AICPA

SBA Paycheck Protection Program (PPP) FAQs

This series of frequently asked questions (FAQs) provides answers to questions we are hearing from our members about the Paycheck Protection Program (PPP).

This document has been updated as of December 3, 2020.

Quick FAQ reference links

Forgiveness of loan

1. What guidance has been issued related to loan forgiveness?

The SBA released a revised loan forgiveness application and instructions on June 17, 2020.

In addition, a simplified loan application and instructions were released. This "EZ" application can be used by:

- self-employed individuals, independent contractors or sole proprietors with no employees
- borrowers who did not have a salary and hourly wage reduction AND an FTE reduction (including exceptions)
- borrowers who did not have a salary and hourly wage reduction AND are unable to operate during the covered period at the same level of business activity as before February 15, 2020 due to compliance with requirements established or guidance issued between March 1, 2020 and December 31, 2020

On October 9, 2020, the SBA released Form 3508S, instructions and an interim final rule providing simplification for PPP loans of $50,000 or less (except for borrowers that together with affiliates have loans totaling $2 million or greater). Qualifying borrowers who can use the Form 3508S are exempt from any reductions in the loan forgiveness amounts for both salary reductions and FTE reductions.

Frequently asked questions on loan forgiveness have also been released.

NOTE: Per Treasury released General Loan Forgiveness FAQ #4, October 31, 2020 is NOT the deadline for borrowers to apply for forgiveness. The FAQ confirms that a borrower may submit an application for forgiveness any time before the maturity date of the loan (although loan payments will begin 10 months after the last day of the covered period) and that the same forms will be posted once the expiration date is extended.

2. Can a PPP loan be forgiven in whole or in part?

The actual amount of loan forgiveness will depend, in part, on the total amount of payroll costs and other eligible costs paid during the covered period. There are reductions in the amount of forgiveness based on the percentage of eligible costs attributable to non-payroll costs, any decrease in FTEs and decreases in salaries/wages per employee. See PPP Loan Forgiveness Steps for additional information.

3. What are the restrictions on determining the amount of loan forgiveness for businesses other than self-employed individuals?

Eligible nonpayroll costs cannot exceed 40% of the total forgiveness amount. If salaries decrease by more than 25% for any non-owner employee who made less than $100,000 annualized in 2019 AND/OR if the number of FTEs decreases, the forgiveness amount will be reduced unless safe harbors are met.

4. Can I use PPP funds to pay payroll expenses to employees when they are not currently able to work (due to business being closed or for any other reason)?

The covered period starts when the loan is funded. For borrowers with a biweekly or more frequent payroll period, an alternative payroll covered period starting on the first day of its first pay period following loan disbursement can be used. If the borrower is not able to operate or is operating at a limited capacity when the PPP loan proceeds are received, the borrower may choose to pay employees who are not able to work. This choice may be made to help the borrower maximize loan forgiveness as current guidance states that not more than 40% of the loan forgiveness amount may be attributable to non-payroll costs.

5. When does the covered period (24 weeks or 8 weeks) begin to determine the amount of the forgiveness for the PPP loan?

The covered period begins on the date the lender makes the first disbursement of the loan. The lender must make the first disbursement of the loan no later than 10 calendar days from the date of the loan approval. Borrowers who received loans prior to June 5, 2020 can elect an 8-week covered period or a 24-week covered period. Borrowers who received loans June 5, or later will have a 24-week covered period. The loan forgiveness application provides for an alternative payroll covered period. Borrowers with a biweekly (or more frequent) payroll schedule may elect to calculate eligible payroll costs using the 24-week (or 8-week if elected) period that begins on the first day of their first pay period following their loan disbursement date.

6. Can a borrower choose a different covered period than 8-week or 24-week?

No. The covered period is either the 24-week period beginning on the loan disbursement date or if the borrower received the loan before June 5, 2020, the 8-week period beginning on the loan disbursement date. Note that an alternative payroll covered period can be used for borrowers with a biweekly (or more frequent) payroll schedule. A borrower can apply for forgiveness before the end of the covered period (see question above).

7. When can a borrower apply for loan forgiveness?

A borrower may submit a loan forgiveness application any time on or before the maturity date of the loan – including before the end of the covered period – if the borrower has used all of the loan proceeds for which the borrower is requesting forgiveness. Payments of principal and interest on the loan are not due until the lender determines the loan forgiveness amount. If a borrower does not submit the application for forgiveness within 10 months after the END of the covered period, payments on the loan will begin at that time. On Oct. 7, 2020, the SBA issued question No. 52 in their frequently asked questions reinforcing that the deferral period extension automatically applies to all loans, with no requirement from the SBA of a formal modification of the promissory note.

8. Can a borrower apply for forgiveness before the end of the chosen covered period?

Yes. A borrower may submit a Loan Forgiveness Application before the end of the 8-week or 24-week covered period, provided that the borrower has used all of the loan proceeds for which the borrower is requesting forgiveness and the borrower's loan forgiveness application accounts for any salary reductions in excess of 25 percent for the full covered period.

9. If a borrower applies for forgiveness before the end of the covered period, how is the salary reduction calculated for forgiveness purposes?

If the borrower applies for forgiveness before the end of the covered period and has reduced any employee's rate of pay (annual salary or hourly wage) in excess of 25 percent, the borrower must account for the excess salary reduction for the full 8-week or 24-week covered period. The rate of pay reduction calculation applies to any non-owner employee who made less than $100,000 annualized during any pay period in 2019.

10. If a borrower applies for forgiveness before the end of the covered period, do any subsequent reductions in FTEs reduce the amount of loan forgiveness?

The instructions for the Form 3508 forgiveness application indicate that the borrower includes the number of FTEs at the end of the covered period OR the date the application is submitted. The SBA has provided information to lenders as follows: "When a borrower submits the completed application and a lender has processed the borrower's forgiveness application, the borrower is no longer bound to the FTE restrictions. The covered period ends when the borrower successfully applies for forgiveness."

11. How are eligible payroll costs (including retirement benefits) determined for forgiveness purposes?

Borrowers are eligible for forgiveness for the payroll costs paid and incurred during the covered period or alternative payroll covered period. Payroll costs are considered paid on the day that paychecks are distributed or when an ACH credit transaction is originated. Payroll costs are considered incurred on the day that the employee's pay is earned. Payroll costs incurred but not paid during the last pay period of the selected period are eligible for forgiveness if paid on or before the next regular payroll date. Payroll costs include all forms of cash compensation including tips, commissions, bonuses, and hazard pay. Payroll costs should be determined based on the Interim Final Rule.

Generally, employer contributions for employee retirement benefits that are paid or incurred during the covered period or the alternative payroll covered period are eligible expenses. Employee contributions (deducted from pay or otherwise paid by the employee) are not eligible costs. Contributions for retirement benefits accelerated from period outside the covered period or the alternative covered period are not eligible forgiveness expenses.

12. How are payroll costs determined for partial pay periods?

Borrowers with a biweekly or more frequent payroll cycle can include the entire pay period that is incurred within the covered period or the alternative payroll covered period as long as the payroll is paid on or before the next regular payroll date.

Borrowers with a bi-monthly or less frequent payroll cycle will need to calculate payroll costs for the partial pay period by determining the amount incurred and paid during the selected covered period. See Aug. 11, 2020 FAQ #3 - Loan Forgiveness Payroll Costs.

13. What are the eligible expenses for forgiveness for businesses other than self-employed individuals?

Cash compensation costs determined using the gross amount before deductions (subject to caps based on the covered period and owner-employee limitations), retirement contributions (paid or incurred during the covered period or alternative payroll covered period for employees subject to limits for owner-employees – see FAQ), health care benefits (see owner-employee limitations in FAQ), mortgage interest payments, rent, utility, interest payments on secured debt incurred prior to February 15, 2020, and/or refinancing an SBA EIDL loan made between January 31, 2020 and April 3, 2020.

14. What are the eligible expenses for forgiveness for self-employed individuals?

The amount of the loan forgiveness will depend on the amount spent during the covered period on:

- Payroll costs as defined by the interim rule (does not include benefits for owners)
- Owner compensation replacement: limited to the lesser of:
    - 2.5 month equivalent of 2019 compensation for a maximum of $20,833 for the 24-week covered period (If electing 8-week covered period: 8/52 of 2019 net profit with a maximum of $15,385 for the covered period) and excluding any qualified sick or family leave equivalent amount for which a credit was claimed under FFCRA
    - 2020 compensation paid during the covered period
- **Interest payments on mortgage obligations for real/personal property paid or incurred before February 15, 2020
- Rent paid or incurred on lease agreements in force before February 15, 2020
- Utility paid or incurred under service agreements dated before February 15, 2020

*Note that for interest, rent and utility payments, the amounts must be deductible on Form 1040 Schedule C.

**Note also that interest on unsecured credit IS NOT eligible for loan forgiveness. See Aug. 11, 2020 FAQ #4 – Loan Forgiveness Nonpayroll Costs.

15. Are vision and dental benefits included as an eligible cost for group health care coverage?

Yes.

16. What is included in utilities for eligible expenses?

The CARES Act defines utilities in Sec.1106(a)(5) as electricity, gas, water, transportation, telephone or internet access for service which began prior to February 15, 2020.

The IFR issued April 14, "Interim-Final-Rule-Additional-Eligibility-Criteria-and-Requirements-for-Certain-Pledges-of-Loans" specifies gas used when driving a business vehicle.

Aug. 11, 2020 FAQ 6 – Loan Forgiveness Nonpayroll Costs explains that "a service for the distribution of transportation refers to transportation utility fees assessed by state and local governments."

Other common utilities such as garbage collection or security monitoring may also be classified as a utility, but a borrower should confirm with the lending institution.

17. Who is included as an owner-employee?

An Aug. 11, 2020 FAQ on forgiveness defined an owner-employee as an owner who is also an employee (including where the owner is the only employee). An Aug. 24, 2020 IFR on treatment of owners and forgiveness of certain nonpayroll costs, provided that owner-employees with a less than 5% ownership stake in a C- or S-corporation are not subject to the owner-employee compensation rule. Note that the IFR does not address LLCs, self-employed borrowers and partnerships.

18. What is the maximum amount of cash compensation for employees and owner-employees for the 24-week covered period that is eligible for forgiveness?

The maximum cash compensation eligible for forgiveness for employees during the 24-week covered period is 24/52 x 100,000 = $46,154. For the 24-week period, the owner compensation replacement for owner-employees, self-employed individuals or general partners is the lesser of $20,833 (2.5/12 x 100,000) or 2.5/12 x 2019 compensation. Non-cash compensation payments for owner-employees are discussed in FAQ "What are the caps on loan forgiveness for payroll costs available for owner-employees, self-employed individuals and general partners?"

19. How is the cap on employee compensation eligible for forgiveness calculated if a borrower applies before the end of the covered period?

Based on current guidance and our understanding of the SBA's position, the maximum amount should be prorated based on the number of weeks used during the covered period. For example, if applying after 14 weeks, the maximum compensation is calculated by taking $100,000 divided by 52 weeks and multiplying times 14 weeks in the covered period for a total of $26,923. The SBA has cited page 4 of the Form 3508 forgiveness application Instructions for PPP Schedule A Worksheet – Cash Compensation - which states that "for each individual employee, the total amount of cash compensation eligible for forgiveness may not exceed an annual salary of $100,000, as prorated for the Covered Period".

20. What are the caps on payroll costs eligible for forgiveness for owner-employees, self-employed individuals and general partners?

Owner-employees, self-employed individuals and general partner payroll costs for the 24-week covered period is capped at the lesser of 2.5 months of $100,000 annualized ($20,833) or 2.5 months of 2019 compensation across all businesses. The owners can choose how to allocate the total allowed compensation across the different businesses.

For an 8-week covered period, this amount is capped at the lesser of 8/52 of 2019 compensation or $15,385.

For general partners, 2019 net earnings from self-employment is reduced by Sec. 179 deduction, unreimbursed partnership expenses and depletion from oil and gas properties and multiplied by .9235.

Non-cash compensation payments for owner-employees are discussed in FAQ "What amounts are included for health insurance and retirement for owner-employees?"

21. What amounts are included for health insurance and retirement for owner-employees?

- For owner-employees of a **C-corporation**: Employer health insurance contributions and retirement contributions are eligible expenses. Retirement costs are capped at 2.5/12 of 2019 employer retirement contribution. These payments do not count toward the $15,385/$20,833 cap per individual.
- For owner-employees of a **S-corporation**: Employer health insurance contributions are not included for owners (and their family members) of at least a 2% stake of an S-corporation. Employer retirement contributions made on behalf of an owner-employee of an S corporation are included and do not count toward the cash compensation cap per individual.
- For **self-employed individuals and general partners**: Employer health insurance contributions and employer retirement contributions made on behalf of self-employed individuals or general partners are not included as eligible expenses.
- See Aug. 4, 2020 FAQ # 8 – Loan Forgiveness Payroll Costs.

22. Can you increase pay for employees during the forgiveness period (for example, hazard pay, bonuses or other forms of incentive pay)?

Yes, salary increases in the form of bonuses are eligible for forgiveness to the extent that the total compensation to an employee does not exceed $100,000 on an annualized basis ($46,154 for the 24-week period or $15,385 for the 8- week period). Owner compensation is capped at the lower of $20,833 for the 24-week period or the 2.5 month equivalent of 2019 compensation for the 24-week period (capped at the lower of 8/52 of 2019 compensation or $15,385 for an 8-week period).

23. Are employee federal withholdings and employer payroll taxes on wages for the covered period included in eligible payroll costs?

The employee federal withholding is included in allowable payroll costs for the purposes of determining the amount to be forgiven. See Aug. 4, 2020 FAQ #4 – Loan Forgiveness Payroll Costs. The employer federal payroll taxes (i.e. FICA and Medicare taxes) imposed on the gross payroll are not eligible payroll costs for the loan forgiveness calculation.

24. Do qualified sick and family leave wages which are eligible for a tax credit under the FFCRA count toward payroll costs for the purpose of the forgiveness portion?

For businesses that take this credit, the wages will be excluded from the determination of payroll costs.

25. Do nonpayroll costs need to be paid or incurred during the covered period to be eligible for forgiveness?

Any eligible nonpayroll cost must be paid during the covered period or incurred during the covered period and paid on or before the next regular billing date, even if the billing date is after the covered period.

26. If a borrower elects to use the alternative payroll covered period for payroll costs, does this method also apply to nonpayroll costs?

No. The alternative payroll covered period only applies to payroll costs. See Aug. 4, 2020 FAQ #3 – Loan Forgiveness Nonpayroll Costs.

27. Can rent or other eligible nonpayroll costs be prepaid?

To be forgiven, the eligible cost must be incurred during the covered period, so prepaid costs would not qualify. Guidance specifically addresses that prepayments of mortgage payments are not allowed.

28. Are payments to related parties for rent included as eligible nonpayroll costs?

Yes, but the amount is limited to the amount of the mortgage interest owed on the property during the covered period. Additionally, the lease and the mortgage must have been entered into prior to Feb. 15, 2020. The borrower is required to provide documentation to the lender to substantiate the amount of mortgage interest. Any ownership in common between the business and the property owner is a related party for these purposes. There is no guidance addressing whether owner attribution rules apply.

29. Are payments to related parties other than rent eligible for forgiveness?

Per Aug. 24, 2020 IFR, mortgage interest payments to a related party are not eligible for forgiveness. Other payments to related parties for expenses other than rent or interest are not addressed in the guidance provided. There is no guidance addressing whether owner attribution rules apply.

30. Can a borrower whose loan was received prior to June 5, 2020 use the June 30, 2020 Salary/Hourly wage reduction and FTE Reduction safe harbors instead of December 31, 2020?

No. The June 30 date in the CARES Act was replaced entirely by December 31 in the PPPFA. However, the forgiveness application does allow the borrower to use the EARLIER of December 31,2020 and the date the application is submitted. Note: see FAQ "If a borrower applies for forgiveness before the end of the covered period, how does the FTE reduction safe harbor work in operation?'

31. When determining the potential reduction of loan forgiveness due to workforce reductions, what method is used to determine employees?

The CARES Act uses the standard of "full-time equivalent employees" to determine whether loan forgiveness must be reduced in the measurement period. The loan forgiveness application provides for a calculation of average full-time equivalency which is calculated as the average number of hours paid per week, divided by 40 and rounded to the nearest tenth. The maximum for each employee is capped at 1.0. A simplified method is provided that assigns a 1.0 for employees who work 40 hours or more per week and .5 to employees who work fewer hours. Guidance is not provided for calculating FTEs if hours of work are not tracked.

32. Under what circumstances will a reduction in FTE not result in a decrease in loan forgiveness?

An FTE reduction exception (meaning that a reduction of FTE in these circumstances does not reduce loan forgiveness) is available for any of the following on an employee-by-employee basis:

- Borrower makes a good-faith, written offer to rehire or restore the reduced hours of an employee during the covered period or the alternative payroll covered period, the offer was rejected and the borrower has documentation of the offer and rejection.
  - Employee was fired for cause
  - Employee voluntarily resigned
  - Employee requested and received a reduction of their hours
  - Borrower in good faith can document the inability to rehire individuals who were employees on February 15, 2020 and hire similarly qualified employees for unfilled positions on or before December 31, 2020 or the date of the application for forgiveness

An FTE reduction safe harbor (meaning that any/all reduction in headcount does not reduce loan forgiveness) is available for the following circumstances:

- Operating restrictions: Borrower is unable to operate between Feb. 15 and end of Covered Period at the same level of business activity as before Feb. 15 due to compliance with requirements established or guidance issued March 1 – Dec. 31 by the HHS Secretary, the CDC Director, or OSHA related to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID-19.
- Dec. 31/application date "restoration": Borrower reduced FTE employee levels between Feb. 15 and Apr. 26, 2020; and then restored its FTE employee levels by not later than Dec. 31, 2020 or the date of the forgiveness application to FTE levels in the pay period that included Feb.15.

33. Does the FTE reduction exception apply to all employees (including those who made more than $100,000) or only those listed in Table 1 of the Schedule A worksheet on the loan forgiveness application?

All employees except owner-employees. If an FTE reduction exception is being used, include all applicable employees in Table 1 of the Schedule A worksheet, regardless of whether their compensation is reported in Table 1 or Table 2. See Aug. 4, 2020 FAQ #3 – Loan Forgiveness Reductions.

34. What are the requirements and documentation necessary in order to use the FTE reduction exception for the inability to return to the same level of business activity as before February 15, 2020?

Borrowers using this exception are required to certify that they have documented in good faith that their reduction in business activity during the covered period stems directly or indirectly from compliance with sanitation, social distancing or any other worker or customer safety requirement related to COVID-19. Please see [Revisions to Loan Forgiveness Interim Final Rule and SBA Loan Review Procedures Interim Final Rule] for full description. Documentation is required and must include copies of applicable COVID Requirements or Guidance for each business location and relevant borrower financial records.

35. What guidance has been issued related to change in ownership for a borrower that has received PPP funds?

The SBA has issued a procedural notice noting when a change in ownership is considered to have occurred and the responsibilities of the borrower. See Oct. 5, 2020 Journal of Accountancy article for more information.

36. Are these expenses tax deductible?

Deductibility depends on whether the PPP loan is forgiven.

IRS Notice 2020-32 (issued on April 30, 2020) states that no deduction is allowed for an expense that is otherwise deductible if the payment of the expense results in forgiveness of a PPP loan.

Additionally, the IRS released Rev. Rul. 2020-27 on November 18, 2020 that states that PPP loan participants that paid or incurred deductible expenses **may not deduct those expenses in the year of the loan if the taxpayer can reasonably expect to receive loan forgiveness (regardless of when the application for forgiveness is submitted)**.

Rev. Proc. 2020-51 (also issued on November 18, 2020) provides a safe harbor to allow certain PPP participants to claim a deduction in 2020 for certain otherwise deductible eligible expenses if certain requirements are met related to forgiveness being denied or not requested.

The AICPA submitted a letter of support for legislation that would clarify that the receipt and forgiveness of Coronavirus assistance through the PPP does not affect the deductibility of ordinary business expenses.

37. Is the forgiveness of the loan taxable income?

No, the forgiveness of the loan does not constitute federal taxable income. States are providing guidance on state taxability that will be included in the AICPA state tax guidance chart.

38. What documentation is required to be submitted to the lender for self-employed individuals to support loan forgiveness?

The following documentation is required:

- certification that the documentation provided is true and correct and the amount for which forgiveness is required was used to retain employees, and make interest, rent and utility payments
- If the self-employed individual has employees, Form 941 and state quarterly tax reporting forms or equivalent payroll processor records that correspond to the covered period
- Evidence of business rent, mortgage interest payments or utility payments for loan proceeds used for these purposes
- 2019 Form 1040 Schedule C

39. How should the forgiveness portion be recorded for financial statement purposes?

The AICPA issued guidance on accounting for PPP loans for nongovernmental borrowers. See article in the *Journal of Accountancy* to learn more.

Relationship between PPP and other SBA loans

40. Can a qualified entity apply for both the PPP and other SBA disaster loans?

Yes, borrowers may apply for the PPP and other SBA financial assistance, including disaster loans and Section 7(a) loans. However, you cannot use the proceeds from the PPP for the same purpose as your other SBA loan(s). Loan proceeds would need to cover payroll for a different period or other qualifying costs. This includes the up to $10,000 grant available with the Section 7(b)(2) loans- Economic Injury Disaster Loans (EIDL).

41. What happens if a business applies for PPP and also receives the up to $10,000 advance from an EIDL?

The amount of advance received (up to $10,000) will reduce the forgiveness amount of the PPP. See Sec. 1110(e)(6) of the CARES Act. If a borrower receives an EIDL advance in excess of the amount of its PPP loan, they will not receive any forgiveness on the PPP loan.

42. The CARES Act included a deferral of the employer portion of the Social Security (6.2%) tax until 2021/2022. Is this affected by a business' participation in the PPP?

No. Per the June 5, 2020 Paycheck Protection Program Flexibility Act of 2020, PPP borrowers now qualify for the deferral of the employers share of Social Security taxes (6.2%). 50% of tax is due by December 31, 2021 and the remaining portion is due by December 31, 2022.

General information

43. What are the general eligibility requirements?

- 500 or fewer employees whose principal place of residence is in the US
- A small business concern as defined in section 3 of the Small Business Act and that is subject to SBA's affiliation rules under 13 CFR 121.301(f) unless specifically waived in the Act, a section 501(c)(3) tax exempt organization, 501(c)(19) tax-exempt veterans organization, Tribal business concern, or an individual who operates a sole proprietorship, is an independent contractor or is an eligible self-employed individual
- In operation on February 15, 2020 and had employees or paid independent contractors
- Seasonal businesses will be considered to be in operation as of February 15, 2020 if the business was in operation for any 8-week period between May 1, 2019 and September 15, 2019.
- There are other factors in determining eligibility. Review the Program Rules on the US Treasury site for further guidance.

44. What is the deadline to apply for PPP funds?

The deadline was August 8, 2020 to apply for PPP funds. Future legislation may provide another opportunity for applying for PPP loans.

45. What guidance has been issued by the Small Business Administration (SBA) and Treasury?

SBA issued Interim Final Rules and FAQs providing further guidance.

46. Are faith-based organizations eligible to receive SBA loans under the PPP and/or EIDL?

SBA issued FAQs regarding participation of faith-based organizations.

47. Are farmers eligible to apply for the PPP?

Yes, farmers, ranchers and agricultural producers are eligible to apply. They are subject to the same eligibility standards and definition of payroll costs as other businesses.

48. What is the maximum amount that can be borrowed?

The lesser of:

- Average monthly payroll costs as defined by the SBA times 2.5
    - If there is an outstanding amount of an Economic Injury Disaster Loan (EIDL) made between January 31, 2020 and April 3, 2020 that can be added to the PPP loan amount request.
- $10 million

In addition, see U.S. Treasury guidance provided on how to calculate the maximum loan amount by business type. The AICPA has several calculators to assist in calculating the maximum loan amount.

49. What are the terms of the loan and the interest rate?

The interest rate will be 1%. The maturity of the loan is 2 years for loans made prior to June 5, 2020 and 5 years for loans made on and after June 5, 2020. Loans with a maturity of 2 years can be extended to 5 years with the agreement of the lender. Payments are deferred until a determination of the amount of forgiveness is made by the SBA. If the borrower does not apply for forgiveness within 10 months after the last day of the covered period, payments will be due that month. Interest will accrue on the loan beginning with disbursement.

50. What documents are needed to be supplied with the application?

The Interim Final Rule 1 (April 2, 2020) stated that lenders must confirm the dollar amount of average monthly payroll costs by reviewing the payroll documentation submitted with the application. Lenders may differ in the payroll documentation that they require. However the AICPA has made recommendations for the documents to be prepared and submitted with the application.

51. Are PPP loans obtained by not-for-profit entities subject to the Uniform Guidance single audit requirements? What about Economic Injury Disaster Loans (EIDL) loans?

As of July 1, 2020, and per Governmental Audit Quality Center Alert No. 404, PPP loans are not subject to the single audit requirements, but EIDL loans are considered federal financial assistance and are subject to the Uniform Guidance single audit requirements.

52. For self-employed individuals, what if the 2019 Form 1040 has not been submitted to the IRS at the time of the application?

The guidance states that regardless of whether you have filed a 2019 tax return with the IRS, you must provide Form 1040 Schedule C with the loan application.

53. Can the original PPP loan be increased to account for the guidance that was issued on April 14 related to partnerships and LLCs taxed as a partnership and April 28 related to seasonal employers?

Yes, in both cases as long as the lender has not submitted Form 1502 to the SBA. If a partnership received a PPP loan that did not include the self-employment income of active partners (up to $100,000 annualized), the lender can increase the PPP loan amount to include the additional amount. If a seasonal employer is eligible for a higher maximum loan amount under the alternative calculation provided on April 28, the lender can increase the PPP loan. The borrower must provide documentation for the increased amounts.

54. What factors should a borrower consider when certifying that current economic uncertainty makes the PPP loan request necessary to support the ongoing operations of the applicant?

Borrowers should assess their economic need for a PPP loan under the standards established by the CARES Act and the PPP regulations in effect at the time of the loan application. Borrowers are considered to make this certification in good faith and by taking into account current business activity and also other sources of liquidity currently available. Any borrower that, together with its affiliates, received PPP loans with an original principal amount of less than $2 million will be deemed to have made the required certification concerning the necessity of the loan request in good faith. Borrowers with loans greater than $2 million will be subject to review by SBA for compliance with the program requirements. These borrowers should continue to assess their economic need as described above. See Q31, Q37 and Q46 in the PPP FAQs for additional guidance.

55. If a business determines that funds from a PPP loan were received based on a misunderstanding or misapplication of the required certification standard, what steps must be taken by the borrower?

If a borrower applied for a PPP loan prior to the issuance of the Interim Final Rule posted on April 24 and repaid the loan in full by May 18, 2020 it will be deemed by SBA to have made the required certification in good faith. See Q31 and Q37 in the PPP FAQs for additional guidance.

56. How should payroll costs for businesses other than self-employed individuals be calculated for the purposes of the loan amount relative to payroll taxes?

Payroll costs are calculated on a gross basis without regard to federal taxes imposed or withheld including FICA and Medicare. Payroll costs are not reduced by taxes imposed on an employee and are not increased by the employer's share of payroll taxes.

57. What other costs should be considered when determining payroll costs for businesses other than self-employed individuals?

Payroll costs consist of compensation to employees including salary, wages, commissions or similar compensation; cash tips or the equivalent; payment for leave; allowance for separation or dismissal; payment for employee benefits including group health care coverage and insurance premiums; retirement contributions, payment of state and local taxes assessed on the compensation of employees.

58. Are there any other specific exclusions in determining payroll costs?

- The compensation of an employee whose principal place of residence is outside of the U.S.
- The compensation of an individual employee in excess of an annual salary of $100,000
- If the borrower took credits under the Families First Coronavirus Response Act (FFCRA) for sick and family leave wages, those costs are also excluded.

59. The CARES Act excludes payroll costs for compensation greater than $100,000 in calculating the loan amount. Does that exclusion apply to employee benefits?

The $100,000 cap applies only to cash compensation not to non-cash compensation such as retirement plans or group health care.

60. What period of time should be used to calculate payroll costs for businesses other than self-employed individuals?

- Borrowers can calculate payroll costs using data either from the previous 12 months or from the 2019 calendar year.
- For seasonal businesses, the applicant may use average monthly payroll for the period between February 15 or March 1, 2019 and June 30, 2019 or any consecutive 12-week period between May 1, 2019 and September 15, 2019.
- A business that was not in operation for that period may use the average monthly payroll costs for the period January 1, 2020 to February 29, 2020.

61. Are payments to independent contractors included in payroll costs?

Payroll costs do not include payments to independent contractors. Independent contractors have the opportunity to apply for PPP funding.

62. Are part-time employees and/or temporary seasonal employees included in payroll costs?

All employees paid during the period of time selected are included in payroll costs and to determine head count for eligibility purposes.

63. What if a business contracts with a payroll provider or a Professional Employer Organization (PEO) to process payroll? Are those costs included as payroll costs of the eligible borrower?

In FAQs released by the SBA, they recognize that the payroll for employees in this arrangement will not be reported on Form 941s for the borrower. The employees' gross salary and benefits would be included as part of payroll costs when calculating the loan amount. For documentation, the SBA suggests providing Schedule R from Form 941 (an allocation schedule for aggregate Form 941 filers) or a statement from the payroll provider or PEO.

64. For churches/religious organizations, should a minister's housing allowance be included as part of payroll costs?

Per the Interim Final Rule released April 24, 2020, payroll costs consist of compensation to employees including salary, wages, commissions or similar compensation. In additional guidance released on April 24, 2020, housing stipends or allowances are specifically included as payroll costs.

Pass-through entities calculation of payroll costs

65. How do S Corporations determine payroll costs?

Businesses should accumulate payroll costs based on the general guidelines as noted above. Specifically, compensation of owners who receive reportable wages (i.e. W-2 wages) should be included as payroll costs up to the $100,000 limit. Specifically, 2019 Form 941 taxable Medicare wages & tips should be added for each quarter plus any pre-tax employee contributions for health insurance or other fringe benefits excluded from taxable Medicare wages & tips should be used to calculate payroll costs. Employer health insurance contributions (portion of Form 1120-S line 18 attributable to health insurance), retirement contributions (Form 1120-S line 17) and employer state and local taxes assessed on employee compensation (from state quarterly wages reporting forms) should be included as payroll costs. Note: S corporation owner-employees are subject to different limitations. See FAQ "What are the caps on loan forgiveness for payroll costs available for owner-employees, self-employed individuals and general partners?"

66. How do partnerships and LLCs determine payroll costs?

Businesses should accumulate and report payroll costs based on the general guidelines as noted above. Additionally, guidance issued on April 14 states that payroll costs should also include the self-employment income of general active partners (subject to $100,000 compensation cap). This is determined by adding the following:

- Schedule K-1, line 14a – Net earnings from self-employment of individual U.S. based general partners, reduced by Sec. 179 deduction, unreimbursed partnership expenses and depletion claimed on oil and gas properties claimed) multiplied by .9235 (adjusting for self-employment tax), up to $100,000 per partner
- 2019 gross wages and tips paid to the employees whose principal place of residence is in the U.S. (calculated based on guidelines noted above)
- 2019 employer contributions for employee health insurance (portion of Form 1065 line 19 attributable to health insurance)
- 2019 employer contributions to employee retirement plans (Form 1065 line 18)

- 2019 employer state and local taxes assessed on employee compensation (from state quarterly wage reporting forms)

Although partners/members are not treated as employees of the partnership/LLC and may receive guaranteed payments and other self-employment income from the partnership/LLC, the SBA determined that partners/members are not permitted to obtain PPP funds based on their self-employment income from a partnership/LLC. Note: S corporation owner-employees are subject to different limitations. See FAQ "What are the caps on loan forgiveness for payroll costs available for owner-employees, self-employed individuals and general partners?"

67. How do single member LLCs determine payroll costs and do they apply as a business, sole proprietor or self-employed person?

LLCs should follow the instructions that apply to their tax filing situation. For example, an LLC that is considered a disregarded entity should file an application as a self-employed person. If the LLC is electing to be taxed as a partnership, the guidance regarding partnerships/LLCs would apply in the calculation of payroll costs.

Self-employed individuals and independent contractors

68. When calculating the loan amount, how are payroll costs calculated for self-employed individuals and independent contractors with no employees?

The loan amount will be determined based on 2019 Form 1040 Schedule C line 31 net profit amount, up to $100,000. If the Schedule C shows a net loss, the allowed loan amount is zero.

69. When calculating the loan amount, how are payroll costs calculated for self-employed individuals and independent contractors with employees?

The loan amount will be determined by the sum of the following:

- 2019 Form 1040 Schedule C line 31 net profit amount, limited to $100,000. If the Schedule C shows a net loss, then this amount is 0
- Payroll costs as calculated above

70. When calculating the loan amount are health insurance premium payments and retirement contributions added to payroll costs for self-employed individuals?

Based on guidance provided, the portion of health insurance premiums and retirement contributions attributable to employees will be added to payroll costs for individuals with employees. For self-employed individuals with no employees, the loan amount is determined based on net profit from Form 1040 Schedule C.

71. Do individuals who are self-employed and report income/expenses on forms other than Schedule C (such as Schedule F (farming) qualify to apply for the PPP?

Yes. Self-employed farmers (those reporting their net farm profit on Schedule F) should use Schedule F line 34 net farm profit to be used to determine their loan amount (rather than Schedule C line 31 net profit). Otherwise, the calculation of the loan amount is the determined in the same manner.

72. How do you calculate the loan amount for self-employed individuals who were not in operation in 2019, but were in operation on February 15, 2020 and will file a Form 1040 Schedule C for 2020?

Per guidance issued, the maximum loan will be 2.5 times average monthly payroll costs incurred in January and February 2020 plus the outstanding amount of any EIDL loan received between January 31, 2020 and April 3, 2020 that will be refinanced by the PPP loan. To determine this amount, complete Schedule C (or Schedule F if applicable) for January and February 2020 to reflect business income and expenses for those two months including 1/6 of the depreciation/Sec. 179. This amount will be limited to $16,667.

Determining number of employees for less than 500 employee limit/affiliate questions

73. What time period should be used to determine the number of employees for the loan application?

Businesses may use average employment over the previous 12 months or for the calendar year 2019 for the purposes of applying an employee- based size standard. As an alternative, this formula provided by the SBA can be used: average number of employees per pay period in the 12 completed calendar months prior to the loan application (or the average for the periods the business has been operational if less than 12 months).

74. Are part-time or seasonal employees included in the employee count?

Yes, all individuals who are considered employees (including those obtained from a temporary employment agency, PEO or leasing concern) are included in the employee count. Per SBA FAQs, you can average employment over the required time period.

75. How do I determine whether related businesses are considered affiliates for the purpose of applying for the PPP?

The general rules of affiliation rules can be found under 13 C.F.R. 121.301. There are 4 tests:

- based on ownership (control of 50% or more of voting equity)
- based on stock options, convertible securities and agreements to merge (considered to have a present effect on the power to control a concern)
- based on common management (one or more officer/director/managing member or general partner controls the Board of Directors and/or management of another business)
- based on identity of interests, including family members (individuals or firms that have identical business or economic interests)

In determining whether affiliation exists, the SBA may consider other circumstances even if no single factor constitutes affiliation (13 C.F.R. 121.301(f)(5).

76. Are there any exceptions to the affiliation rules specifically related to the PPP from the CARES Act?

Yes, affiliation is waved for the following:

- businesses with fewer than 500 employees that is assigned a NACIS Code starting with 72 (hotels, bars, restaurants)
- businesses operating as a franchise that are assigned a franchise identifier code by the SBA

CPAs as agents

77. Should we, as our clients' CPA, be listed as an agent on the application in order to receive the agent fees?

Please see the AICPA Statement on CPAs as Agents for PPP applications for information.

78. If I decide to be listed as an agent on the application, am I jeopardizing my independence with the client?

CPAs should consider the implications of this decision. For more information, please see ethical implications to consider for COVID-19 PPP loan applications as well as impact of accepting PPP agent fees on independence.

Reviewed December 3, 2020