

Model Policy 7436: CARES Act – Small Business Administration (SBA) Loans

{The SBA is expected to issue guidance and regulations for the loan forgiveness of a Paycheck Protection Loan not later than 30 days after the CARES Act is enacted. This gives the SBA until April 26, 2020. This policy and associated guidelines were created prior to that guidance and may need to be revised, accordingly.}

Policy Effective Date: April 3, 2020

Policy Statement:

As part of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), new resources are available to small businesses, certain non-profit organizations and other employers. These loans are made available through the Small Business Administration (SBA). The Credit Union may offer small business loan programs, designed to assist with immediate financial relief for their small business members. The loan programs outlined in this policy will be available to qualifying credit union members.

Guidelines

1. Paycheck Protection Program.

A. Member Eligibility

- a. Businesses, veterans' organizations, tribal business concerns or nonprofit organizations that have fewer than 500 employees, or the applicable size standard in number of employees for the North American Industry Classification System (NAICS) industry as provided by the SBA, if higher.
- b. Individuals who operate a sole proprietorship or as an independent contractor and eligible self-employed individuals.
- c. Any business that employees not more than 500 employees per physical location of the business and that is assigned an NAICS code beginning with 72, for which the SBA affiliation rules are waived.

B. Underwriting

- a. Verification that the business member was in operation on February 15, 2020.
- b. Verification that the business member had employees for whom they paid salaries and payroll taxes.
- c. Verification of the dollar amount of average monthly payroll costs.
- d. Eligible self-employed individuals, independent contractors, or sole proprietorships will provide documentation as necessary to establish themselves as eligible, including payroll tax filings report to the IRS, Forms 1099-MISC, and income and expenses from the sole proprietorship.
- e. Completion of applicable Bank Secrecy Act (BSA) requirements.

C. Member Good Faith Certification

- a. That the uncertainty of current economic conditions makes it necessary that the loan request to support the ongoing operations of the eligible member;
- b. Acknowledgement that funds will be used to retain workers and maintain payroll or make the mortgage, lease or utility payments;
- c. That the member does not have an application pending for a loan under the Paycheck Protection Program for the same purpose and duplicate amounts applied for; and
- d. During the period from February 15, 2020 to December 31, 2020 the member has not received amounts under the Paycheck Protection Program for the same purpose and duplicative amount as is being applied for.

D. Loan Amount and Limits.

- a. If the eligible member was in business February 15, 2019 – June 30, 2019, the max loan is equal to 2.5 times the amount of the average monthly payroll costs (payroll, mortgage payments, rent payments, and payments on any other debt obligations incurred) during that time period. If the business employs seasonal workers, it can opt to choose March 1, 2019 as the time period start date.
- b. If the eligible member was NOT in business between February 15, 2019 – June 30, 2019, the max loan is equal to 2.5 times the average monthly payroll costs (payroll, mortgage payments, rent payments, and payments on any other debt obligations incurred) between January 1, 2020 and February 29, 2020.
- c. The maximum loan size is \$10 million.
- d. A member who has an Economic Injury Disaster Loan through the SBA cannot apply for a Paycheck Protection Loan, but if they have a loan unrelated to COVID-19 they may apply for the Paycheck Protection Loan with an option to refinance their Economic Injury Disaster Loan into the Paycheck Protection Loan.

E. Loan Proceeds – Allowable Uses

- a. Payroll support, including paid sick, medical, or family leave, and costs related to the continuation of group health care benefits during those periods of leave;
- b. Employee salaries;
- c. Interest payments on mortgage obligations;
- d. Rent (including rent under a lease agreement);
- e. Utilities; and
- f. Any other debt obligations that were incurred before the covered period.

F. Loan Criteria

- a. Eligible member was in operation on February 15, 2020; and
- b. Had employees for whom the borrower paid salaries and payroll taxes.

G. Personal Guarantee

- a. During the covered period, no personal guarantee and no collateral shall be required for the covered loan.

H. Loan Forgiveness

- a. For loans made to eligible members during the covered period (February 15, 2020 and ending on June 30, 2020) they may be eligible for forgiveness of indebtedness on their loan in an amount equal to the cost of maintaining payroll continuity, interest on any mortgage, payment of rent or any lease and payment of utilities during the covered period.
- b. Payroll costs will not include:
 - i. Compensation of an individual employee in excess of \$100,000, as prorated for the covered period;
 - ii. Any compensation of an employee whose principal place of residence is outside the United States;
 - iii. Qualified sick leave wages for which a credit is allowed under the Families First Coronavirus Response Act; or
 - iv. Qualified family leave wages for which a credit is allowed under the Families First Coronavirus Response Act.
- c. Amounts forgiven may not exceed the principal amount of the Paycheck Protection. The amount forgiven will be reduced proportionally by any reduction in employees retained compared to the prior year and reduced by the reduction in pay of any employee beyond 25% of their prior year compensation.
- d. Members that re-hire employees who have already been laid off due to the COVID-19 emergency will not be penalized for having a reduced payroll at the beginning of the period and the payroll costs of any such employee is eligible for loan forgiveness. The payroll forgiveness extends to additional wages paid to tipped employees.
- e. Amounts that have been forgiven will be considered canceled indebtedness by the Credit Union.
- f. For purposes of the purchase of the guarantee for a covered loan by the SBA, amounts which are forgiven will be treated in accordance with the procedures that are otherwise applicable to a 7(a) SBA guaranteed loan.
- g. Any loan amounts not forgiven will transition to a loan up to a maximum of a 10-year term [we are also seeing 2 years in [treasury publications](#)] at a maximum interest rate of 4% [.50% fixed rate in [treasury publications](#)]. Principal and interest will continue to be deferred for a total of 6 months to 12 months, after disbursements of the loan.
- h. The member seeking loan forgiveness will apply with the credit union, providing an application that will also include:
 - i. Documentation verifying the number of full-time equivalent employees on payroll and pay rates for the current and prior years, including: payroll tax filings reported to the IRS; and state income, payroll, and unemployment insurance filings.
 - ii. Documentation including cancelled checks, payment receipts, transcripts of accounts, or other documents verifying payments on covered payments (mortgage, lease and utilities).
 - iii. Certification from the representative who is authorized to make a certification on behalf of the business that:
 1. The documentation presented is true and correct;

2. The amount of forgiveness is requested and was used to retain employees and for covered payments (mortgage, rent, or utilities); and
3. Any other documentation that the SBA determines necessary.

I. SBA Guarantee

- a. The SBA guarantees 100% of the outstanding balance, and that guarantee is backed by the full faith and credit of the United States.
- b. SBA is waiving all guaranty fees, including the upfront and annual servicing fees.

J. Risk Weight – Regulatory Capital Requirements

- a. A covered loan shall receive a risk weight of zero under NCUA risk-based capital requirements.

K. Prepayment Penalty

- a. There will be no prepayment penalty for any payment made on a covered loan.

2. Emergency Economic Injury Disaster Loans (EIDL)

A. The CARES Act has expanded the eligibility for access to EIDLs to include:

- a. A business with not more than 500 employees;
- b. Any individual who operates under a sole proprietorship, with or without employees, or as an independent contractor;
- c. A cooperative with not more than 500 employees;
- d. An employee Stock Ownership Plan organization with not more than 500 employees; or
- e. A tribal small business concern with not more than 500 employees.

B. The list of eligible entities also now includes private non-profit organizations and small agricultural cooperatives.

C. Loans made in response to COVID-19 will waive the personal guarantee on advances and loans below \$200,000 as loans if the applicant has been in business for at least a year prior to the disaster.

3. SBA Loan Relief Program

A. This relief program will apply to small businesses with non-disaster SBA loans, in particular 7(a), 504, and microloans.

B. SBA will cover all loan payments on these loans, including principal, interest and fees, for six (6) months.

4. SBA Loan Deferment Program

- A. If the credit union member is considered an impacted borrower, meaning they were in operation on February 15, 2020 and have an application for a loan made under 7(a) of the Small Business Act that is approved or pending approval on or after the date of enactment of the CARES Act, they are presumed to be adversely impact by COVID-19.
- B. During the covered period, each borrower that applies for a covered loan will be considered an impacted borrower and will be permitted to complete payment deferment relief with loans guaranteed under 7(a) for a period of not less than 6 months including payment of principal, interest, and fees, and not more than 1 year.

5. SBA Express Loans

- A. Express Loans offered under SBA 7(a) programs are increased to \$1,000,000 from \$350,000 until January 1, 2021 under the CARES Act.