



PARTRIDGE SNOW & HAHN LLP

COVID-19 Advisory

How Do You Calculate Payroll for Your Paycheck Protection Program Loan Application?

The CARES Act, which was signed into law on March 27, 2020, created the *Paycheck Protection Program*, which allows eligible businesses to receive SBA loans equal to 2.5 times their average monthly payroll. Simple, right? Not exactly. Calculating payroll for purposes of a PPP loan is not as easy as just inserting the total payroll number from your payroll provider.

Pursuant to the CARES Act, payroll expenses exclusively include the sum of payments of any compensation with respect to employees that is a:

1. salary, wage, commission, or similar compensation;
2. payment of cash tip or equivalent;
3. payment for vacation, parental, family, medical, or sick leave;
4. allowance for dismissal or separation;
5. payment required for the provisions of group health care benefits, including insurance premiums;
6. payment of any retirement benefit; or
7. payment of State or local tax assessed on the compensation of employees; and
8. 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.

Certain items are expressly excluded from inclusion in the calculation of payroll. These items include the following:

1. the compensation of an individual employee in excess of an annual salary of \$100,000, as prorated for the covered period;
2. taxes imposed or withheld under chapters 21, 22, or 24 of the Internal Revenue Code of 1986 during the covered period;
3. any compensation of an employee whose principal place of residence is outside of the United States;
4. qualified sick leave wages for which a credit is allowed under section 7001 of the Families First Coronavirus Response Act; or

5. qualified family leave wages for which a credit is allowed under section 7003 of the Families First Coronavirus Response Act.

What does this all mean? The items included in payroll are fairly straightforward, but some of the exclusions are vague. First, employees with a salary over \$100,000 are likely not excluded from the calculation of payroll entirely. Instead, for purposes of the calculation, their pay is capped at \$100,000. This is not clear from the language of the CARES Act, but the SBA's proposed form of application refers to "excluding costs over \$100,000," which implies that the SBA agrees with the interpretation that this is a cap and not a complete exclusion. Second, "taxes imposed or withheld under chapters 21, 22, or 24 of the Internal Revenue Code of 1986" refers to Social Security and Medicare taxes, Railroad Retirement, and federal income tax, respectively. This means that Social Security, Medicare, and federal income taxes cannot be included in the calculation of payroll.

While we do not yet know what supporting documentation the SBA and/or lenders may require in order to process loan applications and issue loans, we would recommend compiling the following information now:

1. Copies of the last 18 months of quarterly and annual federal payroll filings.
2. Support for employer paid health insurance and retirement plan expenses paid for the last 12 months.
3. Prepared calculation of the average monthly payroll for the last 12 months.
4. Monthly payroll reports to support this calculation.
5. Documentation of the following expenses expected to be incurred for the two month period after the loan is disbursed to you:
 - a. Payroll and Benefit Costs
 - b. Rent payments
 - c. Mortgage interest (interest only, do not include principal)
 - d. Expected utility payments for electricity, gas, water, telephone, cable, etc.

Every business will have different circumstances, but with the above information in mind, you should be in a position to calculate your average monthly payroll by totaling the included items, deducting the excluded items, and dividing over the applicable payroll period to determine the average. We are encouraging clients to work with their CPAs and other financial advisors for assistance on completing the calculation, as each business will likely have nuances not addressed in this article. We would also recommend communicating with your lender now so that you can stay apprised of any new developments or requirements and submit a correct, complete application as soon as possible.

Partridge Snow & Hahn's **Business Law Group** is ready to answer questions and to provide advice on how to address general and specific business risks posed by the coronavirus. For additional current information and resources visit the firm's **COVID-19 Advisory Group** page.

Partridge Snow & Hahn LLP's Response to COVID-19:

The world is a different place than it was a few weeks ago. Partridge Snow & Hahn's top priority is still and will always be to ensure that our clients receive the same exacting level of service, responsiveness and expertise that we have delivered for more than thirty years. For some time, all of our attorneys have been equipped with the capability to work remotely. We are taking advantage of that preparedness now. Our attorneys are working remotely to help protect our people and our communities.

We are fully equipped, fully engaged and ready to help you with all of your legal needs, whatever they may be. We will continue to be responsive and on top of the issues you bring to us. For current information and resources visit Partridge Snow & Hahn's **COVID-19 Advisory Group** page.