

Marcum: Forgivable Loan - Actions You Can Take Immediately

President Trump signed into law the Coronavirus Aid, Relief and Economic Security Act ("CARES Act"), providing \$2 trillion in stimulus funding. The CARES Act includes several measures to help small businesses including a **forgivable loan** called the Paycheck Protection Loan, which is intended to encourage employers to retain and re-hire employees.

Small businesses (companies with 500 or fewer employees) can apply for the loan through banks that make the loans on behalf of the Small Business Administration (SBA), which administers the Paycheck Protection Loans program. Certain businesses with larger headcounts also qualify. You can check industries eligible for the higher thresholds at www.sba.gov/size-standards. Significant features of the loan program include:

1. Businesses must apply for the loan by June 30.
2. Waiver of affiliation rules for businesses in the accommodation and food service industries, franchises and businesses receiving financial assistance under the Small Business Investment Act.
3. Nonrecourse – SBA has no recourse against any business owner and there are no personal guarantees.
4. Interest not to exceed 4%.
5. No debt service payments for at least six months and not more than one year.

The loan amount cannot exceed \$10 million and is the lesser of:

- A. **2.5** multiplied by the trailing twelve month average monthly payroll PLUS the amount outstanding under the SBA's disaster loan program, or
- B. For businesses not in existence during the period February 15, 2019, through June 30, 2019, 2.5 multiplied by the average monthly payroll for the period January 1 through February 29, 2020, PLUS the amount outstanding under the SBA's disaster loan program.

Payroll costs include:

A. Employee compensation that is:

1. Salary, wage, commission, or similar compensation;
2. Payment of cash tip or equivalent;
3. Payment for vacation, parental, family, medical, or sick leave;
4. Allowance for dismissal or separation;
5. Payment required for the provisions of group health care benefits, including insurance premiums;
6. Payment of any retirement benefit; or
7. Payment of state or local tax assessed on the compensation of employees.

B. Compensation to 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 not more than \$100,000 in one year, as prorated for the covered period.

Payroll does NOT include certain federal taxes, compensation of employees not resident in the U.S., individual employee compensation over \$100,000 annualized, and sick leave and family leave credited under the Families First Coronavirus Response Act.

Borrowers must certify in good faith that (i) current economic conditions make the loan necessary to support ongoing operations, (ii) funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments and utility payments, (iii) no other pending applications are duplicative of the covered loan request, and (iv) the recipient has not received amounts for the same purpose or duplicative amounts from February 15, 2020, through December 31, 2020.

Amounts expended by the borrower during the eight-week period following loan origination for payroll, interest on mortgages, rent and utilities are eligible for loan forgiveness. Such amounts must be substantiated to the lender. Amounts forgiven by the lender are not taxable to the borrower or business owner. The amount of loan forgiveness will be reduced if the business reduces headcount or salaries and wages. The reduction in loan forgiveness is calculated without regard to employees re-hired or salaries and wages restored by June 30, 2020.

To the extent a loan has a remaining balance after reduction for loan forgiveness, the remaining balance will continue to be guaranteed by SBA and the loan shall have a maximum maturity of 10 years from the date on which the borrower applies for loan forgiveness.

Marcum is here to help. Please contact us to discuss how the Paycheck Protection Loan program can benefit your business. While lenders have not yet released application guidelines but are expected to imminently, now is the time to compile payroll records including Forms W-2, 941 and 1099 to support your loan request.

Correction: An earlier edition of this news blast described the loan amount as 5 times average monthly payroll PLUS the amount outstanding under the disaster loan program. The above correctly states that the loan amount is determined by multiplying 2.5 times the average monthly payroll PLUS the amount outstanding under the disaster loan program.