

COVID-19 RESPONSE

CARES ACT LOAN PROVISIONS – UPDATED APRIL 20, 2020

Subsequent to the CARES Act being signed, additional guidance was released in connection to several key components of the Paycheck Protection Program (PPP).

- Payroll costs calculation
 - Payroll costs can be calculated using either the previous 12 months or calendar year 2019.
 - Payroll costs are calculated on a gross basis without regard for 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.
- Independent contractors are not counted as employees for purposes of a borrower's PPP loan or subsequent forgiveness. They must apply on their own for any loans.
- Guaranteed payments - If you are a partner in a partnership, the self-employment income of general active partners may be reported as a payroll cost, up to \$100,000 annualized, on a PPP loan application filed by or on behalf of the partnership.
- Interplay with deferral of payroll taxes
 - This applies to payments that would otherwise be required to be made during the period beginning on March 27, 2020 and ending December 31, 2020.
 - For companies that receive PPP loans, you may defer paying these taxes up until the date that loan forgiveness is approved by the lender.
 - Payment of these deferred taxes would be due 50% at the end of 2021 and the remainder at the end of 2022. PPP loan recipients are eligible for deferral for the same period on taxes deferred through date of forgiveness.
- Individuals with self-employment income who file a Form 1040, Schedule C
 - A person with self-employment income reported on Schedule C that was in operation on February 15, 2020 and has filed/will file a Form 1040 Schedule C for 2019 is eligible to apply for a PPP loan.
 - IMPORTANT NOTE: Regardless of whether you have filed a 2019 tax return with the IRS, you must provide the 2019 Form 1040 Schedule C with your PPP loan application.
 - For individuals without employees, the loan amount is calculated using the 2019 Schedule C line 31 net profit amount, divided by 12, and multiplied by 2.5.

- For individuals with employees, you add average payroll costs, health benefits, retirement contributions, and state/local taxes paid on employee compensation to the above.
- SBA will issue additional guidance for those individuals with self-employment income 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.

PPP Loan Forgiveness

The SBA has not yet released final guidance on the forgiveness calculations. However, some clarity has been received on a few components.

- The eight-week period begins on the date the lender makes the first disbursement of the PPP loan to the borrower.
- Self-employed individuals will also be eligible for forgiveness on “owner compensation replacement” which is a value of the 2019 net profit as reported on their Schedule C.
- Three factors may impact loan forgiveness:
 - No more than 25% of the loan forgiveness amount can be attributable to non-payroll costs.
 - Reduction in full-time equivalents (FTEs)
 - Calculate the number of FTEs during the eight-week period.
 - This amount is then compared to the FTEs from the baseline period of EITHER 2/15/19-6/30/19 or 1/1/20-2/29/20, whichever has fewer FTEs.
 - If the FTEs are reduced the amount of forgiveness is reduced by the total loan amount multiplied by the FTEs during the eight-week period divided by the base period. That is, if the FTEs are reduced by 10%, the forgiven loan amount is reduced by 10%.
 - Reduction in salary/wages
 - The amount forgiven is reduced by the amount of any reduction in salary/wages during the eight-week period that exceeds 25% of the employee’s salary/wages for the most recent full quarter for employees making less than \$100,000 on an annualized basis.

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