



# Peckar & Abramson

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April 1, 2020

## Re: CARES ACT PAYMENT PROTECTION PROGRAM

As you are probably aware, the Federal government has passed a landmark stimulus bill that includes forgivable loans to qualifying small businesses through the CARES Act payroll protection loan program. The highlights of the program include: (1) loans up to \$10 million for eligible borrowers; (2) forgiveness of loans used for eligible expenditures; deferment of loan payment obligations for a minimum of six months and up to one year; (3) no requirement for personal guarantees or collateral; and (4) waiver of fees to obtain a Covered Loan.

Covered Loans will be made through traditional SBA lenders, such as banks and credit unions. Lenders will begin processing loan applications on April 3, 2020. **Because of the extremely high demand for Covered Loans and the finite amount of capital available under the program borrowers should be in contact with their lending sources and submit loan applications as soon as possible.**

Below is a more detailed summary of the significant provisions of the CARES Act for small business loans.

### Loan Amounts Available

- The amount of Covered Loans available to a small business will be the lesser of:

1) 2.5 times average monthly payroll costs for 2019 (for seasonal employers the calculation is the average monthly payroll costs for the 12 weeks beginning on February 15, 2020, or, at the seasonal employer's election, from March 1, 2019 to June 30, 2019); or

2) \$10,000,000

Salaries to the extent they are above \$100,000 per year (on a pro-rated basis) and any qualified sick leave wages for which a tax credit is allowed under the *Families First Coronavirus Response Act* are NOT included in the payroll costs calculation.

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- The maximum loan amount for SBA Express loans was increased from \$350,000 to \$1 million through December 31, 2020.

## **Use of Loan Proceeds**

Covered Loans can pay for:

- Payroll costs including:
  - Salaries & wages (except that for individual employees that are compensated above \$100,000 per year, payment of prorated compensation above \$100,000 per year is not a permitted use of Covered Loan proceeds);
  - 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;
  - Payment of state or local tax payroll taxes;
- Interest payments on mortgage obligations;
- Rent/lease payments;
- Utilities; and
- Interest on other debt obligations to the extent such debt obligations were incurred prior to February 15, 2020.

## **Eligibility**

- Businesses that employ less than 500 employees are eligible for Covered Loans. Affiliation rules may apply so businesses with affiliated companies and companies owned by private equity funds. The affiliation rules are complex and fact intensive.
- Businesses in the hospitality sector such as restaurants and hotels that employ not more than 500 employees per physical location of the business are also eligible to receive a single Covered Loan, if they operate under the North American Industry Classification System code beginning with 72.
- For Covered Loans, the CARES Act eliminates the SBA requirement that the business have no other source of available credit.

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## Collateral & Personal Guarantees

- No collateral or personal guarantees are required for Covered Loans.

## Loan Forgiveness

- Borrowers will be eligible for loan forgiveness for loan proceeds spent on payroll costs, interest payments on any mortgage incurred prior to February 15, 2020 (loan amounts used for loan prepayments or principal payments will not be forgiven), payment of rent on any lease in force prior to February 15, 2020, and payment on any utility for which service began prior to February 15, 2020. Due to the high subscription rate for Covered Loans, the SBA is now requiring that 75% of the forgiven amount must have been used for payroll costs.
- Loan forgiveness will be eligible, up to the Covered Loan amount, in an amount equal to the amount spent by the borrower on the permitted costs during the eight-week period after the date the loan proceeds are advanced.
- The amount of forgiveness on a Covered Loan will be reduced proportionately for any reductions in headcount and will be reduced dollar-for-dollar for reductions in wages in excess of 25%. There is no reduction in forgiveness for the reduced wages of employees who made more than \$100,000 on an annualized basis during any pay period in 2019.
- To encourage employers to rehire any employees who have been laid off due to the Coronavirus pandemic from February 15, 2020 until 30 days after the enactment of the CARES Act, if the borrower re-hires workers by June 30, 2020, the borrower can claim forgiveness of the loan proceeds that they would not have otherwise been able to claim.
- The CARES Act also provides for recapture of loan forgiveness that would otherwise be lost as a result of salary and wage reductions if an employer has eliminated the reduction in salary or wages on or before June 30, 2020.
- Any Covered Loan amounts not forgiven at the end of one year will be carried forward as an ongoing loan. The SBA has announced ongoing loans will have terms of two years with interest at 0.5%
- Any Covered Loan amounts that are forgiven will **NOT** be included as taxable income.

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## **Payment Deferral**

- Payments under covered loans will be completely deferred for a minimum of six months and up to a maximum of one year. The SBA is required to give lenders guidance in the coming weeks as to how to determine the length of deferment.

## **Fees**

- The CARES Act provides that borrower and lender fees are waived for Covered Loans.

Should you have any questions about the SBA payment protection loan programs, please feel free to contact me at [skatz@pecklaw.com](mailto:skatz@pecklaw.com).

Very truly yours,  
Stephen P. Katz, Esq.