



The CARES Act: What CAM Members Need to Know

Presented by Butzel Long

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PRESENTERS

The CARES Act - \$ Breakdown

- \$2 TRILLION in economic relief from the Coronavirus – largest in American history
- \$600 Billion – Individuals
- \$500 Billion – Larger Corporations
- \$377 Billion – Small Businesses (*PLUS \$250 Billion more?)
- \$340 Billion – State & Local Governments
- \$180 Billion – Public Services

Paycheck Protection Program

1. Who is eligible?
2. What can the loan be used for?
3. Will the loan be forgiven? How?
4. What is the process?
5. What about RIF's, furloughs, etc.?

Who is Eligible?

1. Businesses, start-ups, veterans organizations and non-profits with 500 employees or fewer; OR
2. More than 500 employees IF NAICS Code applies
 - Certain auto manufacturers are considered “small” if no more than 1,500 employees
- BEWARE: AFFILIATES INCLUDED IN CALCULATION
 - All domestic & foreign affiliates’ employees combined
 - Excluded
 - NAICS Code with “72” – hotels, inns, RV parks, food services, restaurants, caterers (location exception)
 - Franchised businesses
 - Receives financial assistance under Section 301 of Small Business Investment Act.
3. Sole proprietorships & Independent contractors
 - Must have been in operation on February 15, 2020

How is the Loan Size Determined?

- Maximum loan size is \$10 million
- Average total monthly payroll costs over the last year multiplied x 2.5
- Eligible payroll costs
 - Compensation (salary, wage, commission or cash tips)
 - Payment for vacation, parental, medical, or sick leave
 - Severance
 - Health care benefits, including insurance premiums
 - State or local tax assessed on employee comp
- Not eligible
 - Employee/owner comp over \$100,000
 - Certain taxes
 - Comp of employees whose principal place of residence is OUTSIDE of the U.S.
 - Qualified sick and family leave for which a credit is allowed under Families First Coronavirus Response Act

Allowable Uses of Loan?

- Payroll costs
- Payment of interest on any mortgage obligation (not principal)
- Rent (including rent under a lease agreement)
- Utilities
- Interest on any other debt obligations that were incurred before the covered period

Is Loan Forgiveness Available?

- Yes, to the extent of the following paid or incurred during the 8 weeks following the loan date:
 - Payroll costs
 - Interest on mortgages created before 2/15/20
 - Rent on leases in force before 2/15/20
 - Utility payments for service that began prior to 2/15/20
- Non-payroll costs cannot be more than 25% of forgiveness amount
- Note that temporal limits apply to loan forgiveness but not to use of proceeds

Amount Forgiven Will Be Reduced If Employer:

- Reduces its workforce during the 8-week period
 - Pro rata reduction
 - Based on avg. monthly FTEs during the 8-week period compared to average monthly FTEs for one of two earlier periods chosen by borrower:
 - Feb. 15 to June 30, 2019
 - Jan. 1 to Feb. 29, 2020

Amount Forgiven Will Be Reduced If Employer:

- Reduces the salary or wages paid to an employee by more than 25% during the 8-week period
 - Dollar for dollar reduction
 - Only applies to reductions for employees making not more than \$100,000 annually
 - Open question: starting point for determining reduction

Exception to Reductions

- Forgiveness will not be reduced:
 - In the case of staff reductions made between Feb. 15 and April 26, if the employer eliminates the reduction in the number of FTE's by June 30
 - In the case of compensation reductions made between Feb. 15 and April 26, if the employer eliminates the reduction in salary or wages by June 30

Loan Forgiveness

- Specific documentation will be required to support forgiveness
- Lender decides within 60 days after it receives application for forgiveness
- Forgiven amounts do NOT constitute cancellation of debt income
- More to come: Act directs SBA to issue interpretation within 30 days of Act's adoption. FAQ already issued.

What if the Loan is NOT Forgiven?

- Portion NOT forgiven continues as a loan

	CARES Act says	SBA decided
Term	Not more than 10 years	2 years
Interest	Note more than 4% per annum	1% per annum

- Principal and interest will continue to be deferred, for a total of 6 months to a year after disbursement of the loan.

Issues to Note

- Mismatch in periods
 - Loan amount based on 2.5x monthly payroll costs, which is around ten weeks
 - Period to measure qualifying forgiveness expenses is only 8 weeks
 - Likely will leave a gap in forgiveness amount
 - Non-payroll expenses (rent, utilities, etc.) cannot be more than 25% of total forgiveness amount
 - May not soak up entire gap amount

Issues to Note

- Taxes
 - Definition of “payroll costs” excludes FICA and income tax withheld during the period Feb. 15 to June 30, 2020
 - What does this mean?
 - Commentators have suggested it means that you can include 2019 withholdings in calculating loan amounts but must exclude them from forgiveness amounts
 - SBA FAQ of April 7 appears to say that no exclusion is necessary (except employer portion of FICA, which wouldn't be in payroll anyway)
 - Additional clarification needed

What is the Process?

1. Contact your lawyers
2. Contact your CPA & Bookkeepers
3. Contact your bank or an approved SBA 7(a) lender
 - Fill out application (online)
 - Self Certify
 - Lender has 15 days to approve
 - Forgiveness through your lender
 - Verify # of employees on payroll and pay rates, including IRS payroll filings and state income, payroll and unemployment insurance filings
 - Verify rent, mortgage, lease, and utility obligations
 - Certification from business rep

Common Questions from Employers

1. PPP Loan v. Furlough/Lay-Offs v. Timing?
2. How do you reconcile employer reimbursements under new paid leave laws under the FFCRA and the CARES Act?
3. What about the enhanced unemployment benefits?
4. What if my business has already been closed due to Michigan's "Stay Home" Order?

BREAKING NEWS

- April 9, 2020 - Treasury & Federal Reserve – New & Expanded Lending Programs (\$2.3 Trillion in Financing)
 - \$75 Billion to implement Main Street Business Lending Program
 - Up to \$600 Billion in new financing for businesses up to 10,000 employees or \$2.5 Billion in 2019 annual revenues
 - \$35 Billion equity investment in Municipal Liquidity Facility (MLF); Up to \$500 Billion in direct financing to states, counties, and cities

\$500 Billion for Larger U.S. Businesses

- \$500 Billion in emergency relief funds (“Fund”)
 - \$29 billion for airlines; \$17 billion for national security (Boeing and GE)
 - \$454 billion for backstop losses
- Fund overseen by new Inspector General and Congressional Oversight Commission (5 person panel)

Assistance for Mid-Sized Businesses

- Between 500 and 10,000 employees
- Direct loans with interest rate not higher than 2 percent per annum
- No principal or interest due for first 6 months (or longer)
- Certification required (strings attached)
 - Uncertainty of economic conditions
 - Funds will be used to retain at least 90% of workforce at full compensation and benefits until September 30, 2020
 - Will restore not less than 90% of workforce that existed as of February 1, 2020
 - Domiciled in the US with significant operations and employees in the US
 - Not in bankruptcy
 - No dividends or repurchase of stock (buy-backs)
 - No outsourcing or offshoring jobs
 - No abrogation of CBA's
 - Neutrality in any union organizing effort for term of loan

Assistance for Mid-Sized Businesses

- Limits on Employee/Executive Comp
 - \$425k cap for officers and employees while loan is in effect PLUS one year
 - \$3,000,000 cap for officers and employees plus 50% of whatever he/she received over that in 2019
- Can be waived, but Treasury Secretary must testify why...

Assistance for Mid-Sized Businesses

- Employee Retention Credit for COVID-19 Closure
 - 50% of wages for each employee
 - Not applicable if you are in the PPP

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QUESTIONS?



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