

## CARES Act and the Paycheck Protection Program

On March 27, 2020, President Trump signed into law the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). The CARES Act provides for a number of resources for individuals and businesses of all sizes to provide financial relief during the COVID-19 pandemic. One of the largest potential opportunities for relief can be found under the Paycheck Protection Program (Program) section of the CARES Act. Since the signing of the CARES Act, the Treasury Department issued various guidelines and questions and answers on the program loans.

### What is the Paycheck Protection Program?

The CARES Act appropriated \$350 billion to assist small businesses in keeping workers employed during this economic crisis. The Program is being facilitated by the Small Business Administration (SBA) and provides for loans up to \$10 million that are 100% federally guaranteed. In addition to the loans being 100% federally guaranteed, some part (or all) of the loan amount may be forgiven.

### How do I qualify for a loan under the Program?

To qualify for a loan under the Program, generally a business has to have fewer than 500 employees and has to have been in business prior to February 15, 2020. The business can be a for-profit or not-for-profit. Sole proprietors, independent contractors, and other individuals who are self-employed and regularly carry on a trade or business qualify as well. Businesses that are in the accommodation and food services sector (NAICS 72) have a special allowance to qualify based on 500 employees per physical location, rather than in total. In determining the 500 employee threshold, a business needs to consider all employees, regardless of status as full-time or part-time. In addition to businesses having fewer than 500 employees, a business can qualify if they exceed 500 employees and meet certain criteria established by the Treasury Department. A business should review the [Treasury Department Frequently Asked Questions](#) in order to determine if they may meet one of the exceptions.

Once a business qualifies there are other items to consider in determining whether or not a business qualifies for a loan under the Program. These additional items include:

- Borrower certifies that the uncertainty of the current economic crisis makes the loan request necessary to support ongoing operations
- The borrower will use the proceeds from the loan to retain workers by maintaining payroll, and/or paying their mortgage, rent, and utility payments
- The borrower has not received a loan for a duplicate purpose during the same time period (note there is the potential to refinance loans made under the Emergency Economic Injury Disaster section of the CARES Act under this Program)

### How do I calculate how much I can borrow under the Program?

Businesses can apply for loans based on a multiplier of "covered payroll costs," up to a maximum amount of \$10 million. Covered payroll costs are defined in the CARES Act and include the following:

- Salary, wage, commission, or similar compensation (up to \$100,000 in annual compensation)
- Payment of cash tips, or equivalent
- Payment for vacation, parental, family, medical, or sick leave
- Allowance for dismissal or separation
- Payment required for the provision of group health care benefits, including insurance premiums
- Payment of any retirement benefit
- Payment of state or local tax assessed on the compensation of employees

A business will need to calculate the average monthly payroll cost over the preceding 12 months and multiply that amount by 2.5.

For example, assume a business applies for a loan under the Program and calculates their total "covered payroll costs" for the preceding 12 months to be \$12,000,000, then the business can borrow \$2,500,000 ( $\$12,000,000/12 \times 2.5$ ).

### How do I apply for a loan under the Program?

A business can apply through any existing SBA lender or through any federally insured depository institution, federally insured credit union, or Farm Credit System that is participating. You should consult your local lender as to whether they are participating. For a list of SBA lenders in your area, you can visit [www.sba.gov](http://www.sba.gov). You

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will also need to complete the Paycheck Protection Program loan application. You can access the loan application by clicking the [Loan Application](#).

## **Do I have to pay the loan back that my business receives under the Program?**

The short answer to this question is, it depends. The long answer is that a business will have to calculate how much of the loan proceeds were used for allowable expenses paid during the 8 week period following the loan origination date. In order to determine how much of the loan proceeds received under the Program were used for allowable expenses, the business will need to account for the following expenses:

- Covered payroll costs
- Utility payments, to the extent that service on those utilities started prior to February 15, 2020
- Rent expenses, to the extent that the rent was obligated under a lease agreement in existence prior to February 15, 2020
- Interest on a mortgage debt, to the extent that the mortgage was entered into prior to February 15, 2020

The maximum amount of loan forgiveness cannot exceed the total amount borrowed under the Program. The amount of loan forgiveness will be reduced under certain circumstances if requirements are not met. Additionally, at least 75% of the amount of the loan forgiven must be used for covered payroll costs. The amount forgiven will be reduced due to either of the following:

- The business does not maintain the same number of FTEs (during the 8 week period) as compared to either of the following (as selected by the business):
  - Average number of FTEs between February 15, 2019, and June 30, 2019
  - Average number of FTEs between January 1, 2020, and February 29, 2020
- Reductions in employee salary or wages in excess of 25% (this portion only applies to employees making less than \$100,000)

There is a special exemption allowed under the Program that would not penalize a business for temporarily reducing their workforce or decreasing wages. If the business restores the reduction in FTEs and reduction in wages by June 30, 2020, then the business will not need to consider those reductions

in determining the amount of loan forgiveness to be reduced under the circumstances described above.

For example, assume a business receives a loan of \$2,500,000 under the Program. In the 8 week period subsequent to getting the loan, the business incurs, \$1,950,000 in covered payroll costs, \$5,000 in utility expenses, and \$45,000 in rent expense. Let's also assume the business did not decrease their FTEs nor did they decrease employee salary and wages by greater than 25%. Based on those expenses, the business would have \$2,000,000 in allowable expenses which would be deducted from the loan amount of \$2,500,000. As a result, the business would have to pay back the difference of \$500,000.

## **If I have a balance outstanding on the loan after calculating my forgiveness, what are the terms of the loan under the Program?**

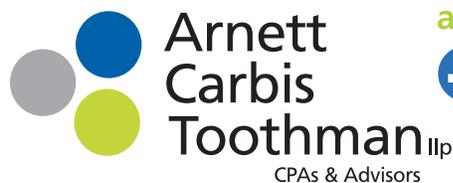
If a business has an amount still outstanding after taking into consideration the amount forgiven, the remaining loan balance would have a maximum term of up to two years with an interest rate of 1%.

## **If I have some or all of my loan forgiven, will the amount forgiven be considered taxable income?**

Here is the best part of the Program: The amount forgiven IS NOT INCLUDED in determination of the business's taxable income.



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