



Q&A From CARES Act For Sole Proprietors and Independent Contractors

April 9, 2010

The comments and information in this document do not constitute, nor should they be construed as, legal or tax advice. Each reviewer is encouraged to seek independent legal and tax counsel with regard to the subjects contained in this document.

Question: How is payroll calculated under the Paycheck Protection Plan? Do independent contractors and sole proprietors qualify?

Answer: Under PPP, the term "payroll costs" is defined to include "(bb) the sum of payments of any compensation to or income of a sole proprietor or independent contractor that is a wage, commission, income, net earnings from self-employment, or similar compensation and that is in an amount that is not more than \$100,000 in 1 year, as prorated for the covered period".

The CARES Act specifically includes sole proprietors:

(ii) INCLUSION OF SOLE PROPRIETORS, INDEPENDENT CONTRACTORS, AND ELIGIBLE SELF-EMPLOYED INDIVIDUALS.—

“(I) IN GENERAL.—During the covered period, individuals who operate under a sole proprietorship or as an independent contractor and eligible self-employed individuals shall be eligible to receive a covered loan.

“(II) DOCUMENTATION.—An eligible self-employed individual, independent contractor, or sole proprietorship seeking a covered loan shall submit such documentation as is necessary to establish such individual as eligible, including payroll tax filings reported to the Internal Revenue Service, Forms 1099–MISC, and income and expenses from the sole proprietorship, as determined by the Administrator and the Secretary.”

The term "payroll costs" expressly excludes:

“(II) shall not include—

“(aa) the compensation of an individual employee in excess of an annual salary of \$100,000, as prorated for the covered period;

“(bb) taxes imposed or withheld under chapters 21, 22, or 24 of the Internal Revenue Code of 1986 during the covered period;

“(cc) any compensation of an employee whose principal place of residence is outside of the United States;

“(dd) qualified sick leave wages for which a credit is allowed under section 7001 of the Families First Coronavirus Response Act (Public Law 116–127); or

“(ee) qualified family leave wages for which a credit is allowed under section 7003 of the Families First Coronavirus Response Act (Public Law 116–127)

There is a calculation formula in the Act. See SBA Interim Final Rule for formula specifics.

EIDL -- Economic Injury Disaster Loan:

(a) DEFINITIONS.—In this section—

(1) the term “covered period” means the period beginning on January 31, 2020 and ending on December 31, 2020; and

(2) the term “eligible entity” means—

(A) a business with not more than 500 employees;

(B) any individual who operates under a sole proprietorship, with or without employees, or as an independent contractor

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“(I) IN GENERAL.—During the covered period, individuals who operate under a sole proprietorship or as an independent contractor and eligible self-employed individuals shall be eligible to receive a covered loan.

“(II) DOCUMENTATION.—An eligible self-employed individual, independent contractor, or sole proprietorship seeking a covered loan shall submit such documentation as is necessary to establish such individual as eligible, including payroll tax filings reported to the Internal Revenue Service, Forms 1099–MISC, and income and expenses from the sole proprietorship, as determined by the Administrator and the Secretary

Question: I am a commissioned salesperson. They take out all of my taxes. They check the box statutory on my W2. I incur all of my expenses to be a salesperson, advertising, samples, postage.

Answer: A statutory employee may be an independent contractor, under IRS regulations. See above for application of PPP to independent contractors.

Question: I tried filling out the CARES Act loan application, but it looks like you have to have a payroll. We have no payroll, it's just the two of us as owners, but we still have monthly expenses. Do we qualify?

Answer: The CARES Act specifically includes sole proprietors:

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Please see SBA Final Interim Rule: https://www.sba.gov/sites/default/files/2020-04/PPP--IFRN%20FINAL_0.pdf

"PAYROLL COSTS" per SBA:

See page 10 of 31 of SBA Interim Rule:

https://www.sba.gov/sites/default/files/2020-04/PPP--IFRN%20FINAL_0.pdf

The SBA Rule defines payroll costs as follows:

“Payroll costs consist of compensation to employees (whose principal place of residence is the United States) in the form of salary, wages, commissions, or similar compensation; cash tips or the equivalent (based on employer records of past tips or, in the absence of such records, a reasonable, good-faith employer estimate of such tips); payment for vacation, parental, family, medical, or sick leave; allowance for separation or dismissal; payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums, and retirement; payment of state and local taxes assessed on compensation of employees; and for an independent contractor or sole proprietor, wage, commissions, income, or net earnings from self-employment or similar compensation.”

Question: Does it matter if your business has slowed significantly vs. if it's stopped altogether?

Answer: Complete shut-down is not the threshold. The borrower must certify as follows:

‘(G) BORROWER REQUIREMENTS.—

“(i) CERTIFICATION.—An eligible recipient applying for a covered loan shall make a good faith certification—

“(I) that the uncertainty of current economic conditions makes necessary the loan request to support the ongoing operations of the eligible recipient;

“(II) acknowledging that funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments;

“(III) that the eligible recipient does not have an application pending for a loan under this subsection for the same purpose and duplicative of amounts applied for or received under a covered loan; and

“(IV) during the period beginning on February 15, 2020 and ending on December 31, 2020, that the eligible recipient has not received amounts under this subsection for the same purpose and duplicative of amounts applied for or received under a covered loan.

Question: I am self-employed/1099 and do not have a federal tax ID number. I use my social security number. My bank is only accepting the PPP if you have a business account with them. Where or with which bank can I apply using my social security number?

Answer: Bank requirements and lending prerogatives are varying from bank to bank. We have seen, but cannot verify, that banks are requiring existing relationship for lending PPP. I believe some banks are requesting state driver license numbers of all business owners. Be prepared to provide that information.

Question: I applied for the COVID-19 Economic Injury Disaster Loan of \$10,000 for immediate access. I have my application number, but there is NO place online I can find to get an update on the status. Any suggestions on this topic?

Answer: Continue to review the SBA website, or contact local bank, if the application was submitted there.

Question: What if I applied for an EIDL loan, and also submitted my info for a PPP loan. I only want the PPP. Did I do something really dumb by doing that?

Answer: The EIDL, if provided, will roll into and reduce the amount of the PPP loan. The EIDL is forgiven if used for qualified purposes in the 8-week covered period. Contact lender or SBA and seek guidance on cancellation.

NOTE: Borrowers must APPLY for forgiveness.

RECOMMENDED: Apply within the covered period. Discuss with your lender about what it will require for loan forgiveness (Documentation, Certification, etc.)