



# The CARES Act Paycheck Protection Program

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### Paycheck Protection Program

The CARES Act expands funding available to U.S. small businesses through the addition of the Paycheck Protection Program to the Small Business Administration Section 7(a) loan program.

### What businesses are eligible?

The Paycheck Protection Program is a \$349,000,000,000 lending program available to an expanded group of borrowers until June 30, 2020:

- A small business, Tribal business concern, 501(c)(3), or a 501(c)(19) Veterans Organization with fewer than 500 employees
- A small business that otherwise meets the SBA's size standard
- An individual who operates as a sole proprietor
- An individual who operates as an independent contractor
- An individual who is self-employed who regularly carries on any trade or business

For the purpose of determining if you meet the 500-employee threshold, all employees are counted (full-time, part-time, and any other status).

### What will lenders be looking for?

The CARES Act directs lenders to evaluate whether or not the applicant was in operation on February 15, 2020 and had employees to whom they paid salaries and payroll taxes or paid independent contractors, as reported on a Form 1099-MISC. Applicants will need to make a good faith certification that:

1. The uncertainty of current economic conditions makes the loan request necessary to support the ongoing operations.
2. The borrower will use loan proceeds to retain workers and maintain payroll or make mortgage, lease, and utility payments.
3. The borrower does not have a loan application pending for a loan duplicative of the purpose and amounts applied for here.
4. From February 15, 2020 to December 31, 2020, the applicant has not received a loan duplicative of the purpose and amounts applied for here. Borrowers may be eligible to refinance emergency loans made between January 31, 2020 and the date that Paycheck Protection Program loan program is available.

### How much can be borrowed?

Under the Paycheck Protection Program, applicants may receive a loan in an amount equal to the lesser of:

Average monthly payroll costs multiplied by 2.5 **or** \$10,000,000.

Certain costs associated with payroll are **not included**:

1. Compensation of an individual employee in excess of an annual salary of \$100,000, as prorated for the covered period.
2. Payroll taxes, railroad retirement taxes, and income taxes.
3. Any compensation of an employee whose principal place of residence is outside of the United States.
4. Qualified sick leave wages for which a credit is allowed under Section 7001 of the Families First Coronavirus Response Act or qualified family leave wages for which a credit is allowed under Section 7003 of the Families First Coronavirus Response Act

### **What can Paycheck Protection Program loan proceeds be used for?**

Paycheck Protection Program loans may be used by borrowers for:

1. payroll costs (excluding annual compensation of an individual employee in excess of \$100,000);
2. costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums;
3. employee salaries, commissions, or similar compensations;
4. payments of interest on any mortgage obligation (excluding prepayment of interest);
5. rent;
6. utilities; and
7. interest on any other debt obligations incurred prior to February 15, 2020.

### **Will the Paycheck Protection Program loan be forgiven?**

Recipients of Paycheck Protection Program loans may be eligible to have a portion of the loan forgiven equal to the sum of the following costs incurred during the eight week period following loan origination:

1. payroll costs;
2. payments of interest on any mortgage obligation (excluding prepayment of interest);
3. payment on any rent obligation; and
4. utility payments.

Loan forgiveness cannot exceed the principal amount of the loan.

### **Can the loan forgiveness be reduced?**

Yes. The loan forgiveness of the CARES Act outlined above will be reduced if the borrower makes meaningful reductions in employee wages (in excess of 25% for any employee) or reduces the number of full-time equivalent employees. Borrowers will not be penalized for workers that were laid off after February 15, 2020 but before thirty days following the effective date of the CARES Act and rehired or replaced on or before June 30, 2020. In addition, Borrowers will not be penalized for salary reductions made after February 15, 2020 but before thirty days following the effective date of the CARES Act provided that the borrower has eliminated the reduction for such employees on or before June 30, 2020.

### **Are the Paycheck Protection Program Loans Subject to the Affiliation Rule?**

Yes. Unless clarified by implementing regulations, affiliated entities must aggregate their number of employees for purposes of determining whether the business satisfies the employee limitation to qualify for a Paycheck Protection Loan. Under the Affiliation Rule, entities are “affiliates” when one controls or has the power to control the other, or a third party (or parties) controls or has the power to control both. It does not matter if control is actually exercised. Control is very expansively defined under SBA regulations and includes situations where a single investor holds majority ownership of voting equity or contractual control rights, blocking rights, and management rights. The affiliation test is highly fact specific and must be analyzed on a case-by-case basis.

For more information on the Affiliation Rule, you may wish to review the National Venture Capital Association’s guidance: [Affiliation in the Context of SBA Loans – Guidance for Venture Capital Investors](#).

For more information on the Paycheck Protection Program, you may wish to review the [Small Business Guide and Checklist prepared by the U.S. Chamber of Commerce](#).

**Please feel free to contact the following individuals at Updike, Kelly & Spellacy, P.C. with any questions or to inquire as to representation related to these topics**

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Updike, Kelly & Spellacy, PC would like to thank associate Michael J. Paciorek for his contributions to this summary.

*Disclaimer: The information contained in this material is not intended to be considered legal advice and should not be acted upon as such. Because of the generality of this material, the information provided may not be applicable in all situations and should not be acted upon without legal advice based on the specific factual circumstances.*

## CARES Act Loan Amount and Loan Forgiveness Calculation Sheet

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### Paycheck Protection Program Loan Amount Calculation

Line 1	Maximum Loan Amount	\$10,000,000
Line 2	Average Total Monthly Payments for Payroll Costs During the 1 Year Period Before the Date on which the Loan is Made (note alternate calculation for seasonal employers) multiplied by 2.5	
Line 3	Payroll Costs means:	
Line 4	the sum of payments of any compensation with respect to employees that is:	
Line 5	salary, wage, commission or similar compensation;	\$ _____
Line 6	cash tip or equivalent;	\$ _____
Line 7	payment for vacation, parental, family, medical or sick leave;	\$ _____
Line 8	allowance for dismissal or separation;	\$ _____
Line 9	payment required for the provisions of group health care benefits;	\$ _____
Line 10	payment of any retirement benefit;	\$ _____
Line 11	payment of any state or local tax assessed on the compensation of employees	\$ _____
Line 12	<b>SUBTOTAL (SUM OF LINES 5 THROUGH 11)</b>	\$ _____
Line 13	Payroll Costs shall not include:	
Line 14	the compensation of an individual employee in excess of an annual salary of \$100,000 as prorated for the covered period <sup>1</sup> ;	\$ _____
Line 15	taxes imposed or withheld under chapters 21, 22 or 24 of the Internal Revenue Code (FICA contributions for both employers and employees, federal income tax, and Railroad Retirement Fund contributions) during any covered period;	\$ _____
Line 16	any compensation of an employee whose principal place of residence is outside of the United States;	\$ _____
Line 17	qualified sick leave wages for which is credit is allowed under Section 7001 of FFCRA;	\$ _____
Line 18	qualified family leave wages for which a credit is allowed under Section 7002 of FFCRA.	\$ _____
Line 19	<b>SUBTOTAL (SUM OF LINES 14 THROUGH 18)</b>	\$ _____
Line 20	<b>PAYROLL COSTS (SUBTRACT LINE 19 FROM LINE 12)</b>	\$ _____
Line 21	<b>AVERAGE MONTHLY PAYROLL COSTS (LINE 20 DIVIDED BY 12)</b>	\$ _____
Line 22	<b>MULTIPLY LINE 21 BY 2.5</b>	\$ _____
Line 23	<b>ENTER THE LESSER OF LINE 1 OR LINE 22</b>	\$ _____

<sup>1</sup> Covered Period means the period beginning on February 15, 2020 and ending of June 30, 2020. Need to determine proration. Example for employee earning \$100,000 annually:  $\frac{136}{365} \times \$100,000 = \$37,260$

## Paycheck Protection Program Loan Forgiveness Calculation Sheet

**A covered loan is eligible for forgiveness in an amount equal to the sum of the following costs incurred and payments made during the eight weeks following loan origination:**

<b>Line 1</b>	Payroll costs;	\$ _____
<b>Line 2</b>	Interest on a covered mortgage obligation;	\$ _____
<b>Line 3</b>	Rent on any covered rent obligation	\$ _____
<b>Line 4</b>	Any covered utility payment.	\$ _____
<b>Line 5</b>	<b>TOTAL POTENTIAL LOAN FORGIVENESS (SUM OF LINES 1 THROUGH 4)</b>	<b>\$ _____</b>

### Limits on Amount of Forgiveness for Reduction in Fulltime Equivalent Employees ("FTE")<sup>2</sup>

<b>Line 6</b>	Enter the average number of FTE per month employed during the eight weeks following loan origination.	_____
<b>Line 7</b>	Divide Line 6 by, at the election of the borrower, either Line 8 or Line 9	
<b>Line 8</b>	The average number of FTE <sup>3</sup> per month employed during the period beginning on February 15, 2019 and ending on June 30, 2019; or	_____
<b>Line 9</b>	The average number of FTE per month employed during the period beginning on January 1, 2020 and ending on February 29, 2020.	_____
<b>Line 10</b>	Enter the preferred quotient of Line 6 and either Line 8 or Line 9	_____
<b>Line 11</b>	Multiply Line 5 by Line 10.	\$ _____

### Limits on Amount of Forgiveness for Salary Reductions<sup>4</sup>

<b>Line 12</b>		
<b>Line 13</b>	The amount of forgiveness shall be reduced by the amount of any reduction in total salary or wages of any employee during the covered period that is in excess of 25% of the total salary or wages of the employee during the most recent full quarter during which the employee was employed before the covered period. An employee in this subsection is any employee who did not receive, during any single pay period during 2019, wages or salary at an annualized rate of pay in an amount more than \$100,000	
<b>Line 14</b>	Aggregate sum of salary or wage cuts in excess of 25%	\$ _____
<b>Line 15</b>	<b>Subtract Line 14 from Line 11. This is the Maximum Loan Forgiveness</b>	<b>\$ _____</b>

### FTE REDUCTION AND WAGE CURE

<b>Line 16</b>	In a circumstance described in Lines 15 through 18 below, the forgiveness amount shall be determined without regard to a reduction in the number of FTE or a reduction in the salary of 1 or more eligible employees during the period beginning on February 15, 2020 and ending on the date that is 30 days after the enactment of this Act.	
<b>Line 17</b>	A circumstance is a circumstance in which:	
<b>Line 18</b>	During the period beginning on February 15, 2020 and ending 30 days after the enactment of this Act, there is a reduction, as compared to February 15, 2020, in the number of FTE of a recipient; and	
<b>Line 19</b>	Not later than June 30, 2020, the eligible employer has eliminated the reduction in the number of FTE.	
<b>Line 20</b>	During the period beginning on February 15, 2020 and ending 30 days after the enactment of this Act, there is a reduction, as compared to February 15, 2020, in the wages of one or more of the recipient's employees; and	
<b>Line 21</b>	Not later than June 30, 2020, the eligible employer has eliminated the reduction in the salary or wages of such employees.	

<sup>2</sup> For the purposes of calculating the FTE reduction, do not include employees described in Lines 16 through 21

<sup>3</sup> The average number of FTE is determined by calculating the average number of FTE during each pay period falling within a month.

<sup>4</sup> For the purposes of calculating the Salary reduction, do not include employees described in Lines 16 through 21