

Coronavirus Aid, Relief, and Economic Security Act (CARES ACT)

PAYCHECK PROTECTION PROGRAM

Amy Lynne Hill

ATTORNEY AT LAW

CARES ACT OVERVIEW

DIVISION A—KEEPING WORKERS PAID AND EMPLOYED, HEALTH CARE SYSTEM ENHANCEMENTS, AND ECONOMIC STABILIZATION

TITLE I—KEEPING AMERICAN WORKERS PAID AND EMPLOYED ACT

TITLE II—ASSISTANCE FOR AMERICAN WORKERS, FAMILIES, AND BUSINESSES
Subtitle A—Unemployment Insurance Provisions
Subtitle B—Rebates and Other Individual Provisions
Subtitle C—Business Provisions

TITLE III—SUPPORTING AMERICA'S HEALTH CARE SYSTEM IN THE FIGHT AGAINST THE CORONAVIRUS
Subtitle A—Health Provisions
Subtitle B—Education Provisions
Subtitle C—Labor Provisions
Subtitle D—Finance Committee
Subtitle E—Health and Human Services Extenders
Subtitle F—Over-the-Counter Drugs

TITLE IV—ECONOMIC STABILIZATION AND ASSISTANCE TO SEVERELY DISTRESSED SECTORS OF THE UNITED STATES ECONOMY
Subtitle A—Coronavirus Economic Stabilization Act of 2020
Subtitle B—Air Carrier Worker Support

TITLE V—CORONAVIRUS RELIEF FUNDS

TITLE VI—MISCELLANEOUS PROVISIONS

DIVISION B—EMERGENCY APPROPRIATIONS FOR CORONAVIRUS HEALTH RESPONSE AND AGENCY OPERATIONS
(Increases in agency budgets)

CARES ACT: TITLE I

KEEPING AMERICAN WORKERS PAID AND EMPLOYED ACT

Sec. 1101. Definitions.

Sec. 1102. Paycheck protection program.

Sec. 1103. Entrepreneurial development.

Sec. 1104. State trade expansion program.

Sec. 1105. Waiver of matching funds requirement under the women's business center program.

Sec. 1106. Loan forgiveness.

Sec. 1107. Direct appropriations.

Sec. 1108. Minority business development agency.

Sec. 1109. United States Treasury Program Management Authority.

Sec. 1110. Emergency EIDL grants.

Sec. 1111. Resources and services in languages other than English..

Sec. 1112. Subsidy for certain loan payments.

Sec. 1113. Bankruptcy.

Sec. 1114. Emergency rulemaking authority

CARES ACT: TITLE I
KEEPING AMERICAN WORKERS PAID AND EMPLOYED ACT
Sec. 1102. Paycheck Protection Program
Purpose

The Paycheck Protection Program and loan forgiveness are intended to provide economic relief to small businesses nationwide adversely impacted under the Coronavirus Disease 2019 (COVID-19) Emergency Declaration (COVID-19 Emergency Declaration) issued by President Trump on March 13, 2020.

On March 27, 2020, the President signed the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act or the Act) (P.L. 116-136) to provide emergency assistance and health care response for individuals, families, and businesses affected by the coronavirus pandemic.

Section 1102 of the Act temporarily permits SBA to guarantee 100% of 7(a) loans under a new program titled the “Paycheck Protection Program.”

Section 1106 of the Act provides for forgiveness of up to the full principal amount of qualifying loans guaranteed under the Paycheck Protection Program.

Further details of Sections 1102 and 1106 of the CARES Act are found below.

**CARES ACT: TITLE I
KEEPING AMERICAN WORKERS PAID AND EMPLOYED ACT
Sec. 1102. Paycheck Protection Program
ELIGIBILITY**

SBA Interim Final Rule incorporates ([13 CFR 120.100](#)) and SBA's Standard Operating Procedure (SOP) 50 10, Subpart B, Chapter 2 (except the nonprofit restriction is removed) which should be reviewed for more specific eligibility requirements:

In General, the Small Business Applicant must:

1. Be an operating business;
2. Be located in the United States (includes territories and possessions);
3. Be small (as defined by SBA); and
4. Demonstrate a need for the desired credit.

CARES ACT: TITLE I

KEEPING AMERICAN WORKERS PAID AND EMPLOYED ACT Sec. 1102. Paycheck Protection Program ELIGIBILITY

Covered Period:
February 15-
June, 2020

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

ELIGIBILITY FOR COVERED LOANS:

1. Small business,
2. 501(c)(3),
3. Sole proprietorships,
4. Independent contractors, and
5. Eligible self-employed individuals

SMALL BUSINESS

independently owned and operated and which is not dominant in its field of operation; generally a maximum tangible net worth of not more than \$15 million; industry-specific standards may apply

Eligible self-employed individuals

(meaning given the term in section 7002(b) of the Families First Coronavirus Response Act)

Operating on
February 15,
2020

Had employees or
paid independent
contractors

Employee:
Full Time, Part
Time, or other basis

Must have less than 500
employees during the
covered period or
applicable size standard
under SBA for the industry

Affiliation Rules of 13 CFR 121.301(f) apply, EXCEPT: AFFILIATION IS WAIVED FOR:

NAIC Code 72: **Accommodation and Food Services** sector comprises establishments providing customers with lodging and/or preparing meals, snacks, and beverages for immediate consumption.

Franchise with a Franchise identifier code; or

Small business investment company licensed under Sec. 301 of 15 USC 681

SBA intends to promptly issue additional guidance with regard to the applicability of affiliation rules at 13 CFR §§ 121.103 and 121.301 to PPP loans. In general, affiliation can exist through:

1. Common ownership,
2. Common management,
3. Excessive restrictions upon the sale/transfer of the franchise interest, or
4. Control by a franchisor either directly or through an affiliated entity or agent such that the franchisee does not have the independent right to both profit from its efforts and bear the risk of loss commensurate with ownership. (13 CFR 121.103 (i)).

CARES ACT: TITLE I
KEEPING AMERICAN WORKERS PAID AND EMPLOYED ACT
Sec. 1102. Paycheck Protection Program

“First-Come,
First-Served”

SPECIFIC EXCLUSIONS FROM ELIGIBILITY INCLUDE:

1. Engaged in conduct which is illegal under federal, state or local law
2. Owner with 20% or more has criminal background (See IFR)
3. Direct or Guaranteed Loan is delinquent or a default within 7 years (business or owners).
4. Household Employers are “not a business”

CERTIFICATION REQUIREMENTS:

1. In operation on February 15, 2020, and had employees;
2. **Current economic uncertainty makes this loan request necessary to support the ongoing operations of the applicant;**
3. The funds will be used to retain workers and maintain payroll or make mortgage interest payments, lease payments, and utility payments (no more than 25% on nonpayroll);
4. Will provide info to lender on costs during 8 week period following loan;
5. Loan forgiveness will be provided for no more than 25% of nonpayroll costs;
6. The applicant will not receive another loan under the program;
7. Information is true and accurate in all material respects.

PENALTIES:

Knowingly making a false statement to obtain a guaranteed loan from SBA is punishable under the law, including under 18 USC 1001 and 3571 by imprisonment of not more than five years and/or a fine of up to \$250,000; under 15 USC 645 by imprisonment of not more than two years and/or a fine of not more than \$5,000; and, if submitted to a federally insured institution, under 18 USC 1014 by imprisonment of not more than thirty years and/or a fine of not more than \$1,000,000.

Covered Period:
February 15-
June, 2020

CARES ACT: TITLE I
KEEPING AMERICAN WORKERS PAID AND EMPLOYED ACT
Sec. 1102. Paycheck Protection Program
AMOUNT OF LOAN

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

CALCULATION:

STEP ONE: Aggregate **payroll costs (defined on next page)** from the last twelve months for employees whose principal place of residence is the United States.

STEP TWO: Subtract any compensation paid to an employee in excess of an annual salary of \$100,000 (any amounts paid to an independent contractor or sole proprietor in excess of \$100,000 per year are subtracted for independent contractor or sole proprietor applicants).

STEP THREE: Calculate average monthly payroll costs (divide the amount from Step 2 by 12).

STEP FOUR: Multiply the average monthly payroll costs from Step 3 by 2.5.

STEP FIVE: Add the outstanding amount of an Economic Injury Disaster Loan (EIDL) made between January 31, 2020 and April 3, 2020, less the amount of any “advance” under an EIDL COVID-19 loan (because it does not have to be repaid).

**CAPPED AT
\$10 Million**

NOTE:
Different rules for
seasonal business or
if not in business for
one year

**ONE LOAN
ONLY PER
ELIGIBLE
BORROWER**

Covered Period:
February 15-
June, 2020

**CARES ACT: TITLE I
KEEPING AMERICAN WORKERS PAID AND EMPLOYED ACT
Sec. 1102. Paycheck Protection Program
AMOUNT OF LOAN**

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

PAYROLL COSTS INCLUDE:

Sum of Payments for:

1. Payroll costs consist of compensation to employees (whose principal place of residence is the United States) in the form of salary, wages, commissions, or similar compensation;
2. cash tips or the equivalent (based on employer records of past tips or, in the absence of such records, a reasonable, good-faith employer estimate of such tips);
3. Payment for Vacation; parental, family, medical or sick leave;
4. Allowance for dismissals;
5. payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums, and retirement; Retirement benefits; and
6. State and local tax on compensation

PAYROLL COSTS DO NOT INCLUDE:

1. Compensation to an individual employee in excess of \$100,000 per year;
2. Federal employment taxes imposed or withheld between February 15, 2020 and June 30, 2020, including the employee's and employer's share of FICA (Federal Insurance Contributions Act) and Railroad Retirement Act taxes, and income taxes required to be withheld from employees;
3. Compensation to residents outside of the US; and
4. Qualified sick leave or family leave under Family First Act (*See Buckley Law Employment Law Group for more details*)
5. **Payments to independent contractors**

**independent contractor or
sole proprietor 'payroll
costs' include:**

1. Wages;
2. commission;
3. income;
4. net earnings from self-employment; or
5. similar compensation as prorated for the covered period

Covered Period:
February 15-
June, 2020

CARES ACT: TITLE I
KEEPING AMERICAN WORKERS PAID AND EMPLOYED ACT
Sec. 1102. Paycheck Protection Program
LOAN USES AND TERMS

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

Allowable Uses:

- Payroll
- Health care benefits
- Salaries, commissions, and compensation,
- Interest on mortgage (not principal)
- Rent
- Utilities
- Interest on debt incurred prior to the covered period

TERMS AND CONDITIONS:

NO COLLATERAL

NO GUARANTEE (except carve out for misuse)

NO FEE

NO requirement that business is unable to obtain credit elsewhere.

MATURITY: 2 years

INTEREST RATE: 1%

PAYMENT DEFERMENT: 6 months (interest will accrue)

PRIORITY for Disadvantaged, Rural, Women, business of less than two years.

**CARES ACT: TITLE I
KEEPING AMERICAN WORKERS PAID AND EMPLOYED ACT
Sec. 1106. LOAN FORGIVENESS
EXPECTED FORGIVENESS**

SBA Administrator issued an Interim Final Rule on April 3, 2020; further guidance and rules are anticipated

Considered 'cancelled' indebtedness under 15 USC 636(a)

Covered Period:
8 week period from loan origination

Expected Forgiveness Amount:
8 weeks of
Payroll Costs (see definition above) including:
Compensation and Wages,
Interest on Mortgages
Rent Obligations
Utility Payments (electric, water, gas, transportation, internet)

LIMIT:
Forgiveness not to exceed the amount of the loan

No more than 25% of the forgiveness amount may be on nonpayroll costs

COVERED RENT
Requires Lease or Mortgage arise before February 15, 2020;

UTILITIES
when service began prior to February 15, 2020

**Covered Period:
8 week period from
loan origination**

**CARES ACT: TITLE I
KEEPING AMERICAN WORKERS PAID AND EMPLOYED ACT
Sec. 1106. LOAN FORGIVENESS
REDUCTION**

**SBA Administrator
issued an Interim Final
Rule on
April 3, 2020;
further guidance and
rules are anticipated**

**REDUCTION BASED ON REDUCTION OF EMPLOYEES:
EXPECTED FORGIVENESS AMOUNT
(See Above)**

MULTIPLIED (X) BY THE FRACTION BELOW:

**Average Number of Full Time Employees (FTEs) (during 8 week
coverage period)**

DIVIDED BY

**Average Number of FTEs February 15, 2019- June 30-2019
OR**

Average Number of FTEs per month January 1, 2020-February 29, 2020

**Average Number of Full
Time Employees (FTEs);
Based on pay period
within a month**

**Possibility to rehire workers
laid off between February 15,
2020 and [April 27, 2020]**

**Different
calculation if
seasonal**

**REDUCTION RELATED TO
SALARY AND WAGES:**

- Reduced by amount of reduction in total salary or wages during 8 weeks in excess of 25% during most recent full quarter prior to the 8 weeks.
- Employees under this provision include any employee who did NOT receive wages or annualized salary of \$100k or more.
- Tipped Workers; Forgiveness may include additional wages paid to tipped employees.

CARES ACT: TITLE I
KEEPING AMERICAN WORKERS PAID AND EMPLOYED ACT
Sec. 1110 Emergency EIDL Grants

Covered Period: 2020
Eligibility: Less than 500 employees.

Sole proprietor; independent contractor; cooperative; ESOP; tribal small business; small business; private nonprofit

Advance of not more than \$10,000 for:

1. paid sick leave for COVID-19;
2. payroll during disruption or shutdown;
3. increased costs due to interruption of supply chains;
4. rent;
5. mortgage;
6. repayment of obligations that can't be met due to revenue loss

Waives various requirements on guarantees, length of business or requirement that the borrower is unable to obtain credit elsewhere

Sec. 1112. Subsidy for certain loan payments.

- **Covers principal, interest, fees paid on covered loans guaranteed under the SBA 15 USC 636(a);**
- Not including a Sec 1102 loan; and
- Covers loans made before enactment of the CARES Act and not otherwise deferred.



Amy Lynne Hill
Attorney at Law & Shareholder
Buckley Law P.C.
ALH@buckley-law.com

Primary Areas of Practice:

- Estate Planning & Trust Administration
- Probate
- Business Law
- Finance & Commercial Law
- Health Care
- Real Estate

Legal Disclaimer

No legal or other professional advice is expressed or implied by any of the presenters or in this written material. This is not legal advice and is intended for informational purposes only. All parties are urged to seek competent legal advice before making any decisions concerning their particular issue. Special circumstances may cause different outcomes compared to those shared by presenter. Each case must be evaluated on its own unique facts and the applicable rules of law.



www.buckley-law.com
503.620.8900

Buckley Law P.C. is a full-service law firm in Lake Oswego providing a broad range of specialized services in business and commercial law, employment and labor law, real estate and land use, civil litigation, intellectual property, taxation, family and elder law, and estate planning, probate and trust administration.