

CARES ACT: OVERVIEW OF PAYCHECK PROTECTION LOANS

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You should consult a lawyer licensed to practice law in your state when considering legal options for your organization as other laws affecting nonprofit religious organizations vary by state.



CARES ACT OVERVIEW

- Signed into law on March 27, 2020
- Largest federal relief package in history
- Centerpiece – “Paycheck Protection Program” (§ 1102 of CARES Act)
- Also includes certain other key legislative changes, including:
 - *Increased corporate charitable deduction*
 - 10% of taxable income charitable deduction increased to 25% of taxable income for 2020 only for cash contributions to a public charity, but no donor advised funds
 - *Increased individual charitable deduction*
 - 60% of adjusted gross income (AGI) income charitable deduction increased to 100% of AGI for 2020 only for cash contributions to public charity, but no donor advised funds.
 - *Waived Required Minimum Distribution (RMD)*
 - Generally, individual taxpayers age 72 and older must take minimum distributions from individual retirement accounts (IRAs) and defined contribution plans such as 403(b) plans.
 - Under CARES Act, the RMD rules are waived for 1 year.



IMPORTANT SOURCES OF INFORMATION

- CARES Act
- Interim Final Rule
- Interim Final Rule on Affiliation
- Summary of Affiliation Rules
- SBA Frequently Asked Questions Regarding Participation of Faith-Based Organizations in the Paycheck Protection Program (PPP)



PAYCHECK PROTECTION LOANS OVERVIEW OF TERMS

Qualifying Borrower	For-profit and nonprofit borrowers with ≤ 500 employees and who certify, among other things: (a) current economic uncertainty makes loan necessary; and (b) funds will be expended for certain allowable uses qualify for SBA-guaranteed “paycheck protection loans” that may be wholly or partially forgiven if certain conditions are met (see slides 6-7).
Application Opening Date	April 3, 2020
Maximum Loan Amount	<ul style="list-style-type: none"> • 2.5x average monthly payroll costs (with salary, wages, and other compensation capped at \$100,000 on an annualized basis per employee) • Total loan capped at \$10 million
Interest Rate	1%
Term	2 years
Payment Deferment	<ul style="list-style-type: none"> • No payments are due until 6 months after funds disbursed (but interest still accrues) • Borrower must begin fully-amortizing payments after the 6-month deferment (except to the extent forgiven) (see slide 6)
Collateral	None
Guaranty	None
Allowable Uses	<ul style="list-style-type: none"> • $\geq 75\%$ of loan <u>must</u> be used for “payroll costs” (see slide 5) • $\leq 25\%$ of loan may be used for certain other allowable uses (see slide 5)



PAYCHECK PROTECTION LOANS OVERVIEW OF TERMS (CONT'D)

“Payroll Costs” (minimum 75% of loan) = sum of the following:

- Salary, wages, commissions, or tips (capped at \$100,000 annualized per employee)
- Employee benefits such as PTO, family and medical leave, severance payments, group health care premiums, and any retirement benefits
 - *Note:* Family leave payments under the Families First Coronavirus Response Act for which a payroll tax credit is provided are **not** “payroll costs” under CARES Act)
- State & local payroll taxes

Other Allowable Uses (capped at 25% of loan)

- Mortgage interest (not principal)
- Rent
- Utilities
- Interest on other debt obligations (not principal)
 - *Note:* Any of the other allowable uses must relate to underlying obligations originally incurred before 2/15/20.



PAYCHECK PROTECTION LOANS OVERVIEW OF TERMS (CONT'D)

Loan Forgiveness Mechanics

- Limited to funds used in **8 weeks after loan disbursement**
 - *Consider:* Separate account for funds received under the PPP
- Borrower cannot reduce pay of any FTE employee earning \$100,000 or less more than 25% during the 8-week period as compared to the most-recent full quarter before the 8-week period
- Borrower must maintain FTE employee head count during the 8 weeks to qualify for forgiveness
- To calculate fraction for determining portion that may be forgiven:
 - Take number of FTE employees during the 8-week period divided by
 - 2 different measures permitted
 - Avg. FTE employees/mo. from 2/25/19 to 6/30/19 or
 - Avg. FTE employees/mo. from 1/1/20 to 2/29/20
 - Note: Seasonal employers must use the first measure



PAYCHECK PROTECTION LOANS OVERVIEW OF TERMS (CONT'D)

Loan Forgiveness Mechanics (cont'd)

- Multiply that fraction by the total amount of allowable uses for which loan proceeds were spent during the 8-week period
 - *Reminder:* This is still subject to the 75%/25% ratio of payroll costs to other allowable uses.
- Once the forgiveness amount is calculated, the borrower will apply for forgiveness by letter to the SBA lender, providing supporting documentation. Per SBA guidance, forgiveness will occur within 90 days of application.



PAYCHECK PROTECTION LOANS OVERVIEW OF TERMS (CONT'D)

Religious Liberty Issues

- Interim Final Rule - § III.5, “Additional Information” (p. 27)
- Interim Final Rule on Affiliation - § III.2, “Faith-Based Organizations” (pp. 6 – 11)
- SBA FAQs re Participation of Faith-Based Organizations – Q. 4 (p. 2); Q. 5 (pp. 2 – 3)



PAYCHECK PROTECTION LOANS OVERVIEW OF TERMS (CONT'D)

Affiliation Issues

- Interim Final Rule on Affiliation - § III.2, “Faith-Based Organizations” (pp. 6 – 11)
- Summary of Applicable Affiliation Rules (p. 2)
- SBA FAQs re Participation of Faith-Based Organizations – QQ. 6 – 8 + Sample Addendum A (pp. 3 – 5)

