

# AAOE: PPP Loans & HHS Provider Relief Fund

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# Agenda

- Paycheck Protection Program (PPP)
- HHS Provider Relief Fund
- Questions

# Treasury/SBA Overview of Paycheck Protection Program:

## **SMALL BUSINESS PAYCHECK PROTECTION PROGRAM**

The Paycheck Protection Program provides small businesses with funds to pay up to 8 weeks of payroll costs including benefits. Funds can also be used to pay interest on mortgages, rent, and utilities.

### **Fully Forgiven**

Funds are provided in the form of loans that will be fully forgiven when used for payroll costs, interest on mortgages, rent, and utilities (due to likely high subscription, at least 75% of the forgiven amount must have been used for payroll). Loan payments will also be deferred for six months. No collateral or personal guarantees are required. Neither the government nor lenders will charge small businesses any fees.

### **Must Keep Employees on the Payroll—or Rehire Quickly**

Forgiveness is based on the employer maintaining or quickly rehiring employees and maintaining salary levels. Forgiveness will be reduced if full-time headcount declines, or if salaries and wages decrease.

### **All Small Businesses Eligible**

Small businesses with 500 or fewer employees—including nonprofits, veterans organizations, tribal concerns, self-employed individuals, sole proprietorships, and independent contractors—are eligible. Businesses with more than 500 employees are eligible in certain industries.

### **When to Apply**

Starting April 3, 2020, small businesses and sole proprietorships can apply. Starting April 10, 2020, independent contractors and self-employed individuals can apply. We encourage you to apply as quickly as you can because there is a funding cap.

### **How to Apply**

You can apply through any existing SBA 7(a) lender or through any federally insured depository institution, federally insured credit union, and Farm Credit System institution that is participating. Other regulated lenders will be available to make these loans once they are approved and enrolled in the program. You should consult with your local lender as to whether it is participating. All loans will have the same terms regardless of lender or borrower. A list of participating lenders as well as additional information and full terms can be found at [www.sba.gov](http://www.sba.gov).

**The Paycheck Protection Program is implemented by the Small Business Administration with support from the Department of the Treasury. Lenders should also visit [www.sba.gov](http://www.sba.gov) or [www.coronavirus.gov](http://www.coronavirus.gov) for more information.**

# Paycheck Protection Program

- Basic Eligibility/Certification:
  - Borrowers with 500 or fewer employees or those meeting other PPP or SBA size standards.
  - Must certify, among other things:
    - Current economic uncertainty makes the loan request necessary to support the ongoing operations of the Borrower; and
    - The funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments.
- Max Loan Amount:
  - 2.5 x Avg. “Payroll Costs” from prior 12 months/2019, plus EIDL loan amounts from January 31 – April 3, 2020; or \$10M.

# PPP – Loan Terms

- Loan Terms:
  - 2 year maturity
  - 1.00% fixed rate
- Permissible Uses:
  - Payroll costs, including benefits ( $\geq 75\%$  requirement);
  - Interest on mortgage obligations;
  - Rent; and
  - Utilities.

# PPP – Forgiveness

- Potentially fully forgivable, but:
  - At least 75% of loan forgiveness amount needs to be attributable to “payroll costs.”
  - Proportionally reduced by any decrease in FTE.
  - Reduced by any decrease in salaries/wages by more than 25% (for employee making < \$100,000).
- Rehire:
  - You have until June 30, 2020 to restore your full-time employment and salary levels for any changes made between February 15, 2020 and April 26, 2020.

# PPP – Forgiveness

- “Covered Period” for forgiveness:
  - 8 week period starting on the date of the initial loan disbursement.
  - Generally, costs should be incurred and paid during the 8 week period (exceptions exist).
- For payroll costs, the 8 weeks may start on either:
  - First day of covered period; or
  - First day of the first payroll cycle in the covered period (the “alternative payroll covered period” or “APCP”).\*

\*Limited to borrowers with bi-weekly or more frequent payroll cycles.

# PPP – Forgiveness

- Forgiveness for payroll costs:
  - Generally must be paid during the covered period or APCP to be eligible for forgiveness.
  - Costs incurred during the borrower’s last pay period of the covered period/APCP are eligible for forgiveness if paid on or before the next regular payroll date.
  - Generally incurred on the day the employee’s pay is earned (i.e., on the day the employee worked/would have worked).

# PPP – Payroll Costs

- Salary, wages, commissions, or tips (capped at \$100,000 on an annualized basis for each employee and excluding those with a principal place of residence outside the US);
- Employee benefits including costs for vacation, parental, family, medical, or sick leave; allowance for separation or dismissal; payments required for the provisions of group health care benefits including insurance premiums; and payment of any retirement benefit;
- State and local taxes assessed on compensation; and
- For a sole proprietor or independent contractor: wages, commissions, income, or net earnings from self-employment (capped at \$100,000 on an annualized basis).

## **Are salary, wages, or commission payments to furloughed employees; bonuses; or hazard pay during the covered period eligible for loan forgiveness?**

Yes. The CARES Act defines the term “payroll costs” broadly to include compensation in the form of salary, wages, commissions, or similar compensation. If a borrower pays furloughed employees their salary, wages, or commissions during the covered period, those payments are eligible for forgiveness as long as they do not exceed an annual salary of \$100,000, as prorated for the covered period. The Administrator, in consultation with the Secretary, has determined that this interpretation is consistent with the text of the statute and ***advances the paycheck protection purposes of the statute by enabling borrowers to continue paying their employees even if those employees are not able to perform their day-to-day duties, whether due to lack of economic demand or public health considerations.*** . . . The Administrator, in consultation with the Secretary, has also determined that, if an employee’s total compensation does not exceed \$100,000 on an annualized basis, the employee’s hazard pay and bonuses are eligible for loan forgiveness because they constitute a supplement to salary or wages, and are thus a similar form of compensation.

# PPP – Nonpayroll Costs

- Eligible non-payroll costs include:
  - Interest payments on any business mortgage obligation on real or personal property that was incurred before February 15, 2020 (not any prepayment/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.

# PPP - Forgiveness

- An eligible nonpayroll costs is eligible for forgiveness if it was:
  - 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.
- Not eligible: advance payments of mortgage interest.
- No guidance addresses prepayment of rent, utilities, etc.

# PPP – Forgiveness Process

- Borrower submits forgiveness application to Lender.
- Lender reviews application and makes a decision regarding loan forgiveness, within 60 days of receiving a complete application.
- SBA will remit the appropriate amount to Lender not later than 90 days after Lender's decision; subject to any SBA review of the loan or loan application.

# PPP – Review/Documentation

- Inconsistent guidance regarding SBA's intended role in reviewing loans.
- Document, document, document.
- Maintain documentation for six years after the date of forgiveness or repayment.

# Questions: Payroll Costs

- Do bonuses or hazard pay count as payroll costs?
- Would payment of 2019 pension/401(k) contributions or prepayment of 2020 pension obligations within the 8 week period count towards payroll costs?
- Are wages for owners of an LLC filing as a partnership eligible for forgiveness? Health benefits?

# Questions: Calculating FTE/Employee retention

- How do you calculate FTE during the baseline and covered periods?
- How long do we have to retain the people employed (or re-hired by June 30, 2020)?
- What if employees don't want to come back – how does that affect my numbers for PPP forgiveness? Can we terminate those employees now?
- What if state orders do not permit employees to come to work?

**Will a borrower's loan forgiveness amount be reduced if the borrower laid-off or reduced the hours of an employee, then offered to rehire the same employee for the same salary and same number of hours, or restore the reduction in hours, but the employee declined the offer?**

No. . . Specifically, in calculating the loan forgiveness amount, a borrower may exclude any reduction in full-time equivalent employee headcount that is attributable to an individual employee if: i. the borrower made a good faith, written offer to rehire such employee (or, if applicable, restore the reduced hours of such employee) during the covered period or the alternative payroll covered period; ii. the offer was for the same salary or wages and same number of hours as earned by such employee in the last pay period prior to the separation or reduction in hours; iii. the offer was rejected by such employee; iv. the borrower has maintained records documenting the offer and its rejection; and v. 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 the offer.

## **Will a borrower's loan forgiveness amount be reduced if an employee is fired for cause, voluntarily resigns, or voluntarily requests a schedule reduction?**

No. When an employee of the borrower is fired for cause, voluntarily resigns, or voluntarily requests a reduced schedule during the covered period or the alternative payroll covered period (FTE reduction event), the borrower may count such employee at the same full-time equivalency level before the FTE reduction event when calculating the section 1106(d)(2) FTE employee reduction penalty. . . The Administrator and the Secretary have determined that such an exemption is de minimis, because a limited number of borrowers will face an FTE reduction event during the covered period or the alternative payroll covered period. Further, borrowers should not be penalized for changes in employee headcount that are the result of employee actions and requests. Borrowers that avail themselves of this de minimis exemption shall maintain records demonstrating that each such employee was fired for cause, voluntarily resigned, or voluntarily requested a schedule reduction. The borrower shall provide such documentation upon request.

## **Are there caps on the amount of loan forgiveness available for owner employees and self-employed individuals' own payroll compensation?**

Yes, the amount of loan forgiveness requested for owner-employees and self-employed individuals' payroll compensation can be no more than the lesser of 8/52 of 2019 compensation (i.e., approximately 15.38 percent of 2019 compensation) or \$15,385 per individual in total across all businesses. See 85 FR 21747, 21750. In particular, owner-employees are capped by the amount of their 2019 employee cash compensation and employer retirement and health care contributions made on their behalf. Schedule C filers are capped by the amount of their owner compensation replacement, calculated based on 2019 net profit. General partners are capped by the amount of their 2019 net earnings from self-employment (reduced by claimed section 179 expense deduction, unreimbursed partnership expenses, and depletion from oil and gas properties) multiplied by 0.9235. No additional forgiveness is provided for retirement or health insurance contributions for self-employed individuals, including Schedule C filers and general partners, as such expenses are paid out of their net self-employment income.

# H.R. 7010: Paycheck Protection Program Flexibility Act of 2020

- If enacted, this legislation would:
  - Reduce payroll loan requirement from 75% to 60%.
  - Extend covered period for forgiveness from 8 weeks to 24 weeks.
  - Extend rehire deadline to December 31, 2020.
  - Provide more leeway on loan forgiveness for business owners who show they could not rehire workers or reopen due to safety standards.
  - Extend the time recipients have to repay the loan.
  - Allow companies that get loan forgiveness to defer payroll taxes.

# PPP Links

- Treasury/SBA FAQ: <https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf>
- Interim Final Rule on Loan Forgiveness: <https://home.treasury.gov/system/files/136/PPP-IFR-Loan-Forgiveness.pdf>
- Forgiveness Application: <https://home.treasury.gov/system/files/136/3245-0407-SBA-Form-3508-PPP-Forgiveness-Application.pdf>
- Calculating Maximum Loan Amounts: <https://home.treasury.gov/system/files/136/How-to-Calculate-Loan-Amounts.pdf>
- Other Interim Final Rules & Resources:
  - Treasury website: <https://home.treasury.gov/policy-issues/cares/assistance-for-small-businesses>
  - SBA website: <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program>

# HHS Provider Relief Fund

- General Distribution
  - Two payment tranches, two sets of terms and conditions.
  - Initial amount based on 2019 Medicare reimbursement.
- Targeted Distributions
  - Rural Providers
  - Rural Health Clinic Testing
  - SNF Relief
  - High Impact Relief
  - Uninsured Relief

# General Distribution: Overview

- Not a loan, but subject to terms and conditions.
- Providers are eligible only if they provide or provided after January 31, 2020, diagnoses, testing or care for individuals with possible or actual cases of COVID-19 – but HHS broadly views every patient as a possible case of COVID-19.
- An out-of-network provider delivering COVID-19-related care to an insured patient may not seek to collect from the patient out-of-pocket expenses, including deductibles, copayments, or balance billing, in an amount greater than what the patient would have otherwise been required to pay if the care had been provided by an in-network provider.

# General Distribution: Permissible Uses

- Recipient certifies to use the payment only “to prevent, prepare for, and respond to coronavirus, and shall reimburse [itself] only for health care related expenses or lost revenues that are attributable to coronavirus.”
- Specific examples from the CARES Act:
  - “building or construction of temporary structures, leasing of properties, medical supplies and equipment including personal protective equipment and testing supplies, increased workforce and trainings, emergency operation centers, retrofitting facilities, and surge capacity.”

# General Distribution: Restrictions on Uses

- Cannot use funds to reimburse expenses or losses that have been reimbursed from other sources or that other sources are obligated to reimburse.
- Additional requirements on confidentiality and nondisclosure agreements, prohibition on the use of funds for excessive executive pay (Executive Level II salary of \$197,300), lobbying, gun control advocacy, abortion, embryo research, needle exchanges, promotion of legalization of controlled substances, pornography, human trafficking, etc.

# HHS Links

- General information:

<https://www.hhs.gov/coronavirus/cares-act-provider-relief-fund/index.html>

- FAQs:

<https://www.hhs.gov/sites/default/files/provider-relief-fund-general-distribution-faqs.pdf>

# Questions?