



FAQs Employers Have About the Payroll Protection Program of the CARES Act

Robert Smith
April 9, 2020





Circular 230 Disclaimer

Any tax advice contained in this presentation is not intended or written to be used to market or promote any transaction. Topics discussed are general in nature and should not be relied upon without professional advice regarding specific facts applicable to your situation.



Your Presenter: Robert Smith



- Tax Senior Manager, Saville CPAs & Advisors, Dallas
- Team Leader for Saville Global Tax & Advisory Group
- BBA Finance, MS Accounting – Southern Methodist University
- CPA licensed in New York and Texas
- Service areas of focus are International Tax Advisory & Compliance, Export Incentives, and State & Local Income Taxation



Are small business concerns required to have 500 or fewer employees to be eligible borrowers in the PPP?

No. Three ways to qualify:

1. Small business concerns can be eligible borrowers even if they have more than 500 employees, if they satisfy the definition of a “small business concern” under section 3 of the Small Business Act, 15 U.S.C. 632.
2. A business can qualify if it meets the SBA employee-based or revenue-based size standard corresponding to its primary industry.

Cont. next slide



Are small business concerns required to have 500 or fewer employees to be eligible borrowers in the PPP? CONT.

3. A business can qualify for the Paycheck Protection Program as a small business concern if it met both tests in SBA's "alternative size standard" as of March 27, 2020:
 - (1) maximum tangible net worth of the business is not more than \$15 million; and
 - (2) the average net income after Federal income taxes (excluding any carry-over losses) of the business for the two full fiscal years before the date of the application is not more than \$5 million.



Does my business have to qualify as a small business concern in order to participate in the PPP?

No. Three other ways a business is eligible for a PPP loan with 500 or fewer employees:

1. Principal place of residence is in the United States, or the business meets the SBA employee-based size standards for the industry in which it operates (if applicable).
2. Qualifying tax-exempt nonprofit organizations described in section 501(c)(3) of the Internal Revenue Code (IRC), tax-exempt veterans organization described in section 501(c)(19) of the IRC
3. Tribal business concerns described in section 31(b)(2)(C) of the Small Business Act that have 500 or fewer employees whose principal place of residence is in the United States, or meet the SBA employee-based size standards for the industry in which they operate.



What time period should borrowers use to determine their payroll costs to calculate their maximum loan amounts?

- Borrowers can calculate their aggregate payroll costs using data either from
 - the previous 12 months or
 - calendar year 2019.
- An applicant that was not in business from February 15, 2019 to June 30, 2019 may use the average monthly payroll costs for the period January 1, 2020 through February 29, 2020.



How does a self-employed individual verify payroll costs for the 8-week forgiveness period?

- We don't know yet. As of April 8, 2020 neither Treasury nor SBA has said how forgiveness will work for self-employed individuals.



What time period should borrowers use to determine their number of employees to calculate their maximum loan amounts?

- Borrowers may use their average employment over the same time periods to determine their number of employees, for the purposes of applying an employee-based size standard.
- Alternatively, borrowers may elect to use SBA's usual calculation: the average number of employees per pay period in the 12 completed calendar months prior to the date of the loan application (or the average number of employees for each of the pay periods that the business has been operational, if it has not been operational for 12 months).



My small business is a seasonal business whose activity increases from April to June. Considering activity from that period would be a more accurate reflection of my business's operations. However, my small business was not fully ramped up on February 15, 2020. Am I still eligible?

- In evaluating a borrower's eligibility, a lender may consider whether a seasonal borrower was in operation on February 15, 2020 or for an 8-week period between February 15, 2019 and June 30, 2019.



The CARES Act excludes from the definition of payroll costs any employee compensation in excess of an annual salary of \$100,000. Does that exclusion apply to all employee benefits of monetary value?

No. 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.



How should a borrower account for federal taxes when determining its payroll costs for purposes of the maximum loan amount, allowable uses of a PPP loan, and the amount of a loan that may be forgiven?

- Payroll costs are calculated on a gross basis.
- Payroll costs are not reduced by taxes imposed on an employee and required to be withheld by the employer
- Payroll costs do not include the employer's share of payroll tax.
- Example: an employee who earned \$4,000 per month in gross wages, from which \$500 in federal taxes was withheld, would count as \$4,000 in payroll costs. The employee would receive \$3,500, and \$500 would be paid to the federal government.
However, the employer-side federal payroll taxes imposed on the \$4,000 in wages are excluded from payroll costs under the statute.



Should payments that an eligible borrower made to an independent contractor or sole proprietor be included in calculations of the eligible borrower's payroll costs?

No. Any amounts that an eligible borrower has paid to an independent contractor or sole proprietor should be excluded from the eligible business's payroll costs.

However, an independent contractor or sole proprietor will itself be eligible for a loan under the PPP, if it satisfies the applicable requirements.



Do PPP loans cover paid sick leave?

Yes. PPP loans covers payroll costs, including costs for

- employee vacation,
- parental, family, medical, and sick leave.

However, the CARES Act excludes qualified sick and family leave wages for which a credit is allowed under sections 7001 and 7003 of the Families First Coronavirus Response Act (Public Law 116–127).



The amount of forgiveness of a PPP loan depends on the borrower's payroll costs over an eight-week period; when does that eight-week period begin?

- The eight-week period begins on the date the lender makes the first disbursement of the PPP loan to the borrower. The lender must make the first disbursement of the loan no later than ten calendar days from the date of loan approval.



What if an eligible borrower contracts with a third-party payer such as a payroll provider or a Professional Employer Organization (PEO) to process payroll and report payroll taxes?

- If a state requires a PEO or payroll provider to report wage and other data with the EIN of the PEO or payroll provider, payroll documentation provided by the payroll provider that indicates the amount of wages and payroll taxes reported to the IRS by the payroll provider for the borrower's employees will be considered acceptable PPP loan payroll documentation.
- Relevant information from a Schedule R (Form 941), Allocation Schedule for Aggregate Form 941 Filers, attached to the PEO's or other payroll provider's Form 941, Employer's Quarterly Federal Tax Return, should be used if it is available; otherwise, the eligible borrower should obtain a statement from the payroll provider documenting the amount of wages and payroll taxes.
- Employees of the eligible borrower will not be considered employees of the eligible borrower's payroll provider or PEO.



May lenders accept signatures from a single individual who is authorized to sign on behalf of the borrower?

Yes, provided the signer is

- An authorized representative of the business seeking a loan may sign on behalf of the business
- Authorized to make the certifications, including with respect to the applicant and each owner of 20% or more of the applicant's equity



I pleaded guilty to a felony crime a very long time ago. Am I still eligible for the PPP?

Yes. Businesses are only ineligible if an owner of 20 percent or more of the equity of the applicant

Is presently

- incarcerated,
- on probation,
- on parole;
- subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction

within the last five years, for any felony, has

- been convicted;
- pleaded guilty;
- pleaded nolo contendere;
- been placed on pretrial diversion;
- been placed on any form of parole or probation (including probation before judgment).



I filed or approved a loan application based on the version of the PPP Interim Final Rule published on April 2, 2020. Do I need to take any action based on the updated guidance?

- No. Borrowers and lenders may rely on the laws, rules, and guidance available at the time of the relevant application.
- However, borrowers whose previously submitted loan applications have not yet been processed may revise their applications based on clarifications reflected in these FAQs.



Contact Information

For additional advice and assistance, please contact your Saville advisor.

(214) 922-9727
700 N. Pearl St., Ste. 1100
Dallas, TX 76201

www.savillecpa.com



Saville CPAs & Advisors



Founded in 1965 Saville has grown into one of the best and most reputable middle-market firms in the DFW metroplex.



Saville CPAs & Advisors

From global entities to entrepreneurs forging new businesses, Saville leverages precise expertise to offer services in:

- Accounting Outsourcing
- Assurance
- Business advisory
- Divorce financial planning
- Estate and gift
- Merger and Acquisitions
- Retirement plans
- Tax compliance
- Tax planning