

## **Federal Stimulus Program for Small and Mid-Size Entities Under H.R. 748 - The CARES Act Section 1102 - Paycheck Protection Program and Section 1106 - Loan Forgiveness Bullet Point Summary & Discussion Outline**

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DISCLOSURE - THIS DOCUMENT IS A HIGH-LEVEL SUMMARY AND DISCUSSION OUTLINE OF CERTAIN SPECIFIC SECTIONS OF H.R. 748, THE ‘CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT’ (“CARES ACT”), WHICH BECAME LAW ON MARCH 27, 2020. THE U.S. SMALL BUSINESS ADMINISTRATION, INTERNAL REVENUE SERVICE AND OTHER GOVERNMENT AGENCIES WILL BE ISSUING GUIDELINES AND REGULATIONS REGARDING THE INTERPRETATION AND IMPLEMENTATION OF THE LAW, WHICH WILL PROVIDE DEFINITIVE GUIDANCE ON ITS PROVISIONS. THIS DOCUMENT SHOULD NOT BE USED AS A BASIS TO MAKE DECISIONS OR TAKE ACTIONS RELATED TO H.R. 748.

### **SECTION 1102 - PAYCHECK PROTECTION PROGRAM**

1. ADMINISTRATOR - SBA is the Administrator of the program and it has delegated authority to lenders to make and approve “covered loans” under the program.
2. COVERED PERIOD - February 15, 2020 - June 30 2020
3. COVERED LOAN - Paycheck Protection Loan made under the Paycheck Protection Program during the covered period to an “Eligible Participant”.
4. ELIGIBILITY - During the covered period the following shall be eligible to receive a covered loan:
  - a. small business concerns
  - b. “any business concern”, nonprofit organization, veterans organization tribal business concern is eligible to receive a covered loan if the business concern employs not more than the greater of:
    - i. 500 employees, or
    - ii. if applicable, the size standard in number of employees established by the SBA for the industry in which the business concern, nonprofit organization, veterans organization, or tribal business concern operates.
  - c. Individuals who operate under a sole proprietorship or as an independent contractor and eligible self-employed individuals.
  - d. Business Concerns with More Than 1 Physical Location

- i. Any business concern that employs not more than 500 employees per physical location of the business concern and that is assigned a North American Industry Classification System code beginning with 72.
              - e. Waiver of Affiliation Rules
                - i. During the covered period, the provisions applicable to affiliations under section 121.103 of title 13, Code of Federal Regulations, or any successor regulation, are waived with respect to the eligibility for a covered loan for:
                  - Any business concern with not more than 500 employees that, as of the date on which the covered loan is disbursed, is assigned a North American Industry Classification System code of 72.
                  - Any business concern operating as a franchise that is assigned a franchise identifier code by the Administration.
                  - Any business concern that receives financial assistance under section 301 of the Small Business Administration Act of 1958 (15 U.S.C. 681).
5. EMPLOYEE – For purposes of determining whether a business concern, nonprofit organization, veterans organization, or tribal business employs not more than 500 employees, the term “employee” includes individuals employed on a full-time, part-time, or other basis.
6. AFFILIATION – The provisions applicable to affiliations under section 121.103 of title 13, Code of Federal Regulations, or any successor thereto, shall apply with respect to a nonprofit organization and a veterans organization in the same manner as with respect to a small business concern.
7. MAXIMUM LOAN AMOUNT
  - a. The lesser of \$10 million or:
    - i. The average total monthly payments by the applicant for “payroll costs” incurred during the 1 year period before the date on which the loan is made. (For seasonal employers the average total monthly payments for payroll shall be for the 12-week period beginning February 15, 2019, or at the election of the eligible recipient March 1, 2019 through June 30 2019.)
      - Payroll Costs are defined as:
        - a. salary, wage, commission, or similar compensation
        - b. cash tip or equivalent
        - c. vacation, parental, family, medical or sick leave
        - d. allowance for dismissal or separation
        - e. group health care benefits, including insurance premiums

- f. retirement benefits
  - g. payment of state or local tax assessed on the compensation
  - Excluded Amounts in Determining Payroll Costs:
    - a. the compensation of an individual employee in excess of an annual salary \$100,000.
    - b. taxes imposed or withheld under chapters 21, 22, or 24 of the IRS Code.
    - c. compensation of an employee with a principal residence outside of the U.S.
    - d. qualified sick leave wages for which a credit is allowed under section 7001 of the Families First Coronavirus Response Act.
    - e. qualified family leave wages for which a credit is allowed under section 7003 of the Families First Coronavirus Response Act.
  - Self-Employed Individuals - The sum of payments of any compensation to or income of a sole proprietor or independent contractor that is a wage, commission, income, net earnings from self-employment, or similar compensation and that is in an amount that is not more than \$100,000 as prorated for the covered period.
    - ii. The amount in (i) above, multiplied by 2.5.
8. ALLOWABLE USES OF COVERED LOANS
- a. payroll costs (as defined above)
  - b. costs related to the continuation of group health care benefits during periods of paid sick, medical or family leave, and insurance premiums
  - c. employee salaries, commissions or similar compensations
  - d. payments of interest on any covered mortgage obligation
  - e. rent
  - f. utilities
  - g. interest on other debt incurred before the covered period (February 15, 2020)
9. LENDERS EVALUATION THE ELIGIBILITY OF A BORROWER
- a. A lender shall consider whether the borrower:
    - was in operation on February 15, 2020, and
    - had employees for whom the borrower paid salaries and payroll taxes, or

- paid independent contractors, as reported on a Form 1099 MISC payments.

## 10. GENERAL LOAN PROVISIONS/REQUIREMENTS

- a. Refinance - A loan made during the period beginning January 1, 2020 and ending on the date on which the covered loans are made available may be refinanced as part of the covered loan.
- b. Nonrecourse - The SBA shall have no recourse against the shareholders, members or partners of an eligible recipient under the program so long as the loans are used for the purposes authorized.
- c. Borrower Requirements:
  - i. An eligible recipient applying for the 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 business.
    - acknowledging that the funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments and utility payments.
    - that the eligible recipient does not have an application pending for a loan under the program 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 December 31, 2020, that the eligible recipient has not received amounts under this program for the same purpose and duplicative of amounts applied for or received und a covered loan.
- d. Fees - waived
- e. Credit Elsewhere
  - i. The requirement that a small business concern is unable to obtain credit elsewhere shall not apply to a covered loan.
- f. Personal Guarantees - waived
- g. Collateral Requirements - waived
- h. Maturity for loans with a balance after application for forgiveness

- i. the covered loan shall have a maximum maturity of 10 years from the date on which the borrower applies for loan forgiveness.
    - i. Interest Rate Requirement - not to exceed 4%
    - j. Prepayment Penalty - None
    - k. Loan Deferment
      - i. Definition of an Impacted Borrower - An impacted borrower means an eligible recipient that:
        - was in operation on February 15, 2020.
        - has an application for a covered loan that is approved or pending approval on or after the date of enactment.
        - an impacted borrower is presumed to have been adversely affected by COVID-19.
      - ii. Deferral
        - during the covered period (February 15 - June 30), the SBA considers each eligible recipient that applies for a covered loan to be an impacted borrower, and
        - requires lenders to provide complete payment deferment relief for impacted borrowers with covered loans for period of not less than 6 months and not more than 1 year.
        - deferral includes payment of principal interest and fees.

## 11. SENSE OF THE SENATE

- a. It is the sense of the Senate that the SBA should issue guidance to lenders and agents to ensure that the processing and disbursement of covered loans prioritizes small business concerns and entities in underserved rural markets, including veterans and members of the military community, small business concerns owned and controlled by socially and economically disadvantaged individuals, women, and businesses in operation for less than 2 years.

## SECTION 1106 - LOAN FORGIVENESS

1. COVERED PERIOD - The 8 week period beginning on the date of the origination of the covered loan.
2. COVERED RENT OBLIGATION – Rent obligated under a leasing agreement in force before February 15, 2020.
3. COVERED UTILITY PAYMENT – Payment for a service for the distribution of electricity, gas, water, transportation, telephone or internet access for which the service began before February 15, 2020.
4. EXPECTED FORGIVENESS AMOUNT – the amount of principal that a lender reasonably expects a borrower to expend during the covered period for:
  - a. payroll costs (as defined above)
  - b. payment of interest on any covered mortgage obligation
  - c. covered rent obligations
  - d. covered utility payments
5. DETERMINING THE AMOUNT OF FORGIVENESS
  - a. An eligible recipient shall be eligible for forgiveness of indebtedness on a covered loan in an amount equal to the following costs incurred and payments made in the covered period (8 week period after the loan is made):
    - i. payroll costs (as defined above)
    - ii. any payment of interest on any covered mortgage obligation
    - iii. any payment of covered rent obligation
    - iv. any covered utility payment
6. LIMITS ON AMOUNT OF FORGIVENESS
  - a. The amount of forgiveness shall not exceed the principal amount of financing made available under the applicable covered loan
  - b. REDUCTION BASED ON REDUCTION IN NUMBER OF EMPLOYEES
    - i. The amount of loan forgiveness shall be reduced, but not increased, by multiplying the amount of forgiveness (5 above) by the ratio of the average number of full time equivalent employees per month employed during the covered period (8 week period after the loan is made) divided by, at the election of the borrower, either:
      - The average number of full time equivalent employees per month employed by the eligible recipient during the period beginning on February 15, 2019 and ending on June 30, 2019, or

- the average number of full time equivalent employees per month employed by the eligible recipient during the period of January 1, 2020 and ending on February 29, 2020
  - for seasonal employers, the average number of full time equivalent employees per month employed by the eligible recipient during the period beginning on February 15, 2019 through June 30 2019.
- c. Calculation of Average Number of Employees
- i. The average number of full time equivalent employees shall be determined by calculating the average number of full-time equivalent employees for each pay period falling within a month.
- d. REDUCTION RELATING TO SALARY AND WAGES
- i. The amount of loan forgiveness shall be reduced by the amount of any reduction in total salary or wages of any employee during the covered period (8 week period after the loan is made) 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.
  - ii. An employee, for purposes of this section, 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.
- e. Tipped Workers
- i. An eligible recipient with tipped employees may receive forgiveness for additional wages paid to those employees.
7. EXEMPTION FOR RE-HIRES
- a. If there is a reduction in the number of full-time equivalent employees of the eligible recipient during the period of February 15, 2020 and ending 30 days after the bill becomes law (April 26, 2020) as compared to February 15, 2020, and, if by not later than June 30 2020, the eligible employer has eliminated the reduction in the amount of full time equivalent employees, the amount of loan forgiveness shall be determined without regard to a reduction in the number of full time equivalent employees of the eligible recipient, as described in #6b above.
  - b. If there is a reduction in the salary or wages of 1 or more employees of the eligible recipient during the period of February 15, 2020 and ending 30 days after the bill becomes law (April 26, 2020) as compared to February 15, 2020, and, if by not later than June 30 2020, the eligible employer has eliminated the reduction in the salary or wages of 1 or more employees, the amount of loan forgiveness shall

be determined without regard to the reduction in salary of 1 or more employees of the eligible recipient, as described in #6d above.

- c. The above two exemptions are independent of each other and eligible recipients can get an exemption for each category (employee rehiring or salary restoration) or both.
8. TREATMENT OF AMOUNTS FORGIVEN
- a. Amounts forgiven shall be considered canceled indebtedness by the lender.
9. APPLICATION FOR FORGIVENESS
- a. An eligible recipient seeking loan forgiveness shall submit to the lender servicing the covered loan an application, which shall include
    - i. documentation verifying the number of full-time equivalent employees on payroll and pay rates for the relevant periods including:
      - payroll tax filings reported to the IRS, and
      - state income, payroll and unemployment insurance filings;
    - ii. documentation including cancelled checks, payment receipts, transcripts of accounts, or other documents verifying payments on covered mortgage obligations, payments on covered lease obligations, and covered utility payments;
    - iii. a certification from a representative of the eligible recipient authorized to make such certifications that:
      - the documentation is true and correct
      - the amount for which forgiveness is requested was used to retain employees, make interest payments on a covered mortgage obligation, make payments on a covered rent obligation, or make covered utility payments; and
      - any other documentation deemed necessary by the SBA
  - b. No eligible recipient shall receive forgiveness without submitting to the lender that is servicing the covered loan the documentation required.
  - c. Decision on Forgiveness
    - i. Not later than 60 days after the date on which the lender receives an application for loan forgiveness from an eligible recipient, the lender shall issue a decision on an application.
10. TAXATION – Any income from debt forgiveness as a result of this section is not included in federal taxable income.