



SUMMARY OF THE PAYROLL PROTECTION PROGRAM

On March 26, 2020, the President signed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). The CARES Act created the Paycheck Protection Program to provide loans to small businesses for payroll costs and other business expenses. The loans will be administered by the United States Small Business Administration (SBA). Importantly, these loans may be forgiven entirely or partially if the loan proceeds are used as intended.

On May 22, 2020, the Small Business Administration and the Department of Treasury issued two interim final rules related to the Paycheck Protection Program (PPP). The [first](#) provides guidance to borrowers and lenders on forgiveness requirements for PPP loans. The [second](#) informs borrowers and lenders of SBA's process for reviewing PPP loans and loan forgiveness applications.

On June 5, 2020, the Paycheck Protection Program Flexibility Act of 2020 (PPP Flexibility Act) was signed into law. It made several changes to PPP loans, which we have incorporated into our summary below. These changes include:

- Extending the loan forgiveness period from 8 weeks to 24 weeks;
- Changing the percentage of the loan that must be used for payroll for loan forgiveness from 75% to 60%;
- Increasing the loan repayment period for new PPP loans from two years to five years;
- Allowing businesses receiving forgiveness to receive payroll tax deferment; and
- Reducing the number of businesses that may receive reductions to their loan forgiveness amount based on the inability to hire back employees or resume business as usual after complying with COVID-19 restrictions.

Below is a brief summary of the Payroll Protection Program and a step-by-step summary of the loan forgiveness process. This summary was last updated on June 5, 2020.

Eligibility:

- Small businesses, nonprofit organizations, certain tribal businesses, and veteran organizations with less than 500 employees or that otherwise meet the SBA's size standard:
 - 500 employee threshold includes those employed on a full-time, part-time, or other basis.
 - Exceptions for the hospitality and food services industries include consideration of physical location for the 500 employee threshold.
- Individuals who operate as sole proprietors, independent contractors or are self-employed.

Application:

- Includes a good faith certification when applying for the loan as follows:
 - The uncertainty of the current economic conditions make the loan necessary to support ongoing operations;
 - The funds will be used to retain workers and maintain payroll or make mortgage, lease, and utility payments; and



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- No other application is pending and you have not received a duplicative loan.
- Businesses that accepted funds of less than \$2 million will be assumed to have performed the required certification concerning the necessity of their loan requests in good faith.
- Identify your payroll costs, mortgage payments, rent payments, and utility payments to prepare the application.

Loan Amount and Information:

- Loan amount can be up to 2.5 times the average monthly payroll costs incurred during the year before the loan is made, not to exceed ten million dollars.
- What are payroll costs?
 - Employee compensation including salaries, wages, commissions, and tips;
 - Bonuses;
 - Hazard pay;
 - Payment for vacation, parental, family, medical, and sick leave;
 - Separation payments;
 - Payment for group health care benefits, including insurance premiums, and retirement benefits;
 - Retirement benefit payments; and
 - Employer paid state or local taxes based on compensation.
- What are not payroll costs?
 - Amounts for an individual employee in excess of \$100,000 annual salary;
 - Compensation to an employee whose residence is outside the United States; and
 - Certain payments for tax credits under the Families First Coronavirus Response Act.

Loan Terms:

- What can the loan be used for?
 - Payroll costs;
 - Costs for continuation of health care benefits, of group health care benefits, paid leave, and insurance premiums;
 - Employee salaries, commissions, or other compensations;
 - Interest payments on any business mortgage obligation on real or personal property that was incurred before February 15, 2020 (but not any prepayment);
 - Payments on business rent obligations on real or personal property under a lease agreement in force before February 15, 2020;
 - Utility payments for the distribution of electricity, gas, water, transportation, telephone, or internet access for which service began before February 15, 2020; and
 - Interest on other debt obligations incurred before February 15, 2020.
- Interest rate of 1%.
- Maturity date of two years for loans prior to enactment of the PPP Flexibility Act and five years for loans after enactment of the PPP Flexibility Act.



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- No collateral or personal guarantee requirement.

Loan Forgiveness Generally:

The amount eligible for forgiveness is the sum of the costs incurred and payments made during the 24-week period beginning on the date of the loan origination or the first payroll cycle in the covered period for payroll costs, mortgage interest payment(s), rent payment(s), and utility payments.

- At least 60% of the forgiven amount must have been used for payroll costs (decreased from 75% by the PPP Flexibility Act).
- Loan forgiveness will be reduced if there is a reduction in the number of employees and if you decrease salaries and wages by more than 25%.
 - These reductions may be mitigated by rehiring employees or eliminating salary and wage reductions by December 31, 2020.
 - Exemptions may be made if employees reject offers of rehire or restoration of hours. This is discussed further below.
- Any forgiven portion is excluded from taxable income.
- If an eligible recipient fails to apply for forgiveness of a covered loan within 10 months after the last day of the covered period, the eligible recipient must make payments of principal, interest, and fees on the loan beginning on the day that is not earlier than the date that is 10 months after the last day of such covered period.

Payroll Costs Eligible for Forgiveness:

The term ‘covered period’ means the period beginning on the date of the origination of a covered loan and ending on the earlier of (1) the date that is 24 weeks after date of origination; or (2) December 31, 2020. Borrowers may seek forgiveness for payroll costs paid or incurred during the covered period or the first day of the first payroll cycle in the covered period (the alternative payroll covered period). The alternative payroll covered period is available for borrowers whose payroll schedule is inconsistent with the covered period.

Payroll costs are “incurred” on the day the employee worked. Payroll costs are “paid” on the day paychecks are distributed. For employees who are not performing work but are still on the borrower’s payroll, payroll costs are incurred based on the schedule established by the borrower (typically, each day that the employee would have performed work).

Other eligible payroll costs include the following, so long as they do not exceed an annual salary of \$100,000 as prorated for the covered period:

- salary, wages, and commission payments to furloughed employees;
- bonuses; and
- hazard pay.



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Non-Payroll Costs Eligible for Forgiveness:

The following non-payroll costs (which cannot exceed 40% of the loan forgiveness amount) are eligible for loan forgiveness, so long as they were paid during the covered period or incurred during the covered period and paid on or before the next regular billing date (even if the billing date is after the covered period):

- Interest payments on any business mortgage obligation on real or personal property that were incurred before February 15, 2020 (but not any prepayment or payment of principal);
- Payments on business rent obligations on real or personal property under a lease agreement in force before February 15, 2020; and
- Business utility payments for the distribution of electricity, gas, water, transportation, telephone, or internet access for which service began before February 15, 2020.

Reductions to Loan Forgiveness Amount:

Under Section 1106(d)(2) and Section 1106(d)(3) of the CARES Act, certain reductions to a borrower's loan forgiveness amount are required based on reductions in full-time equivalent employees or in employee salary and wages during the covered period, subject to an existing statutory exemption under Section 1106(d)(5) of the CARES Act for borrowers who have rehired employees and restored salary and wage levels by December 31, 2020 (with limitations).

Additionally, both the SBA and the Department of Treasury are adopting a regulatory exemption to the reduction rules for borrowers who have offered to rehire employees or restore employee hours, even if the employees have not accepted. This exemption allows a borrower to exclude any reduction in full-time equivalent employee headcount attributable to an individual employee if:

- the borrower made a good faith, written offer to rehire such employee (or restore the reduced hours of such employee) during the covered period or the alternative payroll covered period;
- the offer was for the same salary or wages and the same number of hours as earned by such employee in the last pay period prior to the separation or reduction in hours;
- the offer was rejected by such employee;
- the borrower has maintained records documenting the offer and its rejection; and
- the borrower informed the applicable state unemployment insurance office of such employee's rejected offer of reemployment within 30 days of the employee's rejection of that offer.

The first interim final rule provides a detailed formula to calculate a borrower's number of full-time equivalent employees.

The PPP Flexibility Act also provides that during the period beginning on February 15, 2020 and ending on December 31, 2020, the amount of loan forgiveness shall be determined without regard



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to a proportional reduction in the number of full-time equivalent employees if an eligible recipient is able to document the following:

- Inability to rehire individuals who were employees of the eligible recipient on February 15, 2020;
- Inability to hire similarly qualified employees for unfilled positions on or before December 31, 2020; or
- Inability to return to the same level of business activity as such business was operating at before February 15, 2020, due to compliance with requirements established or guidance issued by the Secretary of Health and Human Services, the Director of the Centers for Disease Control and Prevention, or the Occupational Safety and Health Administration during the period beginning on March 1, 2020, and ending December 31, 2020, related to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID-19.

Loan Forgiveness Process for Applications NOT Reviewed by SBA Prior to the Lender's Decision:

Step 1: The borrower must complete and submit the Loan Forgiveness Application to its lender.

- See Baylor Evnen's [blog post](#) on the Loan Forgiveness Application for more information about application requirements.

Step 2: The lender will review the application and make a decision regarding loan forgiveness.

- The lender has 60 days from receipt of a complete application to issue a decision to SBA.
 - If the lender determines that the borrower is entitled to forgiveness of some or all of the amount applied for, the lender must request payment from SBA at this time.
- A detailed explanation of the lender's review process is contained in the second interim final ruling.

Step 3: SBA remits the appropriate forgiveness amount to the lender (plus any interest accrued through the date of payment) no later than 90 days after the lender issues its decision to SBA.

- If the amount remitted to the lender exceeds the remaining principal balance of the PPP loan, the lender must remit the excess amount, including accrued interest, to the borrower.

Loan Forgiveness Process for Applications Reviewed by SBA:

SBA is authorized to review borrower eligibility, loan amounts and use of proceeds, and loan forgiveness amounts. SBA may begin a review of any PPP loan of any size, at any time, under SBA's discretion. Therefore, borrowers must retain loan documentation for six years after the loan is repaid in full or forgiven.

If SBA undertakes such a review, SBA will notify the lender in writing, and the lender must notify the borrower in writing within five business days of receipt. Within five business days of receipt



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of such notice, the lender shall transmit to SBA electronic copies of several documents listed in the second interim final rule.

If SBA has notified the lender a loan review has commenced, the lender shall not approve any application for loan forgiveness for such loan until SBA notifies the lender in writing that SBA has completed its review.

If SBA determines that a borrower is ineligible, the borrower will be responsible for repaying the loan before its maturity date. The borrower will have an opportunity to respond to the inquiry and provide additional information before SBA reaches a final determination. A separate interim final rule will be issued by SBA to establish an appeal process for eligibility decisions.

Additional information regarding potential fees that lenders may or may not incur based on denial by SBA is detailed in the second interim final rule.

Impact of the Paycheck Protection Program Flexibility Act on Existing Loans:

Existing loans will remain at a two-year maturity.

An eligible recipient that received a covered loan before the PPP Flexibility Act may elect to still have the 8-week period apply instead of the 24-week covered period.

Baylor Evnen's synopsis and link to the Paycheck Protection Program Loan Forgiveness Application is available [here](#). Please visit our Firm [blog](#) for the most recent updates regarding COVID-19 and our updated list of [Coronavirus Resources](#).

- [Dept. of Treasury Website](#)
- [SBA Website](#)
- [SBA PPP FAQs](#) (as of 5/27/20)
- [SBA and Dept. of the Treasury PPP Loan Forgiveness Application Press Release](#)
- [SBA and Dept. of the Treasury PPP Forgiveness Application](#)
- [Interim Final Rule on PPP Loan Forgiveness Requirements](#)
- [Interim Final Rule on PPP Loan Review Procedures and Related Borrower and Lender Responsibilities](#)

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