establishments have identical interests—with the burden of proof on each establishment to prove they are a separate business. However, those rules are waived for food and accommodation establishments (as classified under NAICS 72) with less than 500 employees, establishments that operate under a registered franchise, or those that have received financial assistance from a licensed Small Business Investment Company. Further information can be found [here](#) or on the [Treasury Department's Website](#).
3. As modified by the Paycheck Protection Program Flexibility Act of 2020 (HR. 7010).
4. Borrowers can use up to 40% of the loan on nonpayroll expenses (as amended by HR. 7010).
5. For most borrowers, the applicable period is either between February 15, 2019 and June 30, 2019 or between January 1, 2020 and February 29, 2020, at the election of the borrower. For seasonal businesses, the applicable period is February 15, 2019 and June 30, 2019.