

Coronavirus Aid, Relief, and Economic Security (CARES) Act (Pub. L. 116-136)

PAYCHECK PROTECTION PROGRAM SUMMARY

General: The amount authorized by Congress for these loans is \$349 billion. A portion of the loan is eligible for forgiveness and any balance not forgiven can be repaid over 10 years.

Eligibility: The Paycheck Protection Program allows certain businesses and 501(c)(3) nonprofit organizations with fewer than 500 employees to borrow up to a certain amount, generally 2.5 times their average monthly payroll costs for the 12 months prior to the date on which the loan is made (with specific calculations for businesses not in operation in the period beginning February 15, 2019 and through June 30, 2019), up to a maximum of \$10 million.

Uses of Proceeds: The loan proceeds may be used to pay

- (1) Payroll costs (as defined below),
- (2) Continuation of group health care benefits during sick, medical or family leave periods and insurance premiums,
- (3) employee salaries, commissions and similar compensation,
- (4) interest on mortgages (does not include principal payments),
- (5) rent,
- (6) utilities, and
- (7) interest on any other debt obligation incurred before February 15, 2020.

Payroll costs include not only salaries and commissions, including tips, paid to employees, but also payments (1) for vacation, family, medical or sick leave (other than sick leave for which a credit is received under the family's first act), (2) for group health benefits, (3) for retirement benefits, (4) for state and local payroll taxes and (5) of compensation to independent contractors or for the income of a sole proprietor or the net earnings from self-employment. Payroll costs do not include compensation above the amount of an annual salary of \$100,000 prorated over the covered period (i.e., \$8,333 per month).

Applying for loan. The borrower must certify that:

- (1) the "uncertainty of current economic conditions makes necessary the loan request to support the ongoing operations" of the borrower,
- (2) the funds will be used to retain workers and make payroll or make payments for mortgage, rent or utilities expenses,
- (3) the borrower does not have an application pending for a loan under this subsection for the same purposes and duplicative of the amounts applied for or received under a covered loan, and
- (4) from February 15 through December 31, 2020, the borrower has not received amounts under this section for the same purposes and duplicative of amounts applied for and received under a covered loan.

Loan Terms.

- (1) Interest rate for the loan is no more than 4%.
- (2) No personal guarantee or collateral is required.
- (3) Prepayments, both principal, interest and other fees, deferred for at least 6 months and up to 12 months, provided the borrower was operating on February 15, 2020.
- (4) No prepayment penalties.

Loan forgiveness. In general, the borrower is eligible to receive forgiveness of the portion of the loan used for essentially 2 months' worth of (1) payroll costs as defined above, (2) interest on a mortgage incurred before February 15, 2020, (3) rent for a lease in force before February 15, 2020 and (4) utilities for services beginning before February 15, 2020, provided those costs are incurred and paid within the "covered period." The "covered period" for this purpose is the 8-week period beginning on the date of the loan origination.

The loan forgiveness will not be considered gross income taxable to the borrower. However, the amount of the loan eligible for forgiveness may be reduced if either the number of full-time equivalent employees or the salary of full-time equivalent employees is reduced, provided that the reductions do not apply if the employer eliminates the reduction in the number of employees or in the salaries by June 30, 2020.

NOTE: The loan forgiveness provisions are in a different section (§1106) than the provisions authorizing the Paycheck Protection loans (§1102). Somewhat confusingly, different meanings are given to some terms used in both provisions, such as "covered period." In addition, intended or not, there are differences in the uses of the loan and what uses might be forgiven. For example, loan forgiveness applies only to "eligible" mortgage interest, rent and utility payments whereas the use of the loan proceeds for such expenses is not expressly limited to only defined "eligible" mortgage interest, rent and utility payments.

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