Paycheck Protection Program: Loan Amount

PPP Loan Amount

What is the Paycheck Protection Program?

- The Paycheck Protection Program ("PPP") is a forgivable loan program that is administered by the Small Business Administration and delivered through financial institutions.
- Congress initially authorized $349 Billion in PPP loans that we learned were exhausted on April 16, 2020. Congress subsequently authorized $310 Billion in additional PPP loans on April 23, 2020 with some intentionality around ensuring that small lenders are able to participate more meaningfully .
- Applications will be accepted through June 30, 2020 or the earlier exhaustion of available funds.

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Why is it important to get the loan amount right?

- Applicants must make several good faith certifications, including the following:
  - "I … certify that the information provided in this application and the information provided in all supporting documents and forms is true and accurate in all material respects."
- SBA Guidance has clarified that:
  - "Providing an accurate calculation of payroll costs is the responsibility of the borrower."

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The Max. Loan Amount Calculation

- Generally, the max. loan amount is the lesser of:
  - (Average Monthly Payroll X 2.5)+(EIDL-Advance); OR
  - $10,000,000
- Two main questions remain to be answered:
  1. What expenses qualify as "payroll costs"?
  2. How is "average monthly payroll" calculated?

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What expenses qualify as "payroll costs"?

- Payroll Costs include:
  - compensation of employees whose principal residence is the US;
  - employees' tips (based on records or good faith estimates);
  - the cost of employee leave;
  - the cost of allowance for separation and dismissal;
  - the cost of employee healthcare coverage, insurance premiums, and retirement payments;
  - the cost of state and local taxes on employee compensation; and
  - for a self-employed individual, independent contractor, or sole proprietor, the net earnings from self-employment or similar compensation.

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What expenses qualify as "payroll costs"?

- Payroll Costs do NOT include:
  - compensation for any one employee that exceeds $100,000 (noting however that this is a cap solely on compensation and not the financial value of other benefits);
  - compensation for employees whose primary residence is outside the US;
  - certain employee-side federal withholding taxes; and
  - paid or family leave that you can already receive a tax credit for under Families First Coronavirus Response Act.

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How is “average monthly payroll” calculated?

- Assuming the organization was in business throughout the preceding 12 months:
  - Aggregate of preceding 12 months of “payroll costs”, divided by 12
  - SBA Guidance suggests that an applicant can use calendar year 2019 instead of the preceding 12 months when calculating “average monthly payroll”.

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How is "average monthly payroll" calculated?

- This calculation gets more complicated for self-employed applicants, partners, and organizations that were not in business for the 12 months preceding their application:
  - If you are self-employed with no employees, you calculate your "average monthly payroll" by using your 2019 net profit, capped at $100,000, in lieu of the payroll costs.
  - If you are self-employed with employees, you calculate your "average monthly payroll" by adding your 2019 net profit, capped at $100,000, to the payroll costs.

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How is "average monthly payroll" calculated?

- Continued:
  - If you are a partner in a partnership, a PPP loan application should be filed by the partnership and the self-employment income of the partners can be treated as employee compensation for purposes of calculating average monthly payroll.
  - If the organization was not in business from Feb 15, 2019- June 30, 2019, the CARES Act requires that you use the average monthly payroll costs for the period January 1, 2020 through February 29, 2020. SBA guidance suggests that this is optional, but it appears to be required in the Act.

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How is “average monthly payroll” calculated?

- Continued:
  - Finally, for seasonal businesses, the applicant should use average monthly payroll for the period between February 15, 2019, or March 1, 2019, and June 30, 2019 in its calculation.

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What if I need help?

- Applicants should work closely with their lender, accountant, payroll provider, and attorney to ensure that they accurately calculate their average monthly payroll and their overall maximum loan amount.
- Because every organization's situation is unique it is important that you seek appropriate advice before taking or refraining from taking any action as a result of this presentation.

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