

MONDAY, APRIL 6, 2020

# HOW BUSINESS BROKERS CAN CLAIM PERSONAL CASH BENEFITS FROM THE SBA



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# What Will Be Discussed Today

- Paycheck Protection Program
- General eligibility according to the CARES Act
- Interpretation (translation) of the Act and the IRS Code
- Eligibility individual agents and brokerage companies
- Calculation examples for various situations
- How to apply for a forgivable SBA Loan
- Q&A

# Eligible for Loan

- ▶ Small Business Concerns with 500 or fewer employees
- ▶ Sole Proprietors
- ▶ Independent Contractors
- ▶ Eligible Self-Employed Individuals

# Eligible for Loan

Was in operation on February 15, 2020; and

1. Had employees for whom the borrower paid salaries and payroll taxes; or paid independent contractors reported on a Form 1099-MISC;

OR

2. Operates as a sole proprietor, independent contract or eligible self-employed individual



# Eligible Self- Employed Individual

The CARES Act states:

An “eligible self-employed individual” is given the meaning as per Section 7002(b) of the Families First Coronavirus Response Act (“FFCRA”)

# Eligible Self- Employed Individual

- ▶ Per Section 7002(b) of the FFCRA – Eligible Self-Employed Individual means an individual who:
  - (1) regularly carries on any trade or business within the meaning of section 1402 of such Code, and
  - (2) would be entitled to receive paid leave during the taxable year pursuant to the Emergency Paid Sick Leave Act if the individual were an employee of an employer (other than himself or herself).

# Eligible Self- Employed Individual

- ▶ Pursuant to IRC Section 1402 and Treasury Regulation Section 1.402(c)-1, an Eligible Self-Employed Individual is someone deriving income from:

1. A sole proprietorship

**NOTE:** This includes a single member LLC owned by a person.

2. As a member of a partnership engaged in a trade or business to be included in net earnings from self-employment

**NOTE:** A multi-member LLC taxed as a partnership applies here also.



# Net Earnings From Self-Employment

- ▶ Per IRC 1402(a) - Net earnings from self-employment is subject to Self-Employment Tax. These earnings include:

1. An individual's gross income from any trade or business minus deductions attributable to the trade or business.

**NOTE:** This is reported in Federal Income Tax Return Form 1040 on Schedule C

2. An individual's distributive share from a partnership of which the individual is a member.

**NOTE:** This is derived from Federal Income Tax Return Form 1065 and reported to the partner on Form K-1.

## Eligible self-employed individual, independent contractor, or sole proprietorship documentation

- ▶ An eligible self-employed individual, independent contractor, or sole proprietorship seeking a covered loan shall submit documentation such as:
  - Payroll tax filings reported to the Internal Revenue Service,
  - Forms 1099–MISC,
  - Income and expenses from the sole proprietorship,
  - Other as necessary to establish such individual as eligible

**NOTE:** Form K-1 from Federal Income Tax Return Form 1065 falls into the “Other” category

# Payroll Costs - Allowed

- ▶ Gross salary, wages and commissions, or similar compensation
- ▶ Cash tips or the equivalent
- ▶ Vacation, parental, family, medical or sick leave
- ▶ Allowance for separation or dismissal
- ▶ Group health care coverage including insurance premiums
- ▶ Retirement plan contributions from employer
- ▶ Payment of state and local taxes assessed on compensation of employees (i.e. SUTA)
- ▶ and for an independent contractor or sole proprietor, wage, commissions, income, or net earnings from self-employment or similar compensation.

# Payroll Costs – Not Allowed

- ▶ Compensation of an employee whose principal place of residence is outside the United States
- ▶ An employee's gross compensation in excess of \$100,000
- ▶ Federal employment tax imposed on compensation (i.e. FUTA, FICA, etc.)
- ▶ Qualified sick and family leave wages for which a credit is **allowed** under the Families First Coronavirus Response act

# Payments to Independent Contractors

- ▶ Independent contractors **DO NOT** count as employees

**NOTE:** Independent contractors file for their own PPP loan.

# Sole Proprietor – Form 1040 Schedule C

| <b>SCHEDULE C</b><br>(Form 1040 or 1040-SR)   |  | <b>Profit or Loss From Business</b><br>(Sole Proprietorship)  |   | OMB No. 1545-0074                     |  |
|---|--|---|---|---------------------------------------|--|
| Department of the Treasury<br>Internal Revenue Service (99)   |  | ▶ Go to <a href="http://www.irs.gov/ScheduleC">www.irs.gov/ScheduleC</a> for instructions and the latest information. |   | 2019<br>Attachment<br>Sequence No. 09 |  |
| ▶ Attach to Form 1040, 1040-SR, 1040-NR, or 1041; partnerships generally must file Form 1065.   |  |   |   |                                       |  |
| Name of proprietor  |  |   | Social security number (SSN)            |                                       |  |
| A Principal business or profession, including product or service (see instructions)   |  |   | B Enter code from instructions<br>▶     |                                       |  |
| C Business name. If no separate business name, leave blank.   |  |   | D Employer ID number (EIN) (see instr.) |                                       |  |
| E Business address (including suite or room no.) ▶<br>City, town or post office, state, and ZIP code  |  |   |   |                                       |  |
| 31 Net profit or (loss). Subtract line 30 from line 29. <ul style="list-style-type: none"><li>• If a profit, enter on both <b>Schedule 1 (Form 1040 or 1040-SR), line 3</b> (or <b>Form 1040-NR, line 13</b>) and on <b>Schedule SE, line 2</b>. (If you checked the box on line 1, see instructions). Estates and trusts, enter on <b>Form 1041, line 3</b>.</li><li>• If a loss, you <b>must</b> go to line 32.</li></ul> |  |   | 31                                      |                                       |  |

**NOTE:** Applies to both sole proprietors of businesses operating as a sole proprietorship and independent contactors.



## Partner and Member in LLC taxed as a partnership

Schedule K-1  
(Form 1065)  
Department of the Treasury  
Internal Revenue Service

2019

For calendar year 2019, or tax year  
beginning / / 2019 ending / /

Partner's Share of Income, Deductions,  
Credits, etc. ▶ See back of form and separate instructions.

Part I Information About the Partnership

A Partnership's employer identification number

B Partnership's name, address, city, state, and ZIP code

L Partner's Capital Account Analysis

Beginning capital account . . . \$

Capital contributed during the year . . . \$

Current year net income (loss) . . . \$

Other increase (decrease) (attach explanation) \$

Withdrawals & distributions . . . \$( )

Ending capital account . . . \$

Final K-1

Amended K-1

OMB No. 1545-0123

Part III Partner's Share of Current Year Income,  
Deductions, Credits, and Other Items

1 Ordinary business income (loss) 15 Credits

2 Net rental real estate income (loss)

3 Other net rental income (loss) 16 Foreign transactions

4a Guaranteed payments for services

4b Guaranteed payments for capital

4c Total guaranteed payments

14 Self-employment earnings (loss)

21 More than one activity for at-risk purposes\*

22 More than one activity for passive activity purposes\*

\*See attached statement for additional information.

**NOTE:** Applicable pass-through income is the income subject to self-employment tax.

# PPP Loan Calculation – General

|  |            |
|--|------------|
| Prior twelve months aggregate payroll cost           | \$XX,XXX   |
| Less: Amount in excess of \$100,000 for any employee | (     XXX) |
|  | -----      |
| Adjusted Payroll Costs                               | \$XX,XXX   |
| Divided by 12  | ÷ 12       |
|  | -----      |
| Average Monthly Payroll Cost                         | \$ X,XXX   |
| Multiplied by CARES Act multiplier                   | × 2.5      |
|  | -----      |
| PPP Loan Amount                                      | \$XX,XXX   |
|  | =====      |

# PPP Loan Calculation – Sole Proprietor, Independent Contractor or Eligible Self-Employed Individual

|                                     |            |
|-------------------------------------|------------|
| Prior twelve months Net Earnings    | \$XX,XXX   |
| Less: Amount in excess of \$100,000 | (    XXX)  |
|                                     | -----      |
| Adjusted Net Earnings               | \$XX,XXX   |
| Divided by 12                       | ÷ 12       |
|                                     | -----      |
| Average Monthly Net Earnings        | \$   X,XXX |
| Multiplied by CARES Act multiplier  | × 2.5      |
|                                     | -----      |
| PPP Loan Amount                     | \$XX,XXX   |
|                                     | =====      |

# Broker Office – Sole Proprietorship

## Facts:

- ▶ Prior Twelve-Month Payroll: \$60,000
- ▶ Excess Payroll: \$0
- ▶ Twelve Month Net Profit: \$180,000
- ▶ Excess Net Profit: \$80,000

|                                    |                 |                         |
|------------------------------------|-----------------|-------------------------|
| Prior Twelve Month Payroll:        | \$ 60,000       |                         |
| Twelve Month Net Profit            | <u>180,000</u>  | \$ 240,000              |
| Less: Excess Payroll               | 0               |                         |
| Excess Net Profit                  | <u>(80,000)</u> | <u>(80,000)</u>         |
| Adjusted Payroll                   |                 | 160,000                 |
|                                    |                 | ÷ <u>12</u>             |
| Average Monthly Payroll            |                 | 13,333                  |
| Multiplied by CARES Act Multiplier | ×               | 2.5                     |
| PPP Loan Amount                    |                 | <u><u>\$ 33,333</u></u> |

# Broker Agent – Sole Proprietor / Independent Contractor

## Facts:

- ▶ Prior Twelve-Month Payroll: \$0
- ▶ Excess Payroll: \$0
- ▶ Twelve Month Net Profit: \$140,000
- ▶ Excess Net Profit: \$40,000

|                                    |    |                 |                         |
|------------------------------------|----|-----------------|-------------------------|
| Prior Twelve Month Payroll:        | \$ | 0               |                         |
| Twelve Month Net Profit            |    | <u>140,000</u>  | \$ 140,000              |
| Less: Excess Payroll               |    | 0               |                         |
| Excess Net Profit                  |    | <u>(40,000)</u> | <u>(40,000)</u>         |
| Adjusted Payroll                   |    |                 | 100,000                 |
|                                    |    |                 | ÷ <u>12</u>             |
| Average Monthly Payroll            |    |                 | 8,333                   |
| Multiplied by CARES Act Multiplier |    | ×               | 2.5                     |
| PPP Loan Amount                    |    |                 | <u><u>\$ 20,833</u></u> |

# Broker Office – LLC Taxed as a Partnership (Form 1065)

## Facts:

- ▶ Prior Twelve-Month Payroll: \$150,000
- ▶ Excess Payroll: \$0
- ▶ Twelve Month Net Profit: Not Applicable
- ▶ Excess Net Profit: Not Applicable

|                                    |            |                         |
|------------------------------------|------------|-------------------------|
| Prior Twelve Month Payroll:        | \$ 150,000 |                         |
| Other                              | <u>0</u>   | \$ 150,000              |
| Less: Excess Payroll               | 0          |                         |
| Other                              | <u>0</u>   | <u>0</u>                |
| Adjusted Payroll                   |            | 150,000                 |
|                                    |            | ÷ <u>12</u>             |
| Average Monthly Payroll            |            | 12,500                  |
| Multiplied by CARES Act Multiplier | ×          | 2.5                     |
| PPP Loan Amount                    |            | <u><u>\$ 31,250</u></u> |



# LLC Member – LLC Form 1065 Form K-1 Pass Through

## Facts:

- ▶ Prior Twelve-Month Payroll: \$0
- ▶ Excess Payroll: \$0
- ▶ Twelve Month SE Income: \$90,000
- ▶ Excess SE Income: \$0

SE = Self Employment Income

|                                    |    |               |                         |
|------------------------------------|----|---------------|-------------------------|
| Prior Twelve Month Payroll:        | \$ | 0             |                         |
| Twelve Month SE Income             |    | <u>90,000</u> | \$ 90,000               |
| Less: Excess Payroll               |    | 0             |                         |
| Excess SE Income                   |    | <u>0</u>      | <u>0</u>                |
| Adjusted Payroll                   |    |               | 90,000                  |
|                                    |    | ÷             | <u>12</u>               |
| Average Monthly Payroll            |    |               | 7,500                   |
| Multiplied by CARES Act Multilpier |    | ×             | 2.5                     |
| PPP Loan Amount                    |    |               | <u><u>\$ 18,750</u></u> |

# Broker Office – S Corporation (Form 1120-S)

## Facts:

- ▶ Prior Twelve-Month Payroll: \$55,000
- ▶ Excess Payroll: \$0
- ▶ Twelve Month Net Profit: Not Applicable
- ▶ Excess Net Profit: Not Applicable

|                                    |           |                         |
|------------------------------------|-----------|-------------------------|
| Prior Twelve Month Payroll:        | \$ 55,000 |                         |
| Other                              | <u>0</u>  | \$ 55,000               |
| Less: Excess Payroll               | 0         |                         |
| Other                              | <u>0</u>  | <u>0</u>                |
| Adjusted Payroll                   |           | 55,000                  |
|                                    |           | ÷ <u>12</u>             |
| Average Monthly Payroll            |           | 4,583                   |
| Multiplied by CARES Act Multiplier | ×         | 2.5                     |
| PPP Loan Amount                    |           | <u><u>\$ 11,458</u></u> |

# Shareholder – S Corporation Form 1120-S Form K-1 Pass Through

## Facts:

- ▶ Prior Twelve-Month Payroll: \$0
- ▶ Excess Payroll: \$0
- ▶ Twelve-Month PT Income: \$90,000
- ▶ Excess PT Income: \$0

PT = Pass-Through Income

|                                    |    |          |                    |
|------------------------------------|----|----------|--------------------|
| Prior Twelve Month Payroll:        | \$ | 0        |                    |
| Twelve Month PT Income             |    | <u>0</u> | \$ 0               |
| Less: Excess Payroll               |    | 0        |                    |
| Excess PT Income                   |    | <u>0</u> | <u>0</u>           |
| Adjusted Payroll                   |    |          | 0                  |
|                                    |    | ÷        | <u>12</u>          |
| Average Monthly Payroll            |    |          | 0                  |
| Multiplied by CARES Act Multiplier |    | ×        | 2.5                |
| PPP Loan Amount                    |    |          | <u><u>\$ -</u></u> |

# Broker Office – C Corporation (Form 1120)

## Facts:

- ▶ Prior Twelve-Month Payroll: \$240,000
- ▶ Excess Payroll: \$80,000
- ▶ Twelve Month Net Profit: Not Applicable
- ▶ Excess Net Profit: Not Applicable

|                                    |            |                         |
|------------------------------------|------------|-------------------------|
| Prior Twelve Month Payroll:        | \$ 240,000 |                         |
| Other                              | <u>0</u>   | \$ 240,000              |
| Less: Excess Payroll               | (80,000)   |                         |
| Other                              | <u>0</u>   | <u>(80,000)</u>         |
| Adjusted Payroll                   |            | 160,000                 |
|                                    |            | ÷ <u>12</u>             |
| Average Monthly Payroll            |            | 13,333                  |
| Multiplied by CARES Act Multilpier | ×          | 2.5                     |
| PPP Loan Amount                    |            | <u><u>\$ 33,333</u></u> |

# Eligible use of loan proceeds

- ▶ Payroll costs
- ▶ Mortgage interest payments
- ▶ Rent payments
- ▶ Utility payments
- ▶ Interest payments on any other debt obligations

**NOTE:** At least 75% of PPP loan proceeds must be used for payroll.

# Paycheck Protection Program Application Form



## Paycheck Protection Program Borrower Application Form

OMB Control No.: 3245-0407  
Expiration Date: 09/30/2020

|  |    |  |                       |
|--|----|--|-----------------------|
| <b>Check One:</b> <input type="checkbox"/> Sole proprietor <input type="checkbox"/> Partnership <input type="checkbox"/> C-Corp <input type="checkbox"/> S-Corp <input type="checkbox"/> LLC<br><input type="checkbox"/> Independent contractor <input type="checkbox"/> Eligible self-employed individual<br><input type="checkbox"/> 501(c)(3) nonprofit <input type="checkbox"/> 501(c)(19) veterans organization<br><input type="checkbox"/> Tribal business (sec. 31(b)(2)(C) of Small Business Act) <input type="checkbox"/> Other |    | <b>DBA or Tradename if Applicable</b>                                |                       |
| <b>Business Legal Name</b>   |    |  |                       |
|  |    |  |                       |
| <b>Business Address</b>  |    | <b>Business TIN (EIN, SSN)</b>                                       | <b>Business Phone</b> |
|  |    |  | (   )   -             |
|  |    | <b>Primary Contact</b>   | <b>Email Address</b>  |
|  |    |  |                       |
| <b>Average Monthly Payroll:</b>  | \$ | x 2.5 + EIDL, Net of Advance (if Applicable)<br>Equals Loan Request: | \$                    |
| <b>Number of Employees:</b>  |    |  |                       |
| <b>Purpose of the loan</b><br>(select more than one):  |    |  |                       |
| <input type="checkbox"/> Payroll <input type="checkbox"/> Lease / Mortgage Interest <input type="checkbox"/> Utilities <input type="checkbox"/> Other (explain): _____   |    |  |                       |



# Other

- ▶ Pandemic Unemployment Assistance

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MONDAY, APRIL 6, 2020

# Q&A