

CARES Act Corporate Questions

PPP:

- PPP Application - please go over/how to fill in form!
 - Each bank may have their own application.
 - For most clients the two most difficult components is either determining the business's average monthly payroll or applying the affiliation rules.
- Can you apply for both the PPP loan and the economic injury disaster loan?
 - Yes, you can apply to both the PPP and economic injury disaster loan program (EIDL)
- Our full time staff is still employed but we had to furlough the part-timers. Does the PPP only cover FT?
 - The PPP covers both full time and part time employees. The number of employees is based on the number of full time employees and the number of full time equivalent employees.
- Does it include payroll costs, like employers payroll costs, FICA, taxes...?
 - Yes, per the latest guidance documents you can include payroll costs
- Is the average monthly payroll based on the past 12 months?
 - The average monthly payroll is based on the previous 12 month period. If your business is a seasonal employer, and this is your season, then different rules apply for the business.
- Are the salary computations on the application for the last payroll for the period of 3/25/20 back one year or do we use the calendar year 2019?
 - The salary is the average monthly compensation. The business can use actual data from its payroll data.
- Can any eligible small business qualify for a loan even if the company continues to operate and generate revenues or do employees have to actually be in a non-payment or furloughed situation?
 - Any business that qualifies for the program can participate. Eligible employees include those that are currently working.

- PPP Loan - we just terminated 3 or 4 employees prior to 4/1 because of job shutdowns but that is 4 out of 150 how will that be held against us for loan forgiveness?
 - The number of employees is calculated as the average number of employees over the previous 12 months. Therefore I am not sure if their termination would affect your average number of employees. If the termination was due to business downturn you are able to rehire them.
 - The government has not provided detailed guidelines how the forgiveness program will work. As we get more information, we will be sure to update our clients.
- What if you did not reduce staff, but someone voluntarily terminated? Do we have to fill the spot prior to 6/30?
 - The number of employees is based on the average number of employees over the previous 12 months. If you made staff reductions that would drop the total number of employees below the 12 month average, you have until June 30, 2020 to return to full employment
- Is the \$100k cap per employee per month or per year?
 - The cap \$100,000 per year.
- So we can pay utilities with the loan, but we cannot include the cost of utilities in the loan request amount, correct?
 - You may use the money for any permitted purpose. The total loan amount is 2.5 times the average monthly payroll expenses. The loan should be used in the 8 weeks following the receipt of the loan. To receive full loan forgiveness, the expectation is that 75% of the loan will be used to cover payroll expenses. The balance of the amount can be used for other permitted purposes. The amount forgiven may be reduced depending on how the loan is used. The portion of the loan not forgiven will convert to a two year loan with a 1% interest rate.
- In addition to the headcount is there a revenue cap to be eligible for this or the EIDL?
 - There is no revenue cap.
- What is the date for the employee count?
 - The employee count is based on the average number of employees over the previous 12 months.
- How do retail or restaurants react to the restoration of employees if they are required to be closed?

- The PPP is a government support program to help maintain full employment. In this situation you would pay your employees their wage or wage and tips if a restaurant even if their business is closed.
- Do the staff reduction penalties apply to hourly, part time staff?
 - Yes they do. All employees, full time or part-time figure into the total number of employees. The number will use the total number of full time employees plus the number of full time equivalent employees.
- If a company was previously under a PEO and has less than 12-months of its own payroll, how would the calculation be done at that point?
 - The business should use good faith efforts and use payroll data to create the average monthly payroll data over the last 12 months. You can use PEO data.
- So, if you receive a loan, is the interest rate .50%, or some higher rate?
 - The interest rate is 1%
- Will the loan be "forgiven" before the payments go into effect?
 - Details regarding loan forgiveness are forthcoming. However, the expectation is that the any portion of the loan that will be forgiven, will be forgiven prior to the first payment being due.
- A furloughed employee is an active employee, so doesn't it count as FTE reduction?
 - A furloughed employee would be considered an FTE and needs to be included in the calculation. The PPP program addresses this issue as it looks to the average number of FTEs over the previous 12 month period.
- How long do you have to maintain staff levels to be forgiven?
 - The government has not provided specific guidance regarding the forgiveness program. The PPP loan proceeds should be used in the 8 weeks after receiving the money.
- Concerning the PPP? What if employees "retire" between now and June 30, 2020?
 - The program requires that the company maintain the average number of employees over the previous 12 months. It does not require that each specific person is rehired.
- What if an employee separates from the company according to plans made prior to the law being enacted?
 - The program requires that the company maintain the average number of employees that the company had over the previous 12 months. One employee may not affect

the average number of employees. No need to rehire the same person but you would most likely need to hire somebody to fill that FTE.

- What did you mean by no revenue limitation?
 - The PPP is an extension to the SBA's 7(a) loan program. Under normal circumstances a borrower has to qualify as a small business under one of two methods: i) employ less than 500 persons or ii) if permitted to have more than 500 employees then qualify under the relevant revenue size standard. Under the PPP expanded 7(a) program, a company is eligible if it has 500 or less employees. The revenue standard does not apply.
- I am in the hospitality business and the lack of rooms reduces the volume of work we have. Will I need to have the # of employees in place by June even if we won't have the same \$ amount in payroll? Will my loan be forgiven?
 - Under the terms of the program, you must maintain the number of average number of employees you had over the prior 12 months. Even if your business is not open, you should hire back the employees by June 30, 2020.
- The act seems to limit salary included in the payroll calculation to \$100k but an employee receiving a \$100k salary could also have employer paid health insurance and retirement benefits, can you include those amount in excess of \$100k?
 - Yes, you may include fringe benefits that are in excess of \$100k. The \$100k limit is in regards to compensation.
- On PPP - is the 75% threshold to get loan forgiveness based on payroll amount or headcount or some combination of both?
 - The government has not provided specific details on how forgiveness will be determined. However, the intention is that at least 75% of the loan proceeds should be used on payroll over the 8 week period you have to use the loan.
- I let 42 folks go when they announced the closure of dining areas in NC and kept seven employees to do curb service; do I need to rehire everyone to qualify for help or continue to maintain what I got to get help, payroll was 50k a month now 10k.
 - The business's loan amount is going to be based on the average number of employees that the business employed in the previous 12 months. You should employ the same number of employees. Therefore you should rehire the employees and pay them their wages as provided by the PPP loan funds.
- Is this effectively just for 2.25x months of payroll? (ex. cap 2019 payroll at \$100K/employee, divide by 12, multiply by 2.25)
 - It is 2.5x the average monthly payroll.

- My current employee count is less than the total # of employees captured in the payroll lookback. Someone retired recently. Will I be penalized for the reduced number of employees? Do I need to hire 1 person to get full forgiveness?
 - The government is yet to provide detailed guidelines on how the loan forgiveness program will work. Filling the role will likely result in the full amount being forgiven. However, without further guidance we cannot say with certainty how this situation will be addressed.
- Within related companies with common ownership, where an owner receives compensation in each company, can the owner's compensation be counted for in each company?
 - Generally speaking, businesses that are affiliated will be considered a single entity. More detail and legal analysis will be required to properly answer this question.
- When and who do you send the PPP application to?
 - You must apply through a financial institution. We are recommending that you work with your bank.
- PPP application - what is the "Number of jobs"?
 - The number of employees is calculated by looking at the average number of full time equivalent employees over the previous 12 months
- Are publicly traded companies eligible and does taking the money impact paying dividends or stock buyback?
 - If the company has fewer than 500 employees or is otherwise an eligible entity, then yes it would be eligible. Pursuant the PPP, there are no restrictions on paying dividends or stock buybacks. However, the loan money should be primarily used to cover payroll expenses~ approximately 75% according to the latest treasury guidance documents.
- Related to the PPP Loan, unincorporated Sole Proprietor, pays wages and issues W-2's to employees. Do the owners earnings count toward wages in the calculation of wages?
 - An owner's income up to \$100,000 can be included in the payroll calculation.
- Is PPP applicable to non-profits? Does forgiveness get taxed as ord. income?
 - Yes, a nonprofit may apply for the PPP.
 - The statute provides that loan forgiveness is not taxed as ordinary income. Future guidance may address this issue.

- For the PPP loans, if you are a sole proprietor or gig worker and do not have regular "payroll" how does the 2.25x monthly payroll get calculated for the loan amount?
 - You most likely look at your average monthly gross income over the previous 12 months and then multiply that number by 2.5.
- So if you obtain a PPP loan and you still have reduced income coming in, how do they know which funds were used for what?
 - The forgiveness amount is most likely going to be based on your provided payroll expenses
 - We are awaiting further guidance on the details regarding forgiveness
- Is the 8 week window still the time frame to have the funds paid back out to payroll? I'm worried, that even though this will be great for the 8 week period, what happens with the possible industry lag after the 8 week period? Meaning, if we get to June and nothing has opened back up?
 - The PPP Loan money needs to be used in the eight week period starting when the business receives the funds. Further guidance may address what happens after the eight week period ends.
- How is the payroll protection loan audited to determine use?
 - The borrowers will provide documentation to the banks. This could be in the form of payroll records or other valid business records. The borrower will have to provide proof that the funds were used for payroll purposes, if the borrower is seeking loan forgiveness.
 - The SBA will provide further guidance on the requirements for loan forgiveness.
- Parent / subsidiary scenario outside of a restaurant - combine?
 - This depends on the affiliation rules that the SBA set forth. This requires a fact specific discussion and happy to discuss further.
- Most small business owners cap W-2 wages and pay out the rest through distributions. Will those distributions be acknowledged to capture the gap between W-2 wages and the 100k cap?
 - Compensation that can be included the PPP payroll calculation is capped at \$100,000.
- PPP loan questions, can i use to pay employees while they work, and produce final product that i can bill customers for which i collect funds?

- Yes, you may use the PPP money to cover payroll expenses. You should continue to operate your business.
- Does pay to Independent Contractors qualify for the payroll figures in the PPE loan?
 - No it does not. Independent Contractors can apply separately and therefore they cannot be included the payroll figures.
- Are the PPP loans available to 501-c-6 organizations?
 - Many non-profits are eligible, but there are some that may not participate. Happy to discuss further with additional details.
- Would Real Estate Companies include commission income in their salary computation?
 - The rule states that: “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)”
 - Therefore, commission income counts as salary.
- If my company has an owner who owns another company will this disqualify my request for PPP?
 - Not necessarily. The SBA will apply the affiliation test to determine whether the entities are affiliated and whether the company is too large to participate. To better answer your question, we would require additional information.
- Owners health insurance premium payments are taken off the company expenses and added to the owners income on personal return to then be offset by deduction. Do we include owners health insurance premiums in calculating total payroll?
 - The statute and the guidance permit companies to include its share of health insurance premiums. The guidance specifically says: “payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums, and retirement;...”
- On PPP and EIDL if you the business has an open line of credit already available to them are the prohibited from using the PPP or EIDL?
 - A company may apply for the PPP or the EIDL even if they have an existing line of credit.
- Would increase loan losses as a result of the COVID-19 outbreak qualify as an economic loss for a PPP loan?

- Possibly, more information is required to provide an accurate answer
- Are we allowed to apply for the A loan for a portion of our programs that are not federally supported and only supply information for those programs?
 - I would need additional information to answer this question
- How does the 8 week period start? For example does the forgiveness spending start at the date of the loan application, funding or is there a way to include spending that occurred during the late March/early April period?
 - The 8 week period begins the day that the loan is dispersed.
- Can you self-qualify for PPP loan out of feared impact vs direct reduction in business?
 - A borrower must make several attestations. To best answer this question, we will need additional information.
- Can 1099 employees be included in the payroll calculation for the PPP?
 - No, they cannot. Independent contractors are eligible to apply on their own.
- Question(s) regarding FFCA payroll costs tracking and PPP payroll tracking for *forgiveness*. The way I understood what was said is that you would need to track the FFCA costs separately, does this mean all costs related to those hours (i.e. portion of employer paid health insurance?) or just the wage and related payroll tax? I read that PPP forgiveness cant include the \$\$ you paid due to FFCA?
 - Payroll costs includes FICA and other employee benefits. The expectation is that amount will be forgivable.
- Can Kaufman and Canoles help us with the loan app or only our bank?
 - We can work with you to put together a loan application, but you can only apply through a lending institution.
- If there is a drop in wages due to intermittent closure days or employees opting to take a day off without pay, will that hurt our loan forgiveness?
 - We may need additional information to answer this, but it is unlikely that there will be an issue with employees taking time off.
- 3 companies, one owner of all three. Different EINs, different bank accounts, different employees, different tax filings. Can all 3 companies apply for PPP?
 - The SBA has instituted a set of affiliation rules. Common ownership is one such way to create an affiliated entity. Without additional information, we cannot say for certain whether these companies can apply for PPP.

- Is it 2.5 times payroll or 2.25?
 - It is 2.5 times the average monthly payroll
- Why does application state 2.5?
 - The statute, applications, and the first set of guidance documents were not in alignment. Further guidance has cleaned this up.
- If sole proprietors have no employees are they still eligible for a payment to themselves?
 - A sole proprietor may apply for a PPP.
- Do any of these payroll etc. programs applicable to small businesses with greater than 50 employees but still classified as small businesses under the existing NAICS Codes?
 - There a variety of programs available for small businesses. The PPP and the EIDL disaster program are available for businesses with up to 500 employees.
- Does the relief program apply to companies that are listed under SBA only? For instance what about banks, S&L's, or Credit Unions under the employee Cap?.
 - Most businesses may apply for these relief programs. There are a handful of businesses that may not apply, per SBA rules.
 - Ineligible businesses include: Consumer and marketing cooperatives, dealers of rare coins and stamps, gambling, government owned organizations, illegal firms, *lending firms and loan packaging firms*, multi-sales distribution, pyramid schemes, and real estate investment firms, and speculation-based businesses, e.g. Oil Wildcatting.
- Are guaranteed payments included in payroll costs?
 - More information is required to properly answer your question.
- Would payroll include bonus?
 - Payroll can include a bonus
- Does "payroll" include 1099MISC box 7 payments to individual Contractors
 - No it does not. Since independent contractors may apply separately they are not included in the payroll calculation.
- Is payroll GROSS or NET?
 - Payroll is gross

- In a partnership, would it need to be a guaranteed distribution or simply a distribution?
 - Would need to discuss individual particulars
- What about payroll averages for new businesses that have less than 12 months of payroll costs?
 - A new business can also apply. Per the statute and the guidance documents, “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.”
- Can payroll costs include payroll taxes?
 - The interim final rule states that “Federal employment taxes imposed or withheld between February 15, 2020 and June 30, 2020, including the employee’s and employer’s share of FICA (Federal Insurance Contributions Act) and Railroad Retirement Act taxes, and income taxes required to be withheld from employees” are excluded from payroll costs.
- On an LLC where an owner gets a draw, not payroll are they excluded?
 - Please contact to discuss the specific situation.
- Are the healthcare benefits capped for employees making over 100K?
 - No it is not capped. Please contact to review specific details.
- Can the cost for an employer's Temp employees be counted in the average monthly payroll calculation?
 - Cannot say without further details. Please contact to discuss the situation.
- As far as restoring employees that have been let go? Do you need to go back and pay back wages?
 - The act requires that you re-hire employees.

EIDL:

- How do we get the bridge grant of 10K? Where do we apply - I know it is thru SBA.gov but how is it different from what we have already submitted?
 - You must apply for the EIDL program, follow up with the SBA, and ask for the advance. The amount of the grant is proportionate to the number of employees the business has on its payroll.
- PPP to payoff EIDL?

- The guidance documents allow a business to convert a portion of the EIDL grant to the PPP, if approved for the PPP.
- The PPP loan is capped, but not the EIDL. Do you recommend applying for both loans, just in case the PPP loan isn't granted?
 - We suggest applying for both programs. There is no requirement that you accept either loan and there is no prepayment penalty if you decide you do not want to take either loan and pay it back in full.
- The SBA site states you can apply for both PPP and EIDL but do they have to be used for different purposes?
 - The PPP loans are to be used for payroll and certain permissible purposes if the borrower wants the loan forgiven. EIDL loans will not be forgiven. Please contact to discuss your specific question.
- If both the PPP and EIDL programs cannot be used together, is it possible to determine which program would give you the most funds.
 - You may apply for the EIDL program and the PPP.
 - You may have both a PPP and an EIDL.
- Towne is encouraging filing for EIDL first and then PPP second. Is there a sound reason for going that route?
 - We recommend applying for both programs. The EIDL program was started first and is a slower process. When Towne made this recommendation, no banks were taking PPP applications so the advice was appropriate. At this point when Congress appropriates more money, we recommend applying to both programs.
- The \$10,000 grant - do you get that back if you elect to not go thru with the loan? Or only if loan is not approved? Have clients thinking that is more "free money"I do not think that is the case or should be....
 - If the SBA awards a grant, it does not have to be returned even if the borrower is ultimately denied a loan or the borrower chooses not to accept the loan.
- Is it possible to apply for the EIDL loans and only receive the \$10,000 forgivable grant portion?
 - Yes.
- EIDL is a loan? Or is it a 10k grant?

- The EIDL is a loan. There is an advance of up to \$10,000 that does not need to be repaid.

Contract Aspects:

- What can be used for commercial leases if there is NOT a force Majeure clause? How about utilities?
 - Contract issues are highly fact specific. We are happy to discuss any contract issue you may have. Please contact us to review your individual details.