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# CARES Act Overview - Impact to small business

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# Disclaimer

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# Federal Response to COVID-19

## Phase 1 - Coronavirus Preparedness and Response Supplemental Appropriations Act

Became law March 6

Act is 12 pages

Cost \$8.3 billion

- Provides emergency funding for federal agencies to respond to the coronavirus outbreak.
- Expanded ability of the SBA to offer \$7 billion in disaster assistance loans to small businesses impacted by COVID-19.

## Phase 2 - Families First Coronavirus Response Act (FFCRA)

Became law March 18

Act is 43 pages

Est. cost \$40 - \$120 billion

- Provides mandatory paid sick leave and paid FMLA due to COVID-19 for companies with fewer than 500 employees.
- Provides dollar-for-dollar payroll tax credits to offset the cost of paid leave to employers.

## Phase 3 - Coronavirus Aid, Relief and Economic Security (CARES) Act

Became law March 27

Act is 335 pages

Est. cost \$2 trillion



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# CARES Act – Primary Business Assistance Provisions

- Paycheck Protection Program (“PPP”) loans
- Deferral of employer Social Security taxes (6.2%)
- Employee Retention Tax Credit

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# PPP vs. Payroll Tax Credits

- PPP and Employee Retention Tax Credit / Employer Tax Deferral are **mutually exclusive**

PPP Loan

OR

Employer deferral of SS taxes

Employee Retention Tax Credit

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# Paycheck Protection Program (“PPP”)

- Establishes \$350 Billion for the provision of loans to small business
  - New type of SBA Section 7(a) loans
  - For loans made between February 20, 2020 and June 30, 2020
  - Only available to qualifying "small" employers
  - **Up to 100% of the loan amount is eligible for forgiveness**

# PPP – Eligible “Small” Businesses

SBA Standard	CARES Act Expansions			
“Small Business Concern”	Other Businesses	Non-profits	Hospitality and Food Service Companies	Franchises (regardless of sector)
Meets the SBA’s existing definition of a “small business concern”	Meets SBA’s existing definition of a “business concern”  No more than 500 employees	No more than 500 employees	NAICS code must begin with “72”  500 employee count is determined at each separate <u>physical location</u> (not total)	No more than 500 employees

- “Affiliation” rules generally apply, but **not for hospitality/food-service** companies or **franchises**.
- Doing business with a **PEO will not affect an employer’s small business status** for purposes of obtaining a loan.



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# PPP – Other Eligibility

- “Borrower Requirements” are very simple
  - In businesses before February 15, 2020
  - Had employees or independent contractors
  - Make a “good faith” certification of the following:
    1. The uncertainty of current economic conditions makes the loan request necessary to support ongoing operations
    2. The borrower will use the loan proceeds to retain workers and maintain payroll or make mortgage, lease, and utility payments
    3. Borrower does not have an application pending for a loan duplicative of the purpose and amounts applied for here, nor have they received a duplicative loan since February 15. ***Note that previous SBA loans may be refinanced using a PPP loan.***
- **Must apply by June 30, 2020**





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# PPP – Loan Characteristics

- **Maximum loan amount is lesser of**
  - (a) 2.5 times the average monthly payroll (based on 12-month lookback) or (b) \$10 million
- Loans will be **100% guaranteed** by the SBA
- Availability of credit from other sources does not disqualify eligibility
- **No application fees or closing costs**
- **Nonrecourse**; no collateral or personal guarantees imposed
- Maximum **interest rate is 4%**
- Maximum **loan term of 10 years**
- **First 6 months of payments (principal and interest) are automatically deferred**; deferral can extend up to a year
- **Up to 100% of the loan can be forgiven** (details later)



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# PPP – Maximum Loan Amount

- **2.5 times** average total monthly payments of “**payroll costs**” during the 1-year period before date the loan is made. (Special rule applies for seasonal employers.)

## **Payroll costs include:**

- Salary/wages (gross pay)
- Tips
- Vacation and sick pay
- Group health benefits
- Severance
- Retirement benefits
- State and local taxes on employee compensation

## **Payroll costs exclude:**

- Compensation in excess of \$100,000 for an individual employee (i.e. cap of \$100k)
- FFCRA paid leave
- Federal employment taxes
- Workers’ comp or payroll fees
- Compensation of an employee whose principal place of residence is outside of the US



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# PPP Loan Forgiveness

- Forgiveness equal to **amount of qualifying expenses incurred in the first 8-week period after origination of the PPP loan.**
- **“Qualifying expenses”** include:
  - Payroll costs (defined earlier)
  - Rent payments
  - Mortgage interest (no principal payments)
  - Utility payments (electricity, gas, water, transportation, telephone, or internet access)
- Forgiven amounts are **not taxable** to the small business (**i.e., a tax-free grant**)
- Forgiven amounts are **interest free**
- Can forgive up to 100% of the loan



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# PPP Loan Example

- Company has **\$900,000** annual payroll
- Eligible **loan amount is \$187,500** ( $\$900/12 \times 2.5$ )
- In first **8 weeks of loan**, the company incurs:
  - \$150,000 of payroll
  - \$8,000 of rent
  - \$2,000 of utilities
  - \$160,000 of qualified expenses
- Loan **forgiveness of \$160,000**
- Loan **balance of \$27,500** repayable over ten years at max rate of 4% interest.

# PPP Limits on Loan Forgiveness

## Limit for reductions in headcount

- Loan forgiveness is **reduced proportionately to the reduction in employee headcount** during the COVID-19 crisis.

$$\frac{\text{Average number of FTE's during first 8-week period after origination of loan}}{\text{Average number of FTE's during 8-week reference period* prior to COVID-19}} = \text{Forgiveness reduction factor}$$

- **Reduction can be completely avoided if the company re-hires all laid off employees by June 30, 2020**

\*Reference period can be either (a) Feb 15, 2019 to June 30, 2019 or (b) Jan 1, 2020 to Feb 29, 2020.

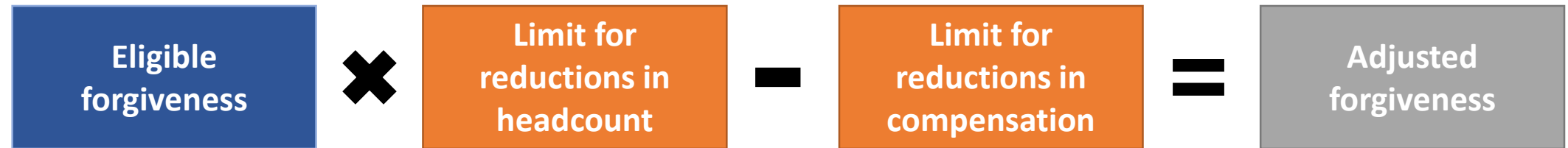
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# PPP Limits on Loan Forgiveness

## Limit for reductions in compensation

- Loan forgiveness is **reduced dollar-for-dollar by decreases in an employee's compensation greater than 25%** from prior quarter
  - i.e., companies cannot avoid headcount reduction factor simply by cutting everyone's pay
- Excludes any employees who made more than \$100k per year
- **Reduction can be completely avoided if the company eliminates the pay reductions by June 30, 2020**

# PPP Loan Example with Limited Forgiveness



Based on **qualifying expenses** in 8-week period.

Company laid off 5 of its 20 employees.

Reduced three of its employees' pay by \$5k each in excess of 25% threshold.

$$\mathbf{\$160,000} \times \mathbf{[15 / 20]} - \mathbf{\$15,000} = \mathbf{\$105,000}$$

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# How to apply for a PPP loan

- **Apply directly through banks or other lending institutions** that participate in SBA lending (approx. 1,800+ institutions - likely your bank participates).
- You do not have to visit any government institution to apply for the program.
- Recommended order for finding a lender:
  1. Call your primary bank
  2. Call another bank/lender in your area that you have a relationship with
  3. Find SBA-approved lenders using the SBA's online [Lender Match](#) tool
- **Call your bank to get in line!**



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# PPP vs Payroll Tax Credits

- Remember: PPP and Employee Retention Tax Credit / Employer Tax Deferral are **mutually exclusive**

PPP Loan

OR

Employer deferral of SS taxes

Employee Retention Tax Credit

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# Deferral of employer Social Security taxes

- Employers may defer employer share of Social Security tax deposits (Code section 3111(a)) due for the period beginning on date of enactment (March 27) through Dec 31, 2020.
- Payment schedule for deferred taxes:
  - 50% due 12/31/2021
  - 50% due 12/31/2022
- Deferral option not available if taxpayer has had indebtedness forgiven under the Paycheck Protection Program
- **Client employer has sole liability for payment of deferred taxes if it directs its PEO to defer payment under this provision with respect to wages paid by the PEO**
- Treasury Secretary is directed to issue regulations/guidance, including “rules for the administration and enforcement of” the liability provision with respect to PEOs

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# Employee Retention Tax Credit

- **Credit is available to any employer:**
  - (1) that was carrying on a trade or business during calendar year 2020, and
  - (2) with respect to any calendar quarter:
    - had its operations fully or partially suspended due to government orders re COVID-19, or
    - had a decline of at least 50% in gross receipts compared to the same quarter in the prior year
- **Amount of credit** → 50% of “qualified wages” with respect to each employee for the quarter
  - Maximum wages taken into account per employee = \$10,000 (max credit \$5,000 per EE)
- **“Qualified wages” mean:**
  - Employers with >100 FTEs → wages paid to employees not performing services due to COVID-19-related circumstances (either suspension of operations or reduction in gross receipts)
  - Employers with <100 FTEs → all employee wages paid
  - Includes employer’s “properly allocable” qualified health plan expenses
  - Excludes paid sick/family leave under the FFCRA (those that receive a 100% credit)



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# Employee Retention Tax Credit, cont'd

- **Other noteworthy provisions:**
  - Credit is taken against employer portion of Social Security taxes (Code section 3111(a))
    - Excess credit is treated as an overpayment that shall be refunded
  - Companies under common control are considered a single employer
  - Pay rate may not be higher than the month immediately prior to taking the credit
  - No double benefit if already taking other income tax credits based on employee wages
  - **Income tax deduction for wages must be reduced by the amount of any credit received** (reduces effective amount of the credit by approx. 21%)
  - Credit not available if eligible employer receives a loan under Paycheck Protection Program
  - **Treasury/IRS to issue guidance to third party payors (including PEOs) “allowing such payors to submit documentation necessary to substantiate the eligible employer status of employers that use such payors”**

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# PPP vs Payroll Tax Credits

- **The PPP loan will be the better choice for most small businesses**
  - Broader criteria to qualify for PPP loan vs Tax Credit
  - Mathematically greater financial benefit for almost all companies
  - Established process for obtaining funds quickly

# PPP vs Payroll Tax Credits - Scenarios

Number of Employees	Avg Annual EE Wage	Annual Rent + Mortgage Interest	Annual Utilities	Applicable Quarters for Tax Credit	PPP Loan Forgiveness	Employer Tax Credit
10	\$60K	\$30K	\$8K	2	<b>\$98K</b>	\$40K
20	\$45K	\$48K	\$12K	1	<b>\$148K</b>	\$79K
30	\$70K	\$50K	\$10K	2	<b>\$332K</b>	\$119K
50	\$30K	\$60K	\$15K	3	<b>\$242K</b>	\$198K
80	\$40K	\$70K	\$20K	4	<b>\$506K</b>	\$316K
90	\$25K	\$30K	\$5K	4	\$371K	<b>\$375K</b>
>100	Any	Any	Any	Any	<b>Almost always best</b>	Limited



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# Income tax changes to provide cash-flow relief

- Retroactive changes to several tax rules back to 2018
- Can **amend 2018 returns now** and claim refunds for:
  - Loss carrybacks (up to 5 years back)
  - Accelerated depreciation for certain real property
  - Increased loss limitation on pass-thru businesses
  - Immediate refund of AMT credits
- Allows increased deduction of business interest for 2019 and forward
- Talk to [your tax-preparer about how these might apply](#)

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# Other CARES Act provisions

- **Direct financial assistance to individuals** (\$1,200/\$2,400 + \$500/child)
- **State UI expansion** (\$600 per week supplement; extended duration of benefits)
- **Benefits/healthcare plan rules** (better coverage for COVID-19)
- **FFCRA paid leave** (technical corrections and rehired employees)
- **Retirement plan relief** (waive early withdrawal penalty, increasing loan caps, waive 2020 RMDs, etc.)
- **Charitable contribution deduction** (\$300 deduction allowed even if you don't itemize)



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# Thank-you!

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