CARES Act and the Paycheck Protection Program (PPP)

What You Need to Know

FuturePlan
by Ascensus

Legislative Updates

- The Coronavirus Aid, Relief, and Economic Security (CARES) Act, signed into law on March 27, 2020, included $349 billion for the Paycheck Protection Program (PPP). These original funds were exhausted on April 16, 2020.
- The Paycheck Protection Program and Health Care Enhancement Act (the "PPPHCEA"), signed into law on April 24, 2020, increased the funding available for the PPP by $310 billion, bringing total funding to $659 billion.
- The Paycheck Protection Program Flexibility Act of 2020, signed into law on June 5, 2020, modified the Paycheck Protection Program as established under the CARES Act.

Program Details

The Paycheck Protection Program provides small businesses with 24 weeks of financial assistance through federally guaranteed loans, which the Small Business Administration (SBA) oversees.

- The loan assets are intended to help keep smaller businesses afloat—and keep workers employed—by providing cash flow for payroll and operating expenses. They must be used primarily to cover payroll expenses, but a portion of the loan may be used on mortgage interest payments, rent obligations, and utility payments, known as non-payroll costs.
  - The program specifically identifies employee benefits—including retirement benefits—as payroll expenses. No guidance has been given, however, as to whether specific types of plan contributions will be allowed.
  - While a $100,000 limit on an individual's annual compensation applies to cash compensation, neither the SBA or Treasury have provided additional guidance on limits to funding retirement benefits with PPP assets.
  - Plan sponsors should be directed to their tax or legal advisers regarding PPP loan assets being used for specific guidance on limits, if any, to funding retirement plan contributions. For example, while it may be permissible to make a required per-payroll plan matching contribution, an employer may not want to use PPP loan assets to institute a generous new discretionary contribution.
- The loan may be forgiven if the borrower can demonstrate it was used for the right proportion of payroll and non-payroll costs in the 24 weeks after receipt of the loan.
  - The amount of payroll costs forgiven generally is reduced based on reductions in full-time equivalent employees or in employee salary and wages between 2/15/20 and 12/31/20, with exceptions when the employer is:

    (1) unable to rehire former employees and is unable to hire similarly qualified employees or
    (2) unable to return to the same level of business activity due to HHS, CDC, or OSHA requirements or guidance.
  - Non-payroll costs cannot exceed 40 percent of the loan forgiveness amount.
- Borrowers must work with SBA-approved lenders, who will apply the SBA eligibility criteria in determining whether (and how much of) each loan is forgiven, based on the borrower's compliance with program rules.

Eligibility

- Available to employers with 500 or fewer employees
- Must apply for SBA approval through a local lender
- Components of the loan attributable to individual payroll cannot exceed $100k per employee
- Total PPP loan amount cannot exceed $10 million

Loan Terms

- Loans that are not forgiven must be repaid within 5 years
- Loan payments are deferred until the date the SBA compensates the lender for the forgiven amount, or 10 months after the end of the covered period if the borrower does not apply for forgiveness
- Interest rate is 1% fixed
- No collateral or personal guarantee is needed

Additional Resource Links

- **Treasury Department FAQ**
- **Treasury Department Fact Sheet**
- **Small Business Administration PPP Website**
- **U.S. Chamber of Commerce PPP Guide & Checklist**

Note: Details from the SBA on how employers must prove compliance with the PPP are pending. Meanwhile, specific questions on program eligibility, borrower documentation, and loan forgiveness should be referred to competent tax or legal counsel.

We're here for you.

Reach out to your FuturePlan TPA consultant for support and expert guidance throughout this difficult time. We're ready to help you answer client questions and make informed decisions, connecting you with ERISA experts and providing any other expert advice you may need.