

A Guide to the SBA Loan Programs

For Statutory W2 Employees and Independent Contractors

Updated: April 24, 2020

If you receive wages as a so-called “statutory” W2 employee or otherwise as an independent contractor, you are eligible for both the Paycheck Protection Program (PPP) loans and its loan forgiveness program, and also the SBA’s Economic Injury Disaster Loan (EIDL) program, specifically for losses of income or disruption of operations related to the COVID pandemic.



1. If I receive income as a “statutory” W2 employee or otherwise as an independent contractor, and I have no employees, am I still eligible for the PPP loan and loan forgiveness?

Yes, you are eligible for the PPP loan and loan forgiveness to maintain operations and cover owner compensation replacement during the COVID pandemic.

2. The lender has denied my PPP loan application because I receive income as a “statutory” W2 employee. How can I justify my application?

According to recent SBA guidance, an individual is eligible to apply for a PPP loan if all of the following are true:

- a. You were in operation on February 15, 2020.
- b. Your primary place of residence is the United States.
- c. You filed or will file a Form 1040 Schedule C for 2019.

Within the meaning of the Tax Code, statutory W2 employees are treated as being engaged in a trade or business and they must file a Schedule C form (see, for example, page C-5 of the IRS instructions for Schedule C [here](#)). Unless they would be an employee regardless of the statutory designation (i.e., a so-called “common law employee”), statutory W2 employees are only subject to FICA taxation as a deemed employee, but are not an employee in the true sense (e.g., for purposes of wage withholding).

Thus, a statutory W2 employee is merely a tax construct to describe an otherwise independent professional whose income is subject to FICA taxation (as opposed to SECA taxation). Given that an individual who receives income as a statutory W2 employee must file a Schedule C, this individual should be eligible for the PPP loan provided that the individual meets both of the requirements of a and b above.

3. What type of documentation are lenders looking for?

First, you will need to fill out the PPP application form available [here](#). The lender may also look for the following:

- a. 2019 Form 1040 Schedule C can be found [here](#) (you are required to submit a draft 2019 Form 1040 Schedule C even if you have not filed with the IRS).
- b. A 2019 1099-MISC [here](#), invoice, bank statement, or book of record that shows self-employment in 2019.
- c. A 2020 invoice, bank statement, or record declaring that you were in operation before February 15, 2020.

4. How do I calculate the maximum loan as a “statutory” W2 or otherwise as an independent contractor?

Per the applicable SBA/Treasury guidance, the maximum PPP loan for a self-employed individual is calculated the following way:

- a. Step 1: Find your 2019 IRS Form 1040 Schedule C line 31 net profit amount (if you have not yet filed a 2019 return, fill it out and compute the value). If this amount is over \$100,000, reduce it to \$100,000.
- b. Step 2: Calculate the average monthly net profit amount (divide step 1 by 12).
- c. Step 3: Multiply the average monthly net profit amount from Step 2 by 2.5.
- d. The result is your maximum loan amount.

5. What are the permissible uses of the PPP loan?

The PPP loan can be used for:

- a. Owner compensation replacement based on the 2019 net profit (from your schedule C);
- b. To pay interest on a business mortgage or loan; make business rent payments;
- c. To make business utility payments; and
- d. To make interest payments on any other debt incurred before February 15, 2020 (these payments may not be eligible for loan forgiveness).

6. How do I calculate the maximum loan forgiveness?

The SBA/Treasury guidance for self-employed individuals clarifies that the individual is eligible for owner compensation replacement during the eight-week period accounted for loan forgiveness. For the person described in the question above, the following are the items that give rise to loan forgiveness:

- a. Owner compensation replacement is calculated by taking your 2019 Schedule C line 31 net profit and dividing it by 52, then multiplying that number by 8.
- b. Payments of interest on mortgage obligations on real or personal property incurred before February 15, 2020, to the extent they are deductible on Form 1040 Schedule C (i.e., business mortgage payments) for the 8-week period.
- c. Business rent payments for the 8-week period (if included in Schedule C) on leases in force before February 15, 2020.
- d. Utility payments for the 8-week period (if included in Schedule C) on service agreements dated before February 15, 2020.

7. Am I eligible for the EIDL program as a “statutory” W2 employee or otherwise as an independent contractor?

Yes, the CARES Act allows independent contractors and the self-employed to apply for the EIDL loans during the COVID pandemic. In addition, you can apply for and receive both a PPP loan and an EIDL loan, as long as the funds are used for separate purposes.

Note: This brief incorporated information from official guidance provided by Treasury and the SBA. Every lending institution is different and may request additional documentation.

Please share your experience with us by contacting Alex Cisneros at cisneros@aalu.org. Your feedback helps us improve our guidance to the profession and advocacy on your behalf. In particular, we would appreciate hearing about which institutions understand statutory W2 and are approving loans.