



# PAYCHECK PROTECTION PROGRAM OVERVIEW AND ISSUES

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# PPP OVERVIEW

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- CARES Act authorizes \$349 billion in ‘forgivable’ loans through emergency modification of the SBA 7(a) loan program.
- Maximum loan amount is 2.5 months of average payroll costs over the last year including benefit costs and local taxes. This is limited to \$100,000 in annual compensation per employee.
- Loans are made through local and national banks that participate in the SBA 7(a) program.
- Forgiveness details and mechanism still pending details from SBA.

# LOAN FORGIVENESS DETAILS

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- Loans are forgiven when used for payroll costs, interest on mortgages, rent, and utilities (due to likely high subscription, at least 75% of the forgiven amount must have been used for payroll).
  - Number of Staff: Your loan forgiveness will be reduced if you decrease your full-time employee headcount.
  - Level of Payroll: Your loan forgiveness will also be reduced if you decrease salaries and wages by more than 25% for any employee that made less than \$100,000 annualized in 2019.
  - Re-Hiring: You have until June 30, 2020 to restore your full-time employment and salary levels for any changes made between February 15, 2020 and April 26, 2020.
  - Source: <https://home.treasury.gov/system/files/136/PPP--Fact-Sheet.pdf>

# PPP CURRENT ISSUES

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- Documentation needed for substantiation of maximum loan amount differs by bank
- Treatment of Ministerial Housing Allowance lacks SBA guidance
  - ECFA and others believe it can be included in “Payroll Costs” maximum loan calculation
- Lack of a unified loan note
  - Note draft circulated has personal liability provision contrary to CARES Act text
  - Some banks are creating their own note for execution
- Many banks are far behind in processing PPP applications

# DOCUMENTATION REQUIREMENTS & CHALLENGES

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- Some lenders have asked for IRS form 940 (annual FUTA return) as part of their required documents.
  - 501(c)(3) Organizations are exempt from FUTA and could not have a 941 return.
- The regulations allow lenders to rely on the applicant's certification regarding maximum loan amount however some banks are stricter with required documents.
- Most lenders ask for IRS 941 quarterly payroll returns for the last year as evidence of payroll costs.
  - However, health insurance, retirement benefits, and local taxes would not appear on the 941, nor would ministerial housing allowance.

# CLARIFICATION OF \$100,000 LIMITATION ON COMPENSATION FOR MAX LOAN AMOUNT

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- SBA and Treasury issued this guidance on 4/7/2020:
  - The exclusion of compensation in excess of \$100,000 annually applies only to cash compensation, not to non-cash benefits, including:
    - employer contributions to defined-benefit or defined-contribution retirement plans;
    - payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums; and
    - payment of state and local taxes assessed on compensation of employees.

Source: <https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf>

# RESOURCES

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- Treasury website re PPP: <https://home.treasury.gov/policy-issues/top-priorities/cares-act/assistance-for-small-businesses>
  - Very helpful FAQ document: <https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf>
- SBA website: <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program-ppp>
- ECFA website on COVID-19 & CARES Act: <https://www.ecfa.org/Content/ECFA-COVID-19-RESOURCES>