



## **Q&A from CARES Act 101 Webinar on April 8, 2020**

### **Paycheck Protection Program:**

*Does 'being in operation' mean that you must have been actively fishing - or just that you had worked as an independent contractor prior to Feb 15?*

The PPP contemplates businesses being closed or harmed due to COVID-19. So it is okay if the business is not out fishing. The business needs to have been created by February 15th and will need documentation from active months in 2019 to demonstrate the amount claimed.

*Re: PPP - Is it okay if employees are not the same individuals, but you have the same number of employees as last year?*

Yes. It is based on the number of employees.

*Re: Hypo 3 - the Independent Contractor gets \$6,250 and pays themselves a salary. Most people pay their rent with their salary. Will doing that negate the ability to get forgiveness?*

The SBA has not yet issued guidance for independent contractors and self-employed individuals. The answer to this question may come down to what the independent contractors establish as their salary in the PPP calculation for the amount of their loan. They are allowed to pay themselves that salary from the loan funds for the 8 weeks and spend it how they want. Then the other amount of their loan has to be spent on allowable business related expenses, including rent for the business. The payment for rent related to the business would be forgivable as long as the rental payment wasn't more than the 25% cap on non-payroll expenses.

*Is monthly income for independent contractors calculated based on 2019 average monthly income or based on 2020 average monthly income after February 15th?*

According to the SBA application form, the timeframe for average monthly payroll costs is 2019. Seasonal businesses can use 2/15/2019 - 6/20/19 or 3/1/2019 - 6/20/19. New businesses can use 1/1/2020 - 2/29/2020.

*Will loan forgiveness be counted as income and taxed in the future?*

No.

*Some fishing businesses' revenue period spans the end date for these programs - should businesses try to apply for assistance for projected amounts to be earned beyond June 30 as well?*

The PPP runs until June 30, 2020. It is meant to cover payroll and other certain business expenses for an 8-week period during this time. A business's loan under this program would be limited to this period.

The EIDL program under the CARES Act runs until December 31, 2020. We would suggest working with the local SBA office to see what could be covered by the EIDL loan.

*Is the PPP loan forgiveness first come first serve?*

The PPP loans themselves are on a first-come, first-served basis. Congress has allocated \$349,000,000,000 at this time. Once those funds are used up, Congress would have to authorize more funds for the program. While this seems like a lot of money, each small business is allowed a loan of up to \$10 million, if 2.5 times their average monthly payroll costs are that high. For that reason, small businesses, independent contractors, sole proprietors, and other eligible entities should work with their banks as soon as possible on a loan application.

The forgiveness mechanism is not on a first-come, first-served basis. Borrowers will become eligible for forgiveness 8 weeks after they receive the loan.

*How will applying for PPP impact applying for Pandemic Unemployment Assistance?*

It is unclear at this time whether the same individual could receive benefits through both of these programs. A self-employed person could apply for a PPP loan for funds to pay themselves their salary for 8 weeks. They would not be considered unemployed during this time. If they still remain unable to work due to COVID-19 following that 8-week period, it may be possible for them to apply for unemployment assistance. However, there are usually prohibitions on "double-dipping" so even if allowed, the time periods would likely not be allowed to overlap.

## **EIDL:**

*I have seen guidance that the advance payment from EIDL is based on the number of employees you have - \$1000/employee. How does that work if you have independent contractors?*

There are some theories floating around about how the EIDL advance will be calculated for recipients, but at this time the SBA has not released any official guidance. We will keep watching this issue and provide an update once guidance is issued.

*Would fishing licenses fees be covered under acceptable expenses?*

Under the PPP, the only allowable expenses to ensure the loan is forgiven are payroll (must account for 75% of the loan amount) and mortgage interest, rent, utilities, and interest on debts incurred before February 15, 2020 (cannot account for more than 25%). You could use the loan for fishing license fees, but that part of the loan would not be forgiven.

The allowable uses for an EIDL Advance are: paying sick leave to employees who can't work due to COVID-19, maintaining payroll to retain employees, meeting increased costs for materials due to supply chain disruptions, making rent or mortgage payments, and repaying obligations that can't be met due to revenue losses. Fishing license fees do not appear to fit in any of these categories.

EIDL loans in general have been allowed for payroll, fixed debts, and accounts payable.

*Would things like lowered prices for seafood products compared to the year prior count toward documenting an economic injury from COVID-19?*

Part of the documentation for proving a business has suffered a loss is showing the cost of goods sold for the 12 months prior to January 31, 2020 versus the cost currently. So, yes, it could be that a business could document that prices have been lowered and affected the business.

*Does the EIDL loan have a requirement on the number of employees the company has?*

To receive an EIDL loan, a business must have less than 500 employees. Sole proprietors, independent contractors, and self-employed individuals are all eligible, so there is no minimum employee requirement.

*Does the EIDL \$10K advance count as taxable revenue?*

No.

*Anyone know where you can get paper versions of the EIDL? I know the online process is much faster/efficient, but I've had a few fishermen ask where they can get the paper forms. I haven't found a link. Thanks.*

Contact your local SBA office to see if they have paper copies. If we find a link, we will let you know!

## **Miscellaneous:**

*The Maryland aquaculture shellfish industry had a less than stellar year last year due to a very long freshette. This will likely impact their financial performance over the last year. How would this be taken into account?*

To be eligible for both the PPP and EIDL, a business needs to have been affected by COVID-19. The SBA and lending banks will be looking for financial documents from the business that establish that it has suffered from COVID compared to 2019.

*In your opinion, who has the best graphics that describe the Pandemic Unemployment program?*

We are not currently aware of any infographics explaining the Pandemic Unemployment Assistance programs. That's a great idea though!

*Shellfish tend to take 2-4 years to reach market size before sales can happen. What about firms that have been in business last year, but their products were not market size last year, but are market size now, but can't be sold?*

To be eligible for both the PPP and EIDL, a business needs to have been affected by COVID-19. The SBA and lending banks will be looking for financial documents from the business that establish that it has suffered from COVID compared to 2019.

*Do applicants need to deduct and payroll monthly tax deductions from their salary calculations?*

Yes. The CARES Act excludes from the definition of payroll costs under the PPP "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." (Page 11 of the Interim Rule).