

The following shows changes to the Paycheck Protection Program (PPP) made by HR 7010, the [Paycheck Protection Program Flexibility Act of 2020](#). The Act alters the PPP as follows:

1. Amends Section 7(a)(36) of the Small Business Act (PPP loans).
2. Amends Section 1106 of the CARES Act (PPP loan forgiveness).
3. Amends Section 2303 of the CARES Act (payroll tax deferral).

Section 7(a) of the Small Business Act:

(36) Paycheck Protection Program.—

(A) Definitions.— in this paragraph:

(iii) the term ‘covered period’ means the period beginning on February 15, 2020 and ending on ~~June 30, 2020~~ [December 31, 2020](#);

(K) Maturity for Loans with Remaining Balance After Application of Forgiveness. — With respect to a covered loan that has a remaining balance after reduction based on the loan forgiveness amount under section 1106 of the CARES Act—

(ii) the covered loan shall have a [minimum maturity of 5 years and a](#) maximum maturity of 10 years from the date on which the borrower applies for loan forgiveness under that section.

[\[\(b\) Effective Date; Applicability.—The amendment made by this section shall take effect on the date of the enactment of this Act and shall apply to any loan made pursuant to section 7\(a\)\(36\) of the Small Business Act \(15 U.S.C. 636\(a\)\(36\)\) on or after such date. Nothing in this Act, the CARES Act \(Public Law 116–136\), or the Paycheck Protection Program and Health Care Enhancement Act \(Public Law 116–139\) shall be construed to prohibit lenders and borrowers from mutually agreeing to modify the maturity terms of a covered loan described in subparagraph \(K\) of such section to conform with requirements of this section.\]](#)

(M) LOAN DEFERMENT.—

(i) DEFINITION OF IMPACTED BORROWER.—

(I) IN GENERAL.—In this subparagraph, the term ‘impacted borrower’ means an eligible recipient that—

(aa) is in operation on February 15, 2020; and

(bb) has an application for a covered loan that is approved or pending approval on or after the date of enactment of this paragraph.

(II) PRESUMPTION.—For purposes of this subparagraph, an impacted borrower is presumed to have been adversely impacted by COVID–19.

(ii) DEFERRAL.—During the covered period, the Administrator shall—

(I) consider each eligible recipient that applies for a covered loan to be an impacted borrower; and

(II) 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, including~~ payment of principal, interest, and fees, until the date on which the amount of forgiveness determined under section 1106 of the CARES Act is remitted to the lender.

(iii) SECONDARY MARKET.—During the covered period, with respect to a covered loan that is sold on the secondary market, if an investor declines to approve a deferral requested by a lender under clause (ii), the Administrator shall exercise the authority to purchase the loan so that the impacted borrower may receive a deferral ~~for a period of not less than 6 months, including payment of principal, interest, and fees, and not more than 1 year, including~~ payment of principal, interest, and fees, until the date on which the amount of forgiveness determined under section 1106 of the CARES Act is remitted to the lender.

(iv) GUIDANCE.—Not later than 30 days after the date of enactment of this paragraph, the Administrator shall provide guidance to lenders under this paragraph on the deferment process described in this subparagraph.

(v) RULE OF CONSTRUCTION.—If an eligible recipient fails to apply for forgiveness of a covered loan within 10 months after the last day of the covered period defined in section 1106(a) of the CARES Act, such eligible recipient shall make payments of principal, interest, and fees on such covered loan beginning on the day that is not earlier than the date that is 10 months after the last day of such covered period.

CARES Act Amendments

SEC. 1106. LOAN FORGIVENESS.

(a) Definitions.--In this section--

(1) the term "covered loan" means a loan guaranteed under paragraph (36) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)), as added by section 1102;

(2) the term "covered mortgage obligation" means any indebtedness or debt instrument incurred in the ordinary course of business that--

(A) is a liability of the borrower;

(B) is a mortgage on real or personal property; and

(C) was incurred before February 15, 2020;

(3) the term "covered period" means, subject to subsection (1), the 8-week period beginning on the date of the origination of a covered loan and ending the earlier of--

(A) the date that is 24 weeks after such date of origination; or

(B) December 31, 2020;

(4) the term "covered rent obligation" means rent obligated under a leasing agreement in force before February 15, 2020;

(5) the term "covered utility payment" means payment for a service for the distribution of electricity, gas, water, transportation, telephone, or internet access for which service began before February 15, 2020;

(6) the term "eligible recipient" means the recipient of a covered loan;

(7) the term "expected forgiveness amount" means the amount of principal that a lender reasonably expects a borrower to expend during the covered period on the sum of any--

(A) payroll costs;

(B) payments of interest on any covered mortgage obligation (which shall not include any prepayment of or payment of principal on a covered mortgage obligation);

(C) payments on any covered rent obligation; and

(D) covered utility payments; and

(8) the term "payroll costs" has the meaning given that term in paragraph (36) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)), as added by section 1102 of this Act.

(b) Forgiveness.—An eligible recipient shall be eligible for forgiveness of indebtedness on a covered loan in an amount equal to the sum of the following costs incurred and payments made during the covered period:

(1) Payroll costs.

(2) Any payment of interest on any covered mortgage obligation (which shall not include any prepayment of or payment of principal on a covered mortgage obligation).

- (3) Any payment on any covered rent obligation.
- (4) Any covered utility payment.

(c) Treatment of Amounts Forgiven.—

(1) In general.--Amounts which have been forgiven under this section shall be considered canceled indebtedness by a lender authorized under section 7(a) of the Small Business Act (15 U.S.C. 636(a)).

(2) Purchase of guarantees.--For purposes of the purchase of the guarantee for a covered loan by the Administrator, amounts which are forgiven under this section shall be treated in accordance with the procedures that are otherwise applicable to a loan guaranteed under section 7(a) of the Small Business Act (15 U.S.C. 636(a)).

(3) Remittance.--Not later than 90 days after the date on which the amount of forgiveness under this section is determined, the Administrator shall remit to the lender an amount equal to the amount of forgiveness, plus any interest accrued through the date of payment.

(4) Advance purchase of covered loan.--

(A) Report.--A lender authorized under section 7(a) of the Small Business Act (15 U.S.C. 636(a)), or, at the discretion of the Administrator, a third party participant in the secondary market, may, report to the Administrator an expected forgiveness amount on a covered loan or on a pool of covered loans of up to 100 percent of the principal on the covered loan or pool of covered loans, respectively.

(B) Purchase.--The Administrator shall purchase the expected forgiveness amount described in subparagraph (A) as if the amount were the principal amount of a loan guaranteed under section 7(a) of the Small Business Act 636(a)).

(C) Timing.--Not later than 15 days after the date on which the Administrator receives a report under subparagraph (A), the Administrator shall purchase the expected forgiveness amount under subparagraph (B) with respect to each covered loan to which the report relates.

(d) Limits on Amount of Forgiveness.--

(1) Amount may not exceed principal.--The amount of loan forgiveness under this section shall not exceed the principal amount of the financing made available under the applicable covered loan.

(2) Reduction based on reduction in number of employees.--

(A) In general.--The amount of loan forgiveness under this section shall be reduced, but not increased, by multiplying the amount described in subsection (b) by the quotient obtained by dividing--

(i) the average number of full-time equivalent employees per month employed by the eligible recipient during the covered period; by

(ii)

(I) at the election of the borrower--

(aa) 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

(bb) the average number of full-time equivalent employees per month employed by the eligible recipient during the period beginning on January 1, 2020 and ending on February 29, 2020; or

(II) in the case of an eligible recipient that is seasonal employer, as determined by the Administrator, 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.

(B) Calculation of average number of employees.--For purposes of subparagraph (A), 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.

(3) Reduction relating to salary and wages.--

(A) In general.--The amount of loan forgiveness under this section shall be reduced by the amount of any reduction in total salary or wages of any employee described in subparagraph (B) 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.

(B) Employees described.--An employee described in this subparagraph 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.

(4) Tipped workers.--An eligible recipient with tipped employees described in section 3(m)(2)(A) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(m)(2)(A)) may receive forgiveness for additional wages paid to those employees.

(5) Exemption for re-hires.--

(A) In general.--In a circumstance described in subparagraph (B), the amount of loan forgiveness under this section shall be determined without regard to a reduction in the number of full-time equivalent employees of an eligible recipient or a reduction in the salary of 1 or more employees of the eligible recipient, as applicable, during the period beginning on February 15, 2020 and ending on the date that is 30 days after the date of enactment of this Act.

(B) Circumstances.--A circumstance described in this subparagraph is a circumstance--

(i) in which--

(I) during the period beginning on February 15, 2020 and ending on the date that is 30 days after the date of enactment of this Act, there is a reduction, as compared to February 15, 2020, in the number of full-time equivalent employees of an eligible recipient; and

- (II) not later than ~~June 30, 2020~~ December 31, 2020, the eligible employer has eliminated the reduction in the number of full-time equivalent employees;
- (ii) in which--
 - (I) during the period beginning on February 15, 2020 and ending on the date that is 30 days after the date of enactment of this Act, there is a reduction, as compared to February 15, 2020, in the salary or wages of 1 or more employees of the eligible recipient; and
 - (II) not later than ~~June 30, 2020~~ December 31, 2020, the eligible employer has eliminated the reduction in the salary or wages of such employees; or
- (iii) in which the events described in clause (i) and (ii) occur.

(6) Exemptions.--The Administrator and the Secretary of the Treasury may prescribe regulations granting de minimis exemptions from the requirements under this subsection.

(7) EXEMPTION BASED ON EMPLOYEE AVAILABILITY.—During the period beginning on February 15, 2020, and ending on December 31, 2020, the amount of loan forgiveness under this section shall be determined without regard to a proportional reduction in the number of full-time equivalent employees if an eligible recipient, in good faith—

(A) is able to document—

(i) an inability to rehire individuals who were employees of the eligible recipient on February 15, 2020; and

(ii) an inability to hire similarly qualified employees for unfilled positions on or before December 31, 2020; or

(B) is able to document an inability to return to the same level of business activity as such business was operating at before February 15, 2020, due to compliance with requirements established or guidance issued by the Secretary of Health and Human Services, the Director of the Centers for Disease Control and Prevention, or the Occupational Safety and Health Administration during the period beginning on March 1, 2020, and ending December 31, 2020, related to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID–19.

(8) LIMITATION ON FORGIVENESS.—To receive loan forgiveness under this section, an eligible recipient shall use at least 60 percent of the covered loan amount for payroll costs, and may use up to 40 percent of such amount for any payment of interest on any covered mortgage obligation (which shall not include any prepayment of or payment of principal on a covered mortgage obligation), any payment on any covered rent obligation, or any covered utility payment.

(e) Application.--An eligible recipient seeking loan forgiveness under this section shall submit to the lender that is servicing the covered loan an application, which shall include—

- (1) documentation verifying the number of full-time equivalent employees on payroll and pay rates for the periods described in subsection (d), including--
 - (A) payroll tax filings reported to the Internal Revenue Service; and
 - (B) State income, payroll, and unemployment insurance filings;
- (2) 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;
- (3) a certification from a representative of the eligible recipient authorized to make such certifications that--
 - (A) the documentation presented is true and correct; and
 - (B) 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
- (4) any other documentation the Administrator determines necessary.

(f) Prohibition on Forgiveness Without Documentation.--No eligible recipient shall receive forgiveness under this section without submitting to the lender that is servicing the covered loan the documentation required under subsection (e).

(g) Decision.--Not later than 60 days after the date on which a lender receives an application for loan forgiveness under this section from an eligible recipient, the lender shall issue a decision on the an application.

(h) Hold Harmless.--If a lender has received the documentation required under this section from an eligible recipient attesting that the eligible recipient has accurately verified the payments for payroll costs, payments on covered mortgage obligations, payments on covered lease obligations, or covered utility payments during covered period--

- (1) an enforcement action may not be taken against the lender under section 47(e) of the Small Business Act (15 U.S.C. 657t(e)) relating to loan forgiveness for the payments for payroll costs, payments on covered mortgage obligations, payments on covered lease obligations, or covered utility payments, as the case may be; and
- (2) the lender shall not be subject to any penalties by the Administrator relating to loan forgiveness for the payments for payroll costs, payments on covered mortgage obligations, payments on covered lease obligations, or covered utility payments, as the case may be.

(i) Taxability.--For purposes of the Internal Revenue Code of 1986, any amount which (but for this subsection) would be includible in gross income of the eligible recipient by reason of forgiveness described in subsection (b) shall be excluded from gross income.

(j) Rule of Construction.--The cancellation of indebtedness on a covered loan under this section shall not otherwise modify the terms and conditions of the covered loan.

(k) Regulations.--Not later than 30 days after the date of enactment of this Act, the Administrator shall issue guidance and regulations implementing this section.

(l) Application to Certain Eligible Recipients.--An eligible recipient that received a covered loan before the date of enactment of this subsection may elect for the covered period applicable to such covered loan to end on the date that is 8 weeks after the date of the origination of such covered loan.

SEC. 2302. DELAY OF PAYMENT OF EMPLOYER PAYROLL TAXES.

(a) In General.--

(1) Taxes.--Notwithstanding any other provision of law, the payment for applicable employment taxes for the payroll tax deferral period shall not be due before the applicable date.

(2) Deposits.--Notwithstanding section 6302 of the Internal Revenue Code of 1986, an employer shall be treated as having timely made all deposits of applicable employment taxes that are required to be made (without regard to this section) for such taxes during the payroll tax deferral period if all such deposits are made not later than the applicable date.

~~(3) Exception.--This subsection shall not apply to any taxpayer if such taxpayer has had indebtedness forgiven under section 1106 of this Act with respect to a loan under paragraph (36) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)), as added by section 1102 of this Act, or indebtedness forgiven under section 1109 of this Act.~~