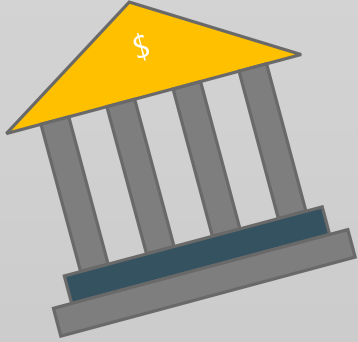


# PAYCHECK PROTECTION LOAN PROGRAM AND THE CARES ACT

DOES MY BUSINESS QUALIFY FOR A "PAYCHECK PROTECTION" (PP) LOAN UNDER §1102 OF THE CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT (CARES ACT)?



NO

## BUT WAIT! YOU STILL MAY BE ELIGIBLE.

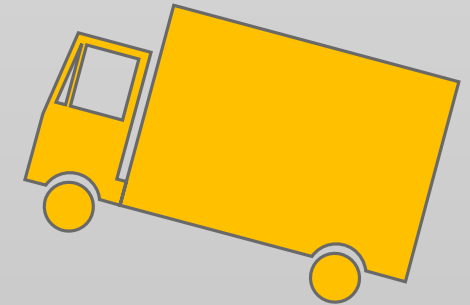
*(FAQ Q4)*

- If you are in the accommodation or food services business that has been assigned an SBA identifier code (think lodging, travel, but check FAQ, Attachment A to be sure) and you have more than one location, the 500-employee rule is applied on a "per location" basis.
- If you are operating as a franchise or receive financial assistance from a Small Business Investment Company, the normal affiliation rules do not apply.  
→ You still may be eligible. (See Interim Rule, 2(b), p. 6)  
→ If you meet either of these exceptions, move over to the 'YES' box

## I AM A:

- A small business (subsequent guidance confirms that this include partnerships and that PPP loans can only be taken at the partnership level) with fewer than 500 employees, whose principal residence is in the U.S
- A small business that otherwise meets the SBA's size standard (<https://www.sba.gov/size-standards/>)
- A 501(c)(3) with less than 500 employees
- An individual operating as a sole proprietor
- An individual operating as an independent contractor
- A self employed individual who regularly carries on any trade or business
- A Tribal business that meets the SBA size standard
- A 501(c)(19) Veterans Organization that meets the SBA size standard
- Any business that qualifies as a small business under the SBA size standards

**NOTE:** The 500-employee threshold includes full-time, part-time, and employees under any other basis, including employees of affiliates. The SBA has issued an Interim Final Rule addressing the application of the affiliation rules to the PPP, confirming that absent a statutory waiver, a borrower will be considered together with its affiliates for purposes of determining eligibility for the PPP. The Interim Final Rule also confirms that the applicable affiliation rules are set forth in 13 CFR § 121.301, as in effect prior to February 10, 2020. *(FAQ Q1-3)*. Most marijuana related business are not eligible. *(FAQ Q13)*



YES

## HOW MUCH CAN I BORROW?

Eligible employers can borrow 250% (or 2.5X) the borrower's average monthly payroll costs, incurred during the 1-year period before the date the loan is made. The loan cannot exceed \$10 million. *(FAQ Q8)*

## BASIC CALCULATION:

Sum of INCLUDED payroll cost  
- Sum of EXCLUDED payroll costs  
= PAYROLL COSTS

# PAYCHECK PROTECTION LOAN PROGRAM AND THE CARES ACT

## HOW DO I DETERMINE PAYROLL COSTS? (FAQ Q10)

"Payroll costs" are defined as the sum of payments of any compensation with respect to employees that is:

### FOR EMPLOYERS

- Salary, wage, commission, or similar compensation (capped at \$100K)
- Payment of cash tip or equivalent
- Payment for vacation, parental, family, medical, or sick leave, and allowance for dismissal or separation (i.e. severance)
- Payment required for the provisions of group health care benefits, including health care premiums
- Payment of any retirement benefit
- Payment of federal, state, or local taxes assessed on the compensation of the employee

### FOR SOLE PROPRIETORS, INDEPENDENT CONTRACTORS, AND SELF-EMPLOYED INDIVIDUALS:

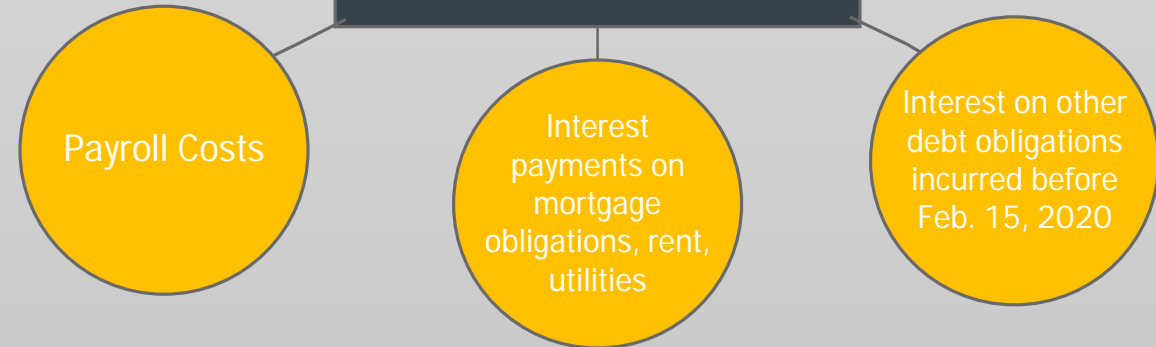
- The sum of payments of any compensation to or income of a sole proprietor or independent contractor that is a wage, commission, income, net earnings from self-employment, or similar compensation and that is in an amount that is not more than \$100K in one year as pro-rated for the covered period. (FAQ Q 10)

### FOR EMPLOYERS WHO UTILIZE A PEO OR PAYROLL PROVIDER:

Subsequent guidance by SBA provides that 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 for these employers.

## WHAT CAN THE PP LOAN BE USED FOR?

(FAQ Q9)



## WHAT MUST I EXCLUDE FROM "PAYROLL COSTS?" (FAQ Q11)

- Compensation of an individual employee whose annual salary is in excess of \$100K, is prorated as necessary.
- FICA (Social Security and Medicare) taxes imposed on the employer, but not FICA taxes withheld from employees' wages, federal income taxes withheld for employee' wages during the covered period
- Compensation of any employee whose principal place of residence is outside of the United States (i.e. out of status/undocumented)
- Qualified sick leave for which sick leave wages or family leave wages credit is allowed under FFCRA

# PAYCHECK PROTECTION LOAN PROGRAM AND THE CARES ACT



## WILL THIS LOAN BE FORGIVEN?

### **BORROWERS ARE ELIGIBLE TO HAVE THEIR LOANS FORGIVEN, BUT BY HOW MUCH?**

A borrower is eligible for loan forgiveness equal to the amount the borrower spent on the following items during the 8-week period beginning on the date of the origination of the loan:

- Payroll cost (See FAQ 10)
- Interest on the mortgage obligation (not including prepayment of or payment on principal) that were in existence on February 15, 2020
- Rent and utility payments for business
- Additional wages for those with tipped employees

The loan forgiveness amount cannot exceed the principal loan amount

### **COULD THE LOAN BE REDUCED?**

The amount of loan forgiveness can be reduced if there is a reduction in the number of employees or a reduction of wages paid to employees that exceeds 25% (FAQ Q16)

#### **Based on reduction of employees: (FAQ Q16)**

PAYROLL COST  
(See p. 2 and FAQ Q10)



Average number of FTEs per month for the 8-weeks beginning on loan origination date



**OPTION 1:** Average number of FTEs/month from Feb. 15 2019 to June 30, 2019

**OPTION 2:** Average number of FTEs/month from Jan. 1, 2019 to Feb. 29, 2020

**SEASONAL EMPLOYEES:** Average number of FTEs/month from Feb. 15 2019 to June 30, 2019

#### **Based on reduction of salaries: (FAQ Q16)**

PAYROLL COST  
FAQ Q10)



Any reduction in employees' wages, during the covered period, in excess of 25% of total wages or salary. Do not include reductions made to employees earning \$100K or more

### **HOW CAN I CLAIM LOAN FORGIVENESS?**

Submit an application that includes:

- Documentation verifying the number of FTEs on payroll and pay rates
- Payroll tax filings reported to the IRS
- State income, payroll, unemployment insurance filings
- Verification of covered mortgage obligations, lease/rent obligations and utility payments
- Certification that:
  - The documentation provided is true
  - The forgiveness amount requested was used to retain employees, make interest payments on covered mortgage/rent obligations/utilities

\*The statute is clear that no loan will be forgiven without proper documentation (FAQ Q18)

\* Not more than 25% of the loan forgiveness amount can be for non-payroll costs

\*The loan forgiveness amount is not considered taxable income to the borrower (FAQ Q19)

\*Guidance will be provided by the Small Business Administration by no later than April 27, 2020 (FAQ Q20)

# PAYCHECK PROTECTION LOAN PROGRAM AND THE CARES ACT

What is the maximum amount of my loan if my business was not operational in 2019?

250% (or 2.5X) of the average monthly total payroll costs incurred for January and February 2020.

I am a seasonal employer. What is the maximum amount of my loan?

250% (or 2.5X) of the Average total monthly payments for payroll costs for the 12-week period beginning February 15, 2019, or March 1, 2019, and ending June 30, 2019

I am in the marijuana-related business. Are PP loans available to me?

Most likely NO. If you are in the direct (grow, produce, process, distribute) or indirect marijuana business (derive gross revenue from sales to direct marijuana businesses), or sell smoking devices or other products in connection with marijuana, NO. (FAQ Q13)

What is a "covered period?"

The 8-week period beginning on the date of the origination of a covered loan. (FAQ Q15)

## WHAT ARE LENDERS LOOKING FOR IN MY LOAN APPLICATION?

When considering eligibility, lenders will consider whether the business was in operation before Feb. 15, 2020, and whether it paid employee salaries, payroll taxes or paid independent contractors for services. Lenders will request a good faith certification that:

- The loan is necessary to support ongoing operations because of the uncertainty of the current economic conditions
- The loans will be used to retain workers, maintain payroll, make mortgage/rent/utility payments
- The borrower does not have a pending loan application duplicative of the purpose and amount applied for here
- From February 15, 2020, to December 31, 2020, the borrower has not received a loan duplicative of the purpose and amounts applied for here
- INDEPENDENT CONTRACTOR, SOLE PROPRIETOR, OR SELF-EMPLOYED: Lenders will also request payroll tax filings, 1099 forms, income and expense reports, among other items yet to be determined