

# Coronavirus Aid, Relief, and Economic Security Act – CARES

## *Paycheck Protection Program*

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The much anticipated **CARES Act** was just approved by the House of Representatives this afternoon. While we have not had an opportunity to review any amendments, we wanted to get this piece out based on the bill approved by the Senate due to the high level of interest from clients and others, specifically about the loan provisions. The bill is 880 pages long and contains many provisions impacting many individuals and businesses across many industries. It's complicated, contains ambiguities that will only be clarified through regulation. But hopefully the summary below will help you understand the key provisions of this Act.

### Eligible Businesses

- Any business or nonprofit organization with not more than 500 employees, or that otherwise qualifies as a “small business” under the SBA size standards published at 13 CFR Part 121.
- “Business” includes sole proprietorships, independent contractors and self-employed individuals.
- In determining the number of employees, the “attribution rules” apply (see below) for all entities other than those with NAICS codes beginning with 72 (essentially hotels and restaurants).

### Affiliation

Companies under common control must be aggregated for purposes of determining whether a business meets the size standards above. The key factor is control, which can be achieved through:

- Majority voting control
- Managerial control
- Economic control
- Significant influence, but less than majority control

Close family member (spouse, parent, child) holdings will generally be aggregated and counted as a single block.

### Special Rules for Hotels and Restaurants

For businesses with NAICS codes beginning with 72 – hotels, restaurants, caterers and the like – the affiliation rules are waived and there are special rules relating to size. As long as the number of employees at each physical location does not exceed 500, the entity will qualify for a Paycheck Protection Loan.

### Loan Amount

The loan amount is the lesser of:

- 2.5x average monthly payroll costs for the 1-year period prior to the loan date, or
- \$10 million

- Payroll costs include:
  - Salaries, wages, commissions or similar compensation
  - Cash tips
  - Payment for vacation, parental, family, medical or sick leave
  - Healthcare and retirement benefits
  - State and local taxes on wages
- Payroll costs exclude:
  - Compensation of an individual employee in excess of \$100,000 a year
  - Compensation paid to employees outside of the U.S.

## Special Provisions

- For purposes of CARES Act loans, no personal guarantees will be required and no collateral will be required.
- The requirement to be unable to obtain credit elsewhere does not apply.
- Loans will have a maximum maturity of 10 years.
- The interest rate will not exceed 4 percent.
- Loan repayment will be deferred for at least 6 months and up to 1 year.

## Loan Forgiveness

- Loan amounts used for the following will be eligible for forgiveness:
  - Payroll costs
  - Interest on certain mortgage obligations
  - Rent and utilities
- The amount forgiven is based on the ratio of the number of employees employed during the period February 15, 2020 to June 30, 2020 to the number of employees employed during either a) the period February 15, 2019 to June 30, 2019, or b) the period January 1, 2020 to February 29, 2020.
- The amount of forgiveness is also reduced by the amount that total salary or wages of any employee is reduced by more than 25 percent.
- The amounts forgiven are excluded from gross income for federal income tax purposes.

## Contact Us

Should you have any questions concerning this article, please feel free to contact your client services partner or:

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