



# THE CARES ACT

## PART I: PAYCHECK PROTECTION LOANS

### *DUNLAP LAW'S GUIDE FOR SMALL BUSINESS OWNERS*

*HELPING BUSINESS LEADERS THRIVE*

Every small business owner is struggling to navigate a very uncertain world right now. We are working to compile and continually update a list of resources that may help you survive. The CARES Act is the largest economic stimulus bill in U.S. history. In this guide, we've focused on the provisions that directly impact small businesses. We hope this is helpful:

#### **SBA PAYCHECK PROTECTION PROGRAM LOANS**

The Paycheck Protection Program (“PPP”) is a significant expansion of the Small Business Administration’s 7(a) loan program and is in addition to the SBA’s Economic Injury Disaster Loans (a.k.a. “Disaster Loans” or “EIDL”).

Loans are available to any for- or non-profit enterprise with fewer than 500 part- or full-time employees between February 15, 2020 and June 30, 2020. If your business is classified as NAICS 72 (accommodation and food services sector), the 500-employee cap is applied to each physical location. If you’re operating a franchise or get financial support from a Small Business Investment Company, you are also eligible – the normal affiliation rules do not apply to PPP loans.

Sole proprietors and small businesses with no employees that use independent contractors are also eligible for PPP loans. Loan fees are eliminated. To qualify, you need to show only that you were in business on February 15, 2020 and had employees or paid independent contractors as reported on Form 1099. No payments will be required for the first six months and, potentially, up to a year (lenders are required to grant the minimum 6-month deferment but may extend it to a year).

Apply with a [SBA-approved lender](#) – they have authority to make loans based on the PPP terms without SBA review and the lender earns an origination fee of between 1 and 5% within five days of your loan being funded. SBA guarantees the loans 100%. The CARES Act prioritizes loan processing and disbursement for:

- Businesses in underserved and rural markets (including veterans and members of the military community)
- Businesses owned/ controlled by individuals from socially and economically disadvantaged groups (for the list of designated groups, go [here](#))
- Businesses owned/ controlled by women
- Businesses in operation for less than 2 years.

**THIS IS A HUGE OPPORTUNITY FOR SBA-APPROVED LENDERS TO GENERATE REVENUE WHILE HELPING SMALL BUSINESS.**



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The maximum loan amount is the *lesser* of either \$10 million or:



\* Use the 12-month period immediately preceding the date of your application. This figure might be adjusted by SBA to reflect the 12-month average total at the time the loan is funded. If you were not yet in business in 2019, use your total monthly payroll costs incurred for January and February 2020.

+ If you are a seasonal employer, use the average total monthly payroll from February 15 or March 1, 2019 to June 30, 2019.

\*\* Meaning SBA EIDL loans made between January 31, 2020 and (presumably) March 27, 2020 (when loans became available under the CARES Act). Essentially, the PPP loan refinances qualifying, pre-existing SBA loans.

### **The term “Payroll Costs” is very broadly defined and includes:**

- Salary, wage, tips, and/ or commissions paid to employees
- Payments to employees for vacation, parental, sick, medical, or family leave
- Costs for group health care benefits provided during leave
- Severance paid upon dismissal or separation from employment
- Payment of any retirement benefit
- Payment of State or local taxes assessed on employee compensation
- Payments to a sole proprietor or independent contractor
- If you are self-employed or a sole proprietor with neither employees nor independent contractors, then your “net earnings from self-employment” (check line 4 of Schedule SE on your most recent federal tax return for this figure).

### **Payroll Costs DO NOT include:**

- The amount of Federal taxes paid on behalf of employees: FICA, Railroad Retirement, or income taxes.
- Compensation paid to employees who live outside the U.S.
- Sick or family leave paid as required by the Families First Coronavirus Response Act (FFCRA, for more on that, go here).
- Compensation paid to an individual employee or independent contractor, or net earnings from self-employment, over \$100,000 annually, prorated over February 15 to June 30, 2020.
  - Over 365 days, \$100,000 equals \$273.97 per day
  - There are 136 days from February 15 to June 30, 2020
  - So, \$100,000 pro-rated over February 15 to June 30, 2020 is equal to \$37,259.92. This is the maximum compensation for any one individual that you may include in Payroll Costs

### **Borrowers must certify that:**

- You need the loan because of the uncertainty of current economic conditions and to support your ongoing operations
- You will use the funds to retain workers and maintain payroll or make qualifying mortgage interest, rent, and utility payments

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- You do not have another application pending for a loan under the PPP for the same purpose and duplicative of amounts applied for or received
- You have not received amounts under the PPP between February 15<sup>th</sup> and December 31, 2020, for the same purpose and duplicative of amounts applied for or received under this loan.

## NO PERSONAL GUARANTEE OR COLLATERAL REQUIRED!

### **You can use the funds for:**

- Payroll Costs
- Costs for continuing group health care benefits for employees on paid sick, medical, or family leave, and insurance premiums
- Business rent or mortgage payments (except pre-paid principal on a mortgage)
- Business utilities
- Interest on any other debt obligations incurred before February 15, 2020

### **Other provisions:**

- The maximum funding amount for 7(a) Express Loans is increased from \$350,000 to \$1 million.
- The SBA's Small Business Development Centers, Women's Business Centers, and Minority Business Centers will get increased funding to educate, advise, or train small business owners facing challenges from COVID-19.

## LOAN FORGIVENESS

Forgiveness is available for the portion of the loan that you used **in the 8-weeks after your loan originated** for:

- Payroll Costs
- Business mortgage interest (not principal) on mortgage obligations incurred before February 15, 2020
- Business rent obligations incurred under a lease in force before February 15, 2020
- Payments for business utilities (electricity, gas, water, transportation, telephone, or internet access) for which service began prior to February 15, 2020
  - It is not clear if the term "transportation" includes passenger vehicles owned by your small business. We have to wait for the regulations to know whether it does.
- The forgiven debt will NOT be considered taxable income.
- Any amount remaining due after forgiveness shall have a repayment term of no more than 10 years from the date when you applied for forgiveness. Interest will not exceed 4%.

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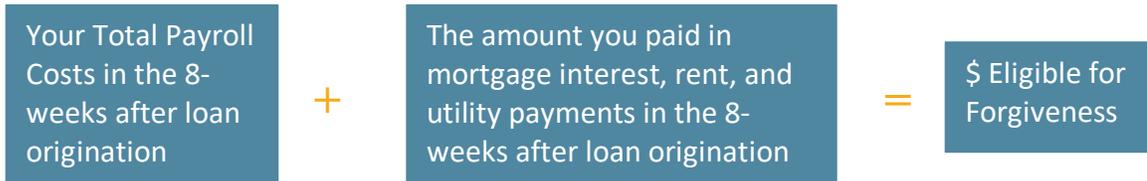
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**Limits on forgiveness include:**

- The forgiven amount cannot exceed the original principal amount.
- The amount eligible for forgiveness will be reduced if you reduced staff or salaries/ wages AND do not restore staff and salaries/ wages by April 26, 2020.

**Here’s how to figure the amount eligible for forgiveness:**



**The amount eligible for loan forgiveness may be reduced if you reduced the number of people you employ or salary/ wages after February 15<sup>th</sup> and do not cure the reduction prior to April 26, 2020.**

- If you fired or laid off staff or reduced salary/ wages after February 15th but you cure the reduction(s) by April 26, 2020 then your amount eligible for forgiveness will NOT be reduced.
- Here’s how to figure out the potential amount by which forgiveness will be reduced if you reduced your workforce:

First, figure out your FTE number:

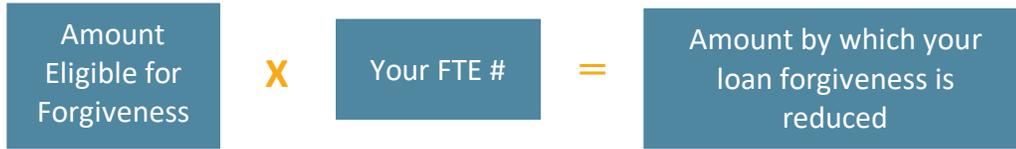


\* FTE means full-time equivalent employees; use the average number of employees for each pay period within a month.

\*\* The borrower decides which time frame to use unless you are a seasonal employer in which case you must use option # 1.

**Note for self-employed/ sole proprietors** who use contractors, the CARES Act does not address how to calculate your FTE for purposes of forgiveness reduction. For purposes of counting the number of employees, the CARES Act defines “employee” as an individual employed on a full-time, part-time, or “other basis.” It is not clear if “other basis” will include independent contractors or, because this definition of “employee” is in a different section of the CARES Act whether it will be used for calculating FTE.

Second, multiply your amount eligible for forgiveness by your FTE number:



- Here’s how to figure out the potential amount by which forgiveness will be reduced if you reduced the salaries/ wages of your workforce. The forgiveness reduction kicks in if you reduced any salary by more than 25%:

Employee <sup>+</sup>	Salary/ Wages Before*	Salary/ Wages After**	% Difference	Qualifying Reduction?	Forgiveness Reduction (Difference)
Nisha	\$24,000	\$19,200	20%	NO	\$0
Jim	\$20,000	\$14,000	30%	YES	\$6,000
Latrice	\$15,000	\$11,100	26%	YES	\$3,900
<b>TOTAL REDUCTION OF FORGIVENESS AMOUNT =</b>					<b>\$9,900</b>

\* Salary/ Wages Before means the most recent full quarter before your PPP loan disbursed.

\*\* Salary/ Wages After means the 8-week period beginning when your PPP loan disbursed.

+ Employee means any employee who did not receive, during any one pay period, wages or salary that would exceed \$100,000, if calculated annually.

## OF COURSE, SBA WILL REQUIRE DOCUMENTATION TO SUPPORT YOUR FORGIVENESS CLAIM.

- Verifying the number of FTE on payroll and their individual pay rates:
  - Payroll tax filings reported to the IRS
  - State income, payroll, and unemployment insurance filings
- For mortgage interest, rent, and utility payments:
  - Cancelled checks, receipt, and account statements
- Certification from the borrower stating:
  - The documentation is true and correct
  - The amount for which forgiveness is requested was used to retain employees, make interest payments on a mortgage or pay rent, or utilities
- Any other documentation the SBA deems necessary.

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