

CARES Act: Paycheck Protection Loans and Eligibility for Loan Forgiveness

[An update to this article is available »](#)

The Trump Administration and representatives of Congress reached an agreement on a proposed COVID-19 economic stimulus bill, the Coronavirus Aid, Relief, and Economic Security Act, or the CARES ACT (the “Act”). The Senate passed the Act late Wednesday, and the House of Representatives will vote on Friday. It is expected to be approved then signed into law on Friday, March 27, 2020.

Among the extensive aid programs, grants and other economic incentives included in this massive, \$2 trillion dollar piece of legislation, is an emergency small business loan program that may benefit your business. This program will fund emergency loans of up to \$10 million for eligible small businesses, non-profits, and sole proprietors, authorizing loan proceeds to be used for payroll, operations, and debt service. Importantly, the Act allows for the forgiveness of amounts borrowed so long as certain requirements are met.

A variety of different businesses will be eligible to participate in what is referred to as the “paycheck protection loan program,” so long as the business employs 500 or fewer employees. Sole proprietors, independent contractors and self-employed individuals may also be eligible pursuant to Section 1102(d)(ii) of the Act.

The maximum loan amount for an eligible business under the Act will equal the lesser of the following sums:

1. The average total monthly payments for payroll costs incurred by the applicant during the one-year period before the date on which the loan is made, multiplied by 2.5; and
2. \$10,000,000.00.

Pursuant to Section 1106(b) of the Act, a borrower is eligible for forgiveness of amounts borrowed in connection with a covered loan. The amount that may be forgiven will equal the sum of the following costs incurred and payments made during the eight-week period beginning on the date of origination of a covered



by Eric S. Clarke & Scott C. Smith



loan (the “covered period”):

1. Payroll costs (the sum of payments to any employee in an amount not more than \$100,000 for one year and prorated for the covered period, which includes salary, commission payment for vacation, parental, family, medical, or sick leave, allowance for dismissal or separation; payment required for the provisions of group health care benefits, including insurance premiums; payment of any retirement benefit; or payment of any State or local tax assessed on the compensation of employees; and the sum of payments of any compensation to or income of a sole proprietor or independent contractor that is a wage, commission, income, net earnings from self-employment, or similar compensation and that is in an amount that is not more than \$100,000 in 1 year, as prorated for the covered period;
2. Any payment of interest on any covered mortgage obligation, i.e., any indebtedness or debt instrument incurred in the ordinary course of business that—(A) is a liability of the borrower (B) is a mortgage on real or personal property; and was incurred before February 15, 2020. This payment does not include any prepayment or paydown of principal on the mortgage obligation;
3. Rent (including rent under a lease agreement); and
4. Any covered utility payment

All amounts forgiven will be treated as canceled indebtedness by a lender authorized under Section 7(a) of the Small Business Act (15 USC 636(a)). For purposes of the Internal Revenue Code of 1986, as amended, amounts forgiven will not be treated as income to the borrower. The amount of loan forgiveness cannot exceed the principal amount of the financing made available under the applicable covered loan.

Importantly, amounts that may otherwise be subject to forgiveness will be subject to repayment if the borrower reduces its employees or institutes salary/wage decreases. Specifically, the amount of loan forgiveness will be reduced pursuant to the computation formula set forth in Section 1106(d)(2), which is based upon reductions in the number of the borrower’s employees measured from the period beginning on February 15, 2019 and ending on June 30, 2019 when compared to the covered period. The amount of loan forgiveness will be further reduced by the amount of any reduction in total salary or wages of any employee during the covered period that is in excess of 25% of the total salary or wages of the employee during the most recent full quarter during which the employee was employed prior to the covered period.

Covered loans will be non-recourse and the administrator will have no recourse against any individual shareholder, member or partner of an eligible recipient of a covered loan for non-payment, except the extent that the proceeds are used for a purpose not authorized pursuant to the Act. During the covered period with respect to a covered loan, no personal guarantee will be required, and no collateral shall be required to secure the covered loan.

The SBA website now shows a sample [application form](#).

If you have questions or need assistance navigating the CARES Act and the paycheck protection loan program, please contact us.

For more information, please contact:

Eric S. Clarke, Partner
925-746-8470

eclarke@hansonbridgett.com

Scott C. Smith, Partner

415-995-5892

ssmith@hansonbridgett.com