

Prioritized Paycheck Protection Program Act

Section-by-Section

Sec.1. Short Title. This section names the legislation the “Prioritized Paycheck Protection Program Act” or the “P4 Act”.

Sec. 2. Paycheck Protection Program Improvements. This section amends the Paycheck Protection Program (PPP) under the Small Business Act in order to allow smaller PPP recipients, with significant losses due to COVID-19, to receive a second PPP loan. The borrowers must be self-employed or have 100 or fewer employees, and suffered more than a 50 percent loss in revenues compared to a quarter in the previous year or another relevant period. They must have exhausted, or be on pace to exhaust, their first PPP loan and certify they need the funding to support ongoing operations for payroll and eligible nonpayroll costs.

- **Definitions.** Provides the meanings of *publicly traded entity* and associated terms; *smaller concern* as 100 or fewer employees, including a sole proprietorship, an independent contractor, or a self-employed individual; and *significant loss* for an existing company as a 50 percent loss in gross receipts for a quarter in 2020 compared to a quarter in 2019, or for a new business compared to the first two months in 2020, or for a seasonal business two months in 2020 compared to two months in 2019.
- **Authority.** Authorizes the SBA Administrator to guarantee a second PPP loan to an eligible recipient. Except for the changes made in this Act, the second PPP loan shall be made under the same terms, conditions, and processes as regular PPP loans.
- **Application Deadline.** Establishes October 1, 2020 as the deadline for applying for P4 loans. This section also gives the SBA Administrator the discretion to extend the deadline. This provides flexibility to continue the program without the need for additional legislation, which could be necessary if the pandemic surges when Congress is out of session and businesses are restricted or shut down again.
- **Choice of lender.** Permits the borrower to apply for the second PPP loan with its existing lender, or another lender.
- **Eligibility.** Limits a second PPP loan to smaller concerns with 100 or fewer employees, including the self-employed. They must have suffered a significant loss in revenue of more than 50 percent due to COVID-19 compared to a relevant period, and also have exhausted, or be on pace to exhaust, their first PPP loan. Publicly traded firms are ineligible for a second PPP loan. Businesses under the North American Industry Classification System code beginning with 72 that have more than one physical location are eligible to apply for one P4 loan per location, if they have 100 or fewer employees, but in aggregate, the P4 loans must be \$2 million or less.
- **Maximum Amount for Supplemental PPP.** Caps the maximum amount of a second PPP at the lesser of \$2 million or the average monthly payroll costs used to calculate the first loan multiplied by 2.5, just as under initial PPP loans.
- **Exception from Certain Certification Requirements.** Exempts applicants for a second PPP from

certain borrower certification requirements applicable to original PPP borrowers. Currently, PPP applicants must make four certifications. Two remain mandatory: The recipient must make a good faith certification that the uncertainty of the current economic conditions makes necessary the loan request to support ongoing operations of the business, and also that the funds will be used to retain workers, maintain payroll or cover eligible nonpayroll costs. Two will not be required: Certification that the applicant does not have an application pending for a PPP loan for the same purpose and duplicative of amounts applied for or received under a covered loan, and between February 15, 2020 and December 31, 2020 the recipient has not received PPP funding for the same purpose and is not duplicative of amounts applied for or received under a PPP loan.

- *Reimbursement for Processing Supplemental PPP.* Establishes a minimum fee of \$2,500 to compensate lenders for second PPP loans of \$50,000 and less. The current fee is 5 percent of the loan amount, for loans of \$350,000 and less. Lenders, especially mission lenders, are losing money on making smaller dollar loans, especially given the complexity of PPP loans. For example, lender compensation for a loan of \$10,000 would be \$500.
- *Priority for Smallest Recipients.* Requires the SBA Administrator to devise a plan for the processing of P4 loans that prioritizes firms with 10 or fewer employees. The plan must harmonize with lender guidance to provide priority processing and disbursement of PPP loans for underserved and rural borrowers enacted as part of the CARES Act.
- *Funding priority.* Reserves the lesser of \$25 billion or 20% of PPP funds, both of unobligated amounts or future PPP funding, for applicants who have 10 or fewer employees.
- *Covered Periods/Authority to Extend Period for Making PPP and P4 Loans.* Gives the SBA Administrator discretion to extend the covered loan period during which a borrower must use PPP loan proceeds beyond December 31, 2020. This provides flexibility to continue the program without the need for additional legislation, which could be necessary if the pandemic surges when Congress is out of session and businesses are restricted or shut down again.

Period for Costs that are Eligible for Forgiveness and Application Submission. Amends the forgiveness covered period to allow a recipient to apply for forgiveness any time after eight weeks through December 31, 2020, with discretion for the SBA Administrator to extend the deadline beyond the end of the year.

Currently, a recipient must apply for forgiveness on the earlier of 24 weeks after the date of their loan's origination or December 31, 2020. Or, borrowers who received a loan before June 5 may apply for forgiveness eight weeks after the origination of their loan. Borrowers should not be forced to wait to apply for forgiveness for longer than eight weeks unless they want to. Waiting needlessly drives up the cost of the program because interest is accruing from the day of loan origination, tying up money that could be deployed for paychecks. It also unnecessarily keeps these loans on the credit records of businesses and balance sheets of lenders.

- *Implementation of Inspector General Suggested Actions for PPP Oversight.* Requires SBA within five days to implement the suggested actions identified by SBA's Inspector General in a report on implementation of PPP. The actions include issuing lender guidance to give priority in processing and disbursement of loans to underserved and rural markets; updating the PPP loan application to capture demographic data (which should apply to both PPP and P4 loan applications); establishing

a registry of all PPP loans; and begin publishing online the basic, non-sensitive information about PPP borrowers, such as their company name, lender name, loan amount, and industry.

- *Forgiveness Compensation Fees, Forgiveness Application Assistance.* Allows SBA to reimburse an agent up to \$500 for helping an eligible recipient with the forgiveness application and documentation. This is available for first and second PPP loans to help reduce the burden and complexity of the forgiveness application, and optimize their forgiveness amount. The amount is purposefully modest to discourage opportunistic agents who are reportedly charging anywhere from \$2,500 to \$5,000.
- *Amount Authorized for Commitments/Commitments for PPP and Other 7(a) Loans.* Extends the program level, or authority to fund PPP loans, from June 30, 2020, to December 31, 2020, with discretion for the SBA Administrator to extend the period.

This section makes the funding subject to the availability of appropriations rather than establishing a dollar threshold. This addresses concerns during the first round of PPP, when demand was surging and borrowers and lenders feared the funding would be exhausted before their loans were approved, that there should be no cap.

This section decouples the program level of the regular 7(a) program from PPP loans. The CARES Act inadvertently tied the PPP's authorization level to the regular 7(a) Loan Guaranty Program. This coupling of the program authorization caps voids the 7(a) loan program's FY20 \$30 billion authorization cap until July 1, 2020. As long as these programs are coupled, when PPP hits its authorization cap, it risks shutting down the regular 7(a) program too.