

# Small Business Forgivable Loan Program Under The \$2 Trillion Federal Stimulus Act—What Businesses Need To Know

On March 27, 2020, the \$2 Trillion federal stimulus act known as the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”) was enacted, providing among other things for \$349 Billion in funding for forgivable loans to small businesses to assist in funding payroll and certain other expenses during the current coronavirus pandemic. The “Paycheck Protection Loans” are available to businesses with under 500 employees who had employees on payroll as of February 15, 2020 (and certain other businesses and nonprofit organizations specified in the CARES Act). Here is the basic summary.

**Implementation:** The CARES Act requires that final implementing regulations must be issued within 15 days after enactment (i.e. by April 11, 2020). Treasury Secretary Steve Mnuchin has said that he will look to have the application process implemented by April 3, 2020 (with a potential one day approval process). Loans can be made by any bank authorized to make SBA loans, and there is authority granted to allow other FDIC bank to make such loans even if they have not previously done SBA loans. Loans must be applied for by no later than June 30, 2020, but obviously sooner is better than later.

**Loan Amount:** The amount that can be borrowed is capped at the lesser of (i) \$10 Million or (ii) 2.5 times the average monthly payments for “payroll costs” over the 12 months before applying for the loan. Payroll costs means payments of any compensation with respect to (i) salaries or similar compensation, (ii) vacation, parental, family, medical, or sick leave (other than those covered by certain other recent coronavirus response Federal laws), (iii) allowance for dismissal or separation, (iv) payments for the provision of group healthcare benefits, including insurance premiums, (v) payment of any retirement benefit, and (vi) payment of State and local taxes assessed on the compensation of employees. The excess portions of an employee’s compensation in excess of the \$100,000 level does not count in the above calculation, nor do taxes imposed or withheld under chapters 21, 22, or 24 of the Internal Revenue Code.

**Use of Loan Proceeds:** Although the amount of the loan is based on certain payroll costs, the loan proceeds may be used more broadly to pay (i) payroll costs (other than excess portions of annualized compensation of an employee that exceeds \$100,000), (ii) continuation of group healthcare benefits during periods of paid sick, medical or family leave, and insurance premiums, (iii) rent or mortgage payments, (iv) utilities, and (v) interest on debts that were incurred before February 15, 2020.

**Loan Forgiveness:** The amount of the loan forgiveness is based on the aggregate sum of the following items paid within the 8 week period after the loan proceeds are received: (i) payroll costs, (ii) rent payments on leases entered into before February 15, 2020, (iii) mortgage payments on mortgages entered into before February 15, 2020, and (iv) utility payments for electricity, gas, water, transportation, telephone, or internet where the service started before February 15, 2020. The forgiven amount is potentially reduced pro rata based on certain reductions of the average number of full time employees during the covered period of the loan compared to either (at the business's preference): (i) the average number of full time employees during the period from February 15, 2019 to June 30, 2019, or (ii) the average number of full time employees during January 1, 2020 to February 29, 2020. There are certain exceptions to these arrangements for employees who may have been terminated after February 15, 2020 and then are re-hired within 30 days after the Cares Act was enacted. Also, if any under \$100,000 (during 2019) per year employee's compensation is reduced more than 25% during the loan covered period, the excess reduction amount cannot be counted toward the forgiveness amount. An application for these forgiveness arrangements will include at least submission of documentation confirming: (i) the number of full time employees during the applicable periods and their pay rates, (ii) payroll tax filings submitted to the IRS, (iii) State income, payroll, and unemployment insurance filings, (iv) documentation, including cancelled checks showing rent and utility payments, and (v) a certification that the documentation is true and correct, and the amount of forgiveness requested. The lender will need to make a decision on the forgiveness application within 60 days. The Federal government, as guarantor, will then make the lender whole for the forgiven amount. The forgiven portions will not be deemed to be income to the borrower business. Any unforgiven portions will be payable over a period of not more than 10 years, at interest rates no higher than 4%.