

## SUMMARY OF PAYCHECK PROTECTION PROGRAM UNDER CARES ACT<sup>1</sup>

<b>Eligibility</b>	<ul style="list-style-type: none"> <li>• <b>Borrower Size:</b> Borrower must be a “small business concern”<sup>2</sup> or a business with <b>no more than 500 employees</b> (or a greater number of employees as is used in the “small business concern” test otherwise applicable to the borrower).</li> <li>• <b>Employees:</b> Includes full-time, part-time and temp employees.</li> <li>• <b>Affiliation:</b> The broad “affiliation” rules traditionally used for SBA loans (which require potential borrowers to aggregate the employees of affiliated companies) will apply to the 500-employee test (likely rendering most portfolio companies of private equity sponsors ineligible).</li> <li>• <b>Restaurants/Lodging:</b> As applied to accommodation and food services businesses (NAICS code 72<sup>3</sup>):             <ul style="list-style-type: none"> <li>➢ the “affiliation” rules are explicitly <b>waived</b>, and</li> <li>➢ the 500-employee limitation applies on a <b>per physical location basis</b>.</li> </ul> </li> <li>• <b>Franchises:</b> The “affiliation” rules are <b>waived</b> for franchises on the SBA Franchise Directory.</li> </ul>
<b>Lenders</b>	<ul style="list-style-type: none"> <li>• Traditional SBA lenders plus other approved FDIC-insured lenders and credit unions. Loans under the program do not need separate SBA approval.</li> </ul>
<b>Timing</b>	<ul style="list-style-type: none"> <li>• Loans must be originated <b>by June 30, 2020</b>.</li> </ul>
<b>Use of Proceeds</b>	<ul style="list-style-type: none"> <li>• Proceeds of a loan may only be used for:             <ul style="list-style-type: none"> <li>➢ “<b>payroll costs</b>”<sup>4</sup> (excluding portion of compensation to an employee in excess of \$100,000 per year),</li> <li>➢ costs related to the continuation of <b>group benefits</b>,</li> <li>➢ <b>mortgage interest payments</b>,</li> <li>➢ <b>rent</b>,</li> <li>➢ <b>utilities</b>, and</li> <li>➢ <b>interest on any other debt obligations</b> incurred prior to Feb. 15, 2020.</li> </ul> </li> <li>• EIDL (disaster) loans can be refinanced under this program.</li> </ul>
<b>Maximum Loan Size</b>	<ul style="list-style-type: none"> <li>• The <b>lesser</b> of:             <ul style="list-style-type: none"> <li>➢ \$10 million, and</li> <li>➢ 250% of average monthly “payroll costs” for last 12 months<sup>5</sup> (plus the amount of any EIDL loan refinanced).</li> </ul> </li> </ul>
<b>Loan Deferral</b>	<ul style="list-style-type: none"> <li>• Lenders required to provide <b>complete payment deferment</b> relief, including payment of principal, interest and fees, for a period <b>no less than 6 months and no more than 1 year</b>.</li> </ul>

<sup>1</sup> The Paycheck Protection Program was added by Section 1102 of the CARES Act as Subsection (36) of Section 7(a) of the Small Business Act. We expect the SBA to provide initial regulations within 15 days of enactment and subsequent guidance to follow, which could modify the information provided herein. The information provided herein is intended to be a summary only and reference should be made to the language of the actual statutes, regulations and SBA guidance.

<sup>2</sup> The “small business concern” test is based on industry-specific maximum annual revenue and/or employees. The test applies both to the individual company and its affiliates (using a very broad affiliate test). A complete discussion of the “small business concern” test and affiliation rules can be found at: <https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=7780ee089107f59ef3f78b938e2282b7&r=PART&n=13y1.0.1.1.17>

<sup>3</sup> A complete list of industries classified under NAICS code 72 can be found here: <https://www.naics.com/six-digit-naics/?code=72>

<sup>4</sup> “Payroll costs” **include**: (a) employee compensation, including (i) salary, wage, (ii) tips, (iii) vacation, parental, family medical or sick leave, (iv) allowance for dismissal or separation, (v) payments for the maintenance of health care benefits (including insurance premiums), (vi) payment of retirement benefits, and (vii) payroll taxes, and (b) payments of a sole proprietor or independent contractor, in an amount not more than \$100,000 per year (as prorated for the covered period); but specifically **exclude** (w) payments to an individual employee exceeding \$100,000 (as prorated for the covered period), (x) Federal employment and income tax obligations, (y) compensation to employees whose principal residence is outside of the US and (z) qualified sick and family leave for which a credit is allowed under the Families First Coronavirus Response Act.

<sup>5</sup> For “seasonal employers”, average monthly payroll costs are based on period commencing Feb. 15, 2019 or March 1, 2019 and ending June 30, 2019.

<p><b>Loan Forgiveness</b></p>	<ul style="list-style-type: none"> <li>• <b>Principal Forgiveness:</b> The portion of the loan principal used to fund the following costs incurred and payments made during the 8-week “covered period” following the date of loan origination are eligible for <b>complete forgiveness</b>:             <ul style="list-style-type: none"> <li>➤ “payroll costs” (including lost tips),</li> <li>➤ mortgage interest payments,</li> <li>➤ rental payments, and</li> <li>➤ utility payments.</li> </ul> </li> <li>• <b>Reduction in Forgiveness:</b> The amount of principal eligible for forgiveness is reduced for borrowers that lay off employees and/or reduce wages as follows:             <ul style="list-style-type: none"> <li>➤ <b>Headcount Reduction:</b> Amount subject to forgiveness is subject to <b>proportionate reduction</b> based on reduction in full-time equivalent employees (“FTEEs”) comparing (i) average FTEEs during 8-week “covered period” to (ii) average FTEEs during one of the following periods (a) Feb. 15, 2019 to June 30, 2019 or (b) Jan. 1, 2020 to Feb. 29, 2020 (borrower elects applicable period<sup>6</sup>).</li> <li>➤ <b>Wage Reduction:</b> Amount subject to forgiveness is subject to a <b>dollar-for-dollar reduction</b> based on reduction in total wages (during 8-week “covered period” compared to most recent full quarter prior to such covered period) of <b>any</b> employee (excluding employees who received more than \$100,000 in annualized wages in any single 2019 pay period), but <b>only to the extent such reduction exceeds 25%</b>.</li> </ul> </li> <li>• <b>Re-Hires:</b> FTEE and wage reductions that occur from Feb. 15, 2020 through Apr. 26, 2020 will be disregarded for purposes of reducing the forgiveness amount to the extent that the borrower has <b>completely eliminated</b> such FTEE or wage reductions prior to June 30, 2020.</li> <li>• <b>Documentation:</b> To obtain forgiveness, the borrower must submit an application to lender with supporting documentation verifying (i) number of FTEEs and pay rates during the applicable periods and (ii) payments for covered mortgage interest payments, rent and utilities. Lender has 60 days to review and make a determination with respect to forgiveness.</li> <li>• <b>Taxable Income Exclusion:</b> Amounts forgiven are excluded from borrower’s taxable income.</li> </ul>
<p><b>Maturity</b></p>	<ul style="list-style-type: none"> <li>• Maximum maturity of 10 years (to the extent any balance remains after forgiveness).</li> </ul>
<p><b>Interest Rate</b></p>	<ul style="list-style-type: none"> <li>• Not to exceed 4%.</li> </ul>
<p><b>Prepayment</b></p>	<ul style="list-style-type: none"> <li>• No penalty for prepayment.</li> </ul>
<p><b>Collateral</b></p>	<ul style="list-style-type: none"> <li>• No collateral required.</li> </ul>
<p><b>Guarantees</b></p>	<ul style="list-style-type: none"> <li>• No personal guarantee required.</li> </ul>
<p><b>Fees</b></p>	<ul style="list-style-type: none"> <li>• No SBA fees (lender processing fee may apply subject to SBA limits).</li> </ul>
<p><b>Other Credit</b></p>	<ul style="list-style-type: none"> <li>• Borrower is not required to demonstrate that it is unable to obtain credit elsewhere.</li> </ul>
<p><b>Employee Retention Credit</b></p>	<ul style="list-style-type: none"> <li>• Borrowers who receive a loan under this program are not eligible for the Employee Retention Credit.</li> </ul>

<sup>6</sup> “Seasonal employers” must use the period between Feb. 15, 2019 and June 30, 2019.