

Coronavirus Aid, Relief, and Economic Security Act” or the “CARES Act”

Title I – Keeping American Workers Paid and Employed Act

Section 1102 Paycheck Protection Program

Amends Section 7(a) of the Small Business Act (15 U.S.C. 636(a))

Lenders who are eligible to participate

- A lender approved to make loans under this subsection (§636(a)) i.e. Lenders with a Loan Guaranty Agreement (aka SBA Form 750 Agreement), shall be deemed to have been delegated authority by the Administrator to make and approve covered loans subject to provisions of paragraph (36) Paycheck Protection Program (PPP) (Note: The Secretary of the Treasury and Administrator may permit others to participate in the Paycheck Protection Program)

Participation of the SBA

- Administrator participation in PPP shall be 100% (i.e. the loan has 100% guaranty)

Covered loan

- A loan made under PPP during the covered period, which is from February 15, 2020 to June 30, 2020

Borrower eligibility

- In addition to small business concerns as defined in section 3 of the Small Business Act
 - Any business concern, nonprofit organization, veteran’s organization, or Tribal business concern shall be eligible to receive a covered loan if they employ less than 500 employees, unless otherwise established by the Administration for the industry
 - Business concerns with more than 1 physical location that employs not more than 500 employees per physical location that is assigned a NAICS beginning with 72 (Accommodation and Food Services) shall be eligible to receive a covered loan, and affiliation provisions of 13 C.F.R. 121.103 are waived for a covered loan, including a franchise that is assigned a franchise identifier code by the Administration
 - Affiliation provisions shall apply to nonprofit and veterans’ organizations
 - Business concerns that receive financial assistance from an SBIC
 - An eligible self-employed individual, independent contractor, or sole proprietorship seeking a covered loan shall submit such documentation as is necessary to establish such individual as eligible, including payroll tax filings reported to the Internal Revenue Service, Forms 1099-MISC, and income and expenses from the sole proprietorship, as determined by the Administrator

Considerations

- A lender shall consider whether the borrower
 - Was in operation on February 15, 2020
 - Had employees for whom the borrower paid salaries and payroll taxes; or
 - Paid independent contractors, as reported on a Form 1099-MISC

Borrower requirements

Certification

- An eligible recipient applying for a covered loan shall make a good faith certification-
 - that the uncertainty of current economic conditions makes necessary the loan request to support the ongoing operations of the eligible recipient;
 - acknowledging that funds will be used to retain workers and maintain payroll or make mortgage payments, lease payment, and utility payments;
 - that the eligible recipient does not have an application pending for a loan under this subsection for the same purpose and duplicative of amounts applied for or received under a covered loan; and
 - during the period beginning on February 15, 2020 and ending on December 31, 2020, that the eligible recipient has not received amounts under this subsection for the same purpose and duplicative of amounts applied for or received under a covered loan.

Maximum loan amount is lesser of:

- The sum of the product obtained by multiplying:
 - Average total monthly payroll costs incurred during 1-year period before the date loan is made
 - Seasonal employers calculated by the average total monthly payments for payroll for the 12-week period beginning February 15, 2019, or at the election of the recipient, March 1, 2019, and ending June 30, 2019
 - By 2.5; and,
 - The outstanding amount of a Disaster Loan made from January 31, 2020 and the date on which covered loans are made available; or,
- If otherwise eligible recipient that was not in business from February 15, 2019 and ending on June 30, 2019, the sum of the product obtained by multiplying:
 - Average total monthly payroll costs incurred from January 1, 2020 through February 29, 2020
 - By 2.5; and,
 - The outstanding amount of a Disaster Loan made from January 31, 2020 and the date on which covered loans are made available; or
- \$10,000,000

Allowable uses

- In addition to allowable uses of a loan made under this subsection (§636(a));
- Use of proceeds for a covered loan include:
 - Payroll costs;
 - Sum of compensation including salary, wage, commission, or similar compensation;
 - Payment for vacation, parental, family, medical, or sick leave;
 - Allowance for dismissal or separation;
 - Payment required for the provisions of group health care benefits, including insurance premiums;
 - Payment of any retirement benefit; or
 - Payment of State or local tax assessed on the compensation of employees; and



- The sum of payments or compensation to or income of a sole proprietor or independent contractor in an amount that is not more than \$100,000 in 1 year, as prorated for the covered period, which shall not include the compensation in excess of an annual salary of \$100,000 for the covered period;
- Taxes imposed or withheld under chapters 21 (Federal Insurance Contributions Act), 22 (Railroad Retirement Tax Act), or 24 (Collection of Income Tax at Source on Wages) of the Internal Revenue Code during the covered period;
- Compensation of an employee whose principal place of residence is outside the US;
- 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
- Costs for the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums;
- Employee salaries, commissions, or similar compensations;
- Note: Payroll shall NOT include the following:
 - Compensation of an individual employee in excess of an annual salary of \$100,000/year as prorated for the covered period
 - Taxes imposed or withheld under chapters 21 (Federal Insurance Contributions), 22 (Railroad Retirement Tax Act) or 24 (Collection of Income Tax at Source on Wages) of the IRS Code during the covered period
 - Any compensated employee whose principal place of residence is outside the U.S.
 - Qualified sick leave wages for which a credit is allowed under section 7001 of the Families First Coronavirus Response Act
 - Qualified family leave wages for which a credit is allowed under section 7003 of the Families First Coronavirus Response Act
- Payments of interest on any mortgage obligation, not including any prepayment of principal;
- Rent including rent under a lease agreement;
- Utilities; and
- Interest on any other debt obligations that were incurred before the covered period
- Refinance of a loan made under subsection (b)(2) during the period beginning on January 31, 2020 and ending on the date which covered loans are made available

Interest Rate

- Interest rate not to exceed 4 percent (Note: 3/31/20 Late Afternoon, SBA website **quietly updated with Interest Rate of 0.5% and Maturity of 2 years**)

Fee waiver

- The Administrator shall collect no fee under paragraph (23)(A) and (18)(A)

Credit elsewhere

- During the covered period, the requirement that a small business concern is unable to obtain credit elsewhere shall not apply to a covered loan



Waiver of personal guarantee; collateral requirements

- No personal guarantee shall be required for a covered loan
- No collateral shall be required for the covered loan

Non recourse

- The Administrator shall have no recourse against any individual shareholder, member, or partner of an eligible recipient of a covered loan for non-payment of any covered loan, except to the extent loan proceeds were used for purposes not authorized under clause (i)

Loan deferment

- During the covered period, the Administrator shall consider each eligible recipient that applies for a covered loan to be an impacted borrower; and
- Require lenders under this subsection to provide complete payment deferment relief for impacted borrowers with covered loans for a period of not less than 6 months, including payment of principal, interest, and fees, and not more than 1 year

Secondary market sales

- A covered loan shall be eligible to be sold in the secondary market consistent with this subsection
- The Administrator may not collect any fee for any guarantee sold into the secondary market under this subparagraph

Temporary relief from TDR disclosures

- Lenders who modify a covered loan in relation to COVID-19 related difficulties in a TDR on or after March 13, 2020 shall not be required to comply with FASB ASC Subtopic 310-40 ('Receivables-Troubled Debt Restructurings by Creditors') until such time and circumstances deemed appropriate by NCUA Board

Reimbursement for processing

- The Administrator shall reimburse a lender at a rate based on the balance of the financing outstanding at the time of disbursement of the covered loan, of
 - 5 percent for loans of not more than \$350,000;
 - 3 percent for loans of more than \$350,000 and less than \$2,000,000; and
 - 1 percent for loans of not less than \$2,000,000
- A reimbursement shall be made not later than 5 days after the disbursement of the covered loan

Prepayment penalty

- There shall be no prepayment penalty for any payment made on a covered loan

Express Loans

- Limit increased from \$350,000 to \$1,000,000
 - Effective January 1, 2021, reverts to \$350,000

Guarantee fee waiver for veterans

- Removes exception for fee waiver, i.e. it becomes permanent

Interim Rule

- The interim final rule published by the Administrator "Express Loan Programs: Affiliation Standards" (85 Fed. Reg. 7622 (February 10, 2020)) is permanently rescinded and shall have no force or effect



Section 1106 Loan Forgiveness (Note: 30-days after enactment of this Act, Administrator shall issue guidance and regulations implementing this section)

An eligible recipient shall be eligible for forgiveness of indebtedness on a covered loan in an amount equal to the sum of:

- Payroll costs
- Any payment of interest on any covered mortgage obligation (not including prepayment or payment of principal)
- Any payment on any covered rent obligation
- Any covered utility payment

Treatment of amounts forgiven

- Shall be considered canceled indebtedness; however, for purposes of Internal Revenue Code, any amount canceled shall be excluded from gross income
- No later than 90 days after the amount of forgiveness is determined, the Administrator shall remit to the lender the amount of forgiveness plus any accrued interest through the date of payment

Limits on amount of forgiveness

- May not exceed principal amount of financing
- Shall be reduced by multiplying the amount in subsection (b) by the quotient obtained by dividing:
 - The average number of full-time equivalent employees per month employed by the eligible recipient during the covered period; by either
 - The average number of FTE from February 15, 2019 and ending June 30, 2019; or
 - The average number of FTE from January 1, 2020 and ending February 29, 2020; or
 - In case of seasonal employer, the average number of FTE from February 15, 2019 and ending June 30, 2019
 - Average FTE determined by calculating the average number of FTE for each pay period falling within a month
- Reduction relating to salary and wages
 - The amount of loan forgiveness shall be reduced by the amount of reduction in total salary or wages of any employee during the covered period that is in excess of 25 percent 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
 - Employee is described as any employee who did not receive during any single pay period during 2019, wages or salary at an annualized rate of more than \$100,000
 - An eligible recipient with tipped employees as defined by FLSA (29U.S.C. 203(m)(2)(A)) may receive forgiveness for additional wages paid too these employees
 - Exemption for rehires
 - The amount of loan forgiveness shall be determined without regard to a reduction in the number of FTE employees (as described above) or the reduction in salary of 1 or more employees during the period beginning February 15, 2020 and ending April 26, 2020; if
 - the number of FTE employees and salary of 1 or more employees is eliminated by June 30, 2020



Section 1109 US Treasury Program Management Authority

Department of Treasury in consultation with Administrator and Chairman of the Farm Credit Administration shall establish criteria for insured credit unions and other qualified lenders that do not already participate in SBA lending programs, to participate in the paycheck protection program

- Lenders qualified to participate as a lender under 7(a) may elect to participate in the paycheck participation program under the criteria, terms, and conditions under this section
 - Such participation shall not preclude the lenders from continuing participation as 7(a) lenders
- The Administrator shall administer the program established under this section

Section 1110 Emergency EIDL grants (Direct loans through the SBA Disaster Relief Program)

Same eligible entities as Section 1102

Approval and ability to repay for small dollar loans

- Administrator may approve an applicant based solely on the credit score of the applicant and shall not require an applicant to submit a tax return or transcript; or
 - Use alternative appropriate methods to determine an applicant's ability to repay

Emergency grant

- During the covered period, an applicant may request that the Administrator provide an advance of up to \$10,000 within 3 days after the Administrator receives an application
- The Administrator shall verify eligibility by accepting a self-certification under penalty of perjury (section 1746 of title 29 USC)
- Use of proceeds same as Section 1102
- An applicant shall not be required to repay an advance under this subsection, even if subsequently denied a loan under 7(b)(2) of the Small Business Act (15 U.S.C. 636(b)(2))
- Termination of this subsection is December 31, 2020

Section 1112 Subsidy for certain loan payments (SBA 7(a) loan payments)

Administrator shall pay the principal, interest, and any associated fees that are owed on 7(a)loans in regular servicing status, no later than 30 days after the date on which the first such payment is due:

- Loans not on deferment, for 6-month period beginning with the next payment due on the covered loan
- Loans on deferment, for the 6-month period beginning with the next payment due after the deferment period
- Loans made during period beginning on the date of enactment of this Act and ending on the date that is 6 months after such date of enactment, for the 6-month period beginning with the first payment due

Section 1114 Emergency rule making authority

Not later than 15 days after the enactment of this Act, the Administrator shall issue regulations to carry out this Title and the amendments made by this title without regard to the rule making notice requirements under section 553(b) of title 5, USC (i.e. the public does not have a say!)



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Lenders who are eligible to participate

- Lenders qualified to participate as a lender under 7(a) may elect to participate in the paycheck participation program under the criteria, terms, and conditions under this section
 - Such participation shall not preclude the lenders from continuing participation as 7(a) lenders

Title II – Assistance for American Workers, Families, and Businesses

Subtitle C- Business Provisions

Section 2301 Employee retention credit for employers subject to closure due to COVID-19

Must have been fully or partially suspended during calendar quarter due to orders from appropriate governmental authority

Starting with first calendar quarter beginning January 1, 2020 in which there was >50% decline in gross receipts from same calendar quarter in prior year, and ending with the first calendar quarter in which gross receipts are >80% of gross receipts from same calendar quarter in prior year

- 50 percent credit against employment taxes
 - Amount of qualified wages taken into account per quarter not to exceed \$10,000 nor the amount of applicable employment taxes
- If eligible employer receives a PPP loan, not eligible for this credit

Title IV – Economic Stabilization and Assistance to Severely Distressed Sectors of the United States Economy

Section 4008 Debt guarantee authority

NCUA Board may vote to increase to unlimited, or such lower amount as approved, the share insurance coverage on noninterest-bearing transaction account in any federally insured credit union, provided that such increase shall terminate by December 31, 2020

Section 4013 Temporary relief from troubled debt restructurings

From March 1, 2020 to December 31, 2020, or 60 days after the national emergency concerning COVID-19 terminates:

- A financial institution may elect to suspend GAAP requirements or determinations for loan modifications related to COVID-19 that would otherwise be categorized as a TDR
 - Any such suspension shall be applicable for the term of the loan modification, provided the loan was not more than 30 days past due as of December 31, 2019; and
 - Shall not apply to any adverse impact on the credit of a borrower that is not related to COVID-19



- The appropriate Federal banking agency of the financial institution shall defer to the determination of the financial institution to make a suspension under this section

Anticipated Application Materials

- Completed Paycheck Protection Loan Application
- Articles of Incorporation/Organization of each borrowing entity
- By Laws/Operating Agreement of each borrowing entity
- All owners Driver's Licenses
- Payroll Expense verification documents to include:
 - IRS Form 940 and 941
 - Payroll Summary Report with corresponding bank statement
 - If a Payroll Summary Report is not available, Employee Pay Stubs as of February 15, 2020 (or corresponding period) with corresponding bank statement; and,
 - Breakdown of payroll benefits (vacation, allowance for dismissal, group healthcare benefits, retirement benefits, etc.)
 - 1099s (if Independent Contractor)
 - Certification that all employees live within the United States. If any do not, provide a detailed list with corresponding salaries of all employees outside the United States
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 - i This is Clause (i) as referenced in the Act