

RUBIO AMENDMENTS NO. 2507 AND 2508
CONTINUING PAYCHECK PROTECTION PROGRAM ACT
SECTION-BY-SECTION

Section 3. Small Business Recovery

Short Title; Definitions.

Emergency Rulemaking Authority. This section requires the SBA Administrator to establish regulations to carry out this title no later than 30 days after the enactment of this title.

Additional Eligible Expenses. This section would make the following expenses allowable and forgivable uses for Paycheck Protection Program funds:

- Covered operations expenditures. Payment for any software, cloud computing, and other human resources and accounting needs.
- Property damage costs. Costs related to property damage due to public disturbances that occurred during 2020 that are not covered by insurance.
- Covered supplier costs. Expenditures to a supplier pursuant to a contract for goods in effect prior to February 15, 2020 that are essential to the recipient's current operations.
- Covered worker protection expenditure. Personal protective equipment and adaptive investments to help a loan recipient comply with federal health and safety guidelines related to COVID-19 during the period between March 1, 2020, and December 31, 2020.

Lender Safe Harbor. This section would provide that no enforcement action could be taken against a lender who in good faith relied on a certification or documentation submitted by a borrower of a covered loan.

Selection of Covered Period for Forgiveness. This section allows the borrower to elect a covered period ending at the point of the borrower's choosing between 8 weeks after origination and December 31, 2020.

Simplified Application. This section creates a simplified application process such that:

- For loans under \$150,000. Borrowers are not required to submit to the lender documentation required by section 1106(e) of the CARES Act, but must attest to a good faith effort to comply with Paycheck Protection Program loan requirements, retain relevant records for one year, and may complete and submit demographic information. The Administrator may review and audit these loans to ensure against fraud.
- For loans between \$150,000 and \$2 million. Borrowers are not required to submit to the lender documentation required by section 1106(e) of the CARES Act, but must complete the certification required by that section, retain relevant records and worksheets for three years, and may complete and submit demographic information. After lenders review the application for completeness, they must submit the application to the Administrator. The Administrator may review and audit these loans for fraud.
- The SBA must submit to the Senate and House Small Business Committees a report 30 days after enactment detailing their review and audit plan to mitigate risk of fraud and provide monthly reviews and audit updates thereafter.

Group Insurance Payments as Payroll Costs. This section clarifies that other employer-provided group insurance benefits are included in payroll costs.

Paycheck Protection Program Second Draw Loans. This section creates a second loan from the Paycheck Protection Program for eligible businesses and businesses qualifying originally under this eligibility.

- **Eligibility.** In order to receive a Paycheck Protection Program loan under this section, eligible entities must:
 1. meet the SBA's revenue size standard, if applicable;
 2. employ not more than 300 or fewer employees; and
 3. demonstrate at least a 35 percent reduction in gross receipts in the first or second quarter of 2020 relative to the same 2019 quarter.
- Eligible entities must be businesses, certain non-profit entities including certain 501(c)(6) organizations, veterans' organizations, tribal businesses, self-employed individuals, sole proprietors, independent contractors, or small agricultural co-operatives.
- Ineligible entities include publicly-traded businesses, entities listed in 13 C.F.R. 120.110 except for entities from that regulation which have otherwise been made eligible by statute or guidance, businesses in financial services which received a Paycheck Protection Program loan in the first round of funding, and entities affiliated with entities in the People's Republic of China.
- **Loan terms.** In general, borrowers may receive a loan amount of to 2.5 times average total monthly payroll costs in the one year prior to the loan or the calendar year 2019, up to \$2 million.
 - Seasonal employers may calculate their maximum loan amount based on a 12-week period beginning February 15, 2019 or March 1, 2019, and ending June 30, 2019, or any consecutive 12-week period between May 1, 2019 and September 15, 2019.
 - New entities may calculate loans by taking 2.5x the sum of total monthly payments divided by the total number of months in which payments were made.
 - Firms with multiple locations may not receive a loan greater than \$2 million in total.
 - An eligible entity may only receive one covered loan.
 - Businesses who have received a Paycheck Protection Program loan may not receive another SBA loan that aggregates to an excess of \$10 million.
- **Churches and religion organizations.** Expresses the sense of Congress that the Administrator's guidance clarifying the eligibility of churches and religious organizations was proper and prohibits the application of regulations otherwise rendering ineligible businesses principally engaged in teaching, instructing, or counseling religion or religious beliefs.
- **Loan forgiveness.** Borrowers of a Paycheck Protection Program Second Draw would be eligible for loan forgiveness equal to the sum of their payroll costs, covered mortgage, rent, utility payments, covered operations expenditures, covered property damage costs, covered supplier costs, and covered worker protection expenditures incurred before January 1, 2021. The 60/40 cost allocation between payroll and non-payroll costs in order to receive full forgiveness will continue to apply.

- Lender compensation. The Administrator is authorized to reimburse a lender for three percent of the principal amount of the loan up to \$350,000 and one percent of the principal thereafter. It directs SBA to use remaining funds authorized and appropriated under Section 1112 in the CARES Act to cover the costs of these fees.
- Set-aside for small entities. \$25 billion in funds is set aside for entities employing 10 or fewer employees.
- Set-aside for Community Lenders. \$10 billion in funds is set aside to be made by community financial institutions; insured depository institutions with consolidated assets of less than \$10 billion; credit unions with consolidated assets of less than \$10 billion; and farm credit system institutions with assets of less than \$10 billion.
- Guidance to prioritize underserved communities. Directs the Administrator to issue guidance addressing barriers to access to capital for underserved communities.
- Standard Procedures. Directs the SBA to allow lenders to approve loans made under this paragraph utilizing existing program guidance and standard operating procedure, to the maximum extent possible, as the standard SBA 7(a) program.
- Prohibition on use of proceeds for lobbying. Prohibits any eligible entity from using proceeds of the covered loan for lobbying activities, as defined by the Lobbying Disclosure Act, lobbying expenditures for state or local campaigns, and expenditures to influence federal, state, or local legislation, appropriations, or regulations.

Continued Access to the Paycheck Protection Program. This section reduces the maximum amount borrowers may receive under the first round of Paycheck Protection Program funding from \$10 million to \$2 million.

Increased Ability for Paycheck Protection Program Borrowers to Request an Increase in Loan Amount due to Updated Regulations. This section allows borrowers whose loan calculations have increased due to changes in interim final rules to work with lenders to alter their loan value regardless of whether the loan has been fully disbursed or if Form 1502 has already been submitted.

Calculation of Maximum Loan Amount for Farmers and Ranchers under the Paycheck Protection Program. This section establishes a specific loan calculation for the first round of Paycheck Protection Program for farmers and ranchers who operate as a sole proprietor, independent contractor, or self-employed individual, who report income and expenses on a Schedule F, and who were in business during on February 15, 2019 through June 30, 2019. These entities may utilize their gross income in 2019 as reported on a Schedule F. Lenders may recalculate loans that have been previously approved to these entities if they would result in a larger loan.

Farm Credit System Institutions. This section allows Farm Credit System Institutions to be eligible to make loans under the Paycheck Protection Program. It also allows for a zero risk weight for Paycheck Protection Program loans and aligns eased requirements for Farm Credit System Institutions with those of other Paycheck Protection Program lenders. Further, it ensures these smaller asset institutions have access to set-asides.

Definition of a Seasonal Employer. This section defines a seasonal employer to be an eligible recipient which: (1) operates for no more than seven months in a year, or (2) earned no more than 1/3rd of its receipts in any six months in the prior calendar year.

Eligibility of 501(c)(6) Organizations for Loan Under the Paycheck Protection Program.

This section would expand eligibility to receive a Paycheck Protection Program loan to include the following organizations:

1. 501(c)(6) organizations if,
 - a. the organization does not receive more than 10 percent of receipts from lobbying;
 - b. the lobbying activities do not comprise more than 10 percent of receipts; and
 - c. the organization has 150 or fewer employees.
 - i. Professional sports leagues or organizations with the purpose of promoting or participating in a political campaign or other political activities are not eligible under this section.
2. Destination Marketing Organizations if ,
 - a. the organization does not receive more than 10 percent of receipts from lobbying;
 - b. the lobbying activities do not comprise more than 10 percent of receipts;
 - c. the organization has 150 or fewer employees; and
 - d. that destination marketing organization is registered as a 501(c)(6) organization, a quasi-government entity, or a political subdivision of a state or local government.

Prohibition on Use of Loan Proceeds for Lobbying Activities. This section prohibits any eligible entity from using proceeds of the covered loan for lobbying activities, as defined by the Lobbying Disclosure Act, lobbying expenditures related to state or local campaigns, and expenditures to influence the enactment of federal, state, or local legislation, appropriations, or regulations.

Effective Date; Applicability. Amendments made by this bill shall apply to Paycheck Protection Program loans as if included in the CARES Act.

Bankruptcy Provisions. This section would establish a special procedure in the bankruptcy process if the Administrator determines certain small business debtors are eligible for Paycheck Protection Program loans. It requires court approval for Paycheck Protection Program loans to these debtors and requires any such loan be given a superpriority claim in the bankruptcy process, providing additional protection to taxpayers and participating banks. The provisions in this section would take effect only upon a written determination by the Administrator that certain small business debtors are eligible for Paycheck Protection Program loans and would sunset two years from the date of enactment.

Oversight. This section would require the SBA to comply with GAO requests no later than 30 days after receipt, and require the Secretary of the Treasury and SBA Administrator to testify every quarter to the Senate and House Small Business Committees for two years.

Conflicts of Interest. This section would require the President, Vice President, the head of an Executive department, or a Member of Congress as well as their spouse, child, son-in-law, or

daughter-in-law to disclose this status when receiving Paycheck Protection Program or Paycheck Protection Program Second Draw.

Commitment Authority and Appropriations.

- Commitment Authority. This allows the Administrator to make commitments for loans made under the Paycheck Protection Program and Second Draw Loans beginning on February 15, 2020 through December 31, 2020. It also separates SBA's traditional 7(a) loan program authorization from the Paycheck Protection Program, and Second Draw.
- Direct Appropriations. This would rescind \$100 billion in previously appropriated funds from the CARES Act and the Paycheck Protection Program and Health Care Enhancement Act and appropriate \$257.6 billion in funds for the Paycheck Protection Program and Second Draw Loans, and \$10 million for the Minority Business Development Agency. It would also provide no-year money for the SBA Office of Inspector General for the funds issued in the CARES Act.
- Emergency Designation. This language designates the funds appropriated in this section as an emergency requirement and exempts them from Pay-As-You-Go Act requirements.