



# Equipment Dealers ASSOCIATION

TO: Equipment Dealer's Association Dealer Members  
FROM: EDA's Legal Counsel - Polsinelli PC  
SUBJECT: Paycheck Protection Program  
DATE: April 27, 2020

**DISCLAIMER:**  
**THE FOLLOWING A GENERAL SUMMARY AND SHOULD NOT BE CONSTRUED AS LEGAL ADVICE. YOU SHOULD CONSULT WITH THE ATTORNEYS OF YOUR CHOICE WHO CAN PROVIDE GUIDANCE ON HOW THESE PROVISIONS WILL IMPACT YOUR DEALERSHIP.**

## 1. Facts

Founded in 1900, the Equipment Dealers Association (EDA), is a non-profit trade organization representing retail dealers extensively engaged in the sale and service of agricultural, construction, industrial, forestry, outdoor power, lawn and garden, and/or turf equipment. EDA provides essential value to its members by enhancing the dealer-manufacturer relationship and advocating for a positive legislative and regulatory environment. EDA is headquartered in St. Louis, MO and is affiliated with regional associations located throughout the United States and Canada. EDA asked Polsinelli to provide an overview of eligibility for the Paycheck Protection Program ("PPP"), as well as what loan amounts a business is eligible for.

## 2. Eligibility

In order to be eligible for the PPP, a business, when aggregated with its affiliates, must (a) have less than 500 employees; or (b) be a small business as determined by its NAICS code or the alternative size test. A business must also certify that it has an economic need for the funds. Please note that a business in bankruptcy is ineligible for PPP loans. Each business (separate EIN) that is eligible for the PPP may apply for a loan.

### A. Affiliation:

A business must determine if it has an affiliates, as this will factor into the business's eligibility. Affiliation is ultimately a question of control, and is typically found based on ownership and management. *Please note that this is a fact specific inquiry.*

- **Affiliation based on ownership:** For determining affiliation based on equity ownership, a business is an affiliate of an individual, concern, or entity that owns or has the power to control more than 50% of the business's voting equity. If no

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individual or entity is found to control, SBA will deem the Board of Directors, President or CEO (or other officers, managing members, or partners who control the management of the concern) to be in control. SBA will deem a minority shareholder to be in control, if that individual or entity has the ability to prevent a quorum or otherwise block action by the board of directors or shareholders. *Please note that stock options, convertible securities and agreements to merge will have present effect unless they are subject to conditions precedent which are incapable of fulfillment, speculative, or unenforceable.*

- For EDA dealers that have separate EINs for each location but the same parent or holding company, all of those locations will be considered affiliates.
- **Affiliation based on management:** Affiliation arises where the CEO or President of the business (or other officers, managing members, or partners who control the management of the business) also controls the management of one or more other businesses. Affiliation also arises where a single individual or entity that controls the Board of Directors or management of one business also controls the Board of Directors or management of one of more other businesses. Affiliation also arises where a single individual or entity controls the management of the business through a management agreement.
  - For EDA dealers that do not own multiple entities but provide all of the management services to multiple entities, those entities will be considered of each other.

## B. Less than 500 employees

- **Step 1:** Determine the business's average monthly domestic employees (both part-time and full-time) in 2019 or the trailing 12 months.
- **Step 2:** Determine the average monthly domestic employees of its affiliates (both part-time and full-time) in 2019 or the trailing 12 months.
- **Step 3:** Add the amounts in Step 1 and Step 2, that will be the number of employees that the business has for purposes of eligibility. If that number is less than 500, the business is eligible. If that number is more than 500, the business is not eligible *unless* it is a small business.

## C. Small Business:

### a. *NAICS Code*

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- **Step 1:** Determine the business's NAICS code is (should be on the business's tax returns).
- **Step 2:** Determine the NAICS code of any of its affiliates.
- **Step 3:** Determine the primary industry of the business and the affiliates. For example, if, when combined with affiliates, 60% of the combined business is oil refining and 40% of the combined business is dealing farm equipment then the primary industry would be oil refining.
- **Step 4:** Once the NAICS code of the business and the NAICS code of the business and its affiliates is determined, the business should input the codes on the [SBA website](#). The website will tell the business if it, when combined with its affiliates, is a small business using either of the NAICs codes. If the business, when combined with its affiliates, is a small business then it is eligible for a PPP loan.

## b. *Alternative Size Test*

- **Step 1:** Determine the tangible net worth of the business and its affiliates. Tangible net worth is all business assets minus liabilities minus intangible assets (goodwill and intellectual property such as proprietary technology or designs). If the net worth is more than \$15 million, then you are not eligible under this test. If it is less than \$15 million, then proceed to Step 2.
- **Step 2:** Determine the average net income after Federal income taxes (excluding carryover losses) of the business and its affiliates for the past full two fiscal years. If the average net income is more than \$5 million, then you are not eligible under this test. If it is less than \$5 million, then you are eligible for a PPP loan.

## D. Economic Need

A business must certify that the “current economic uncertainty makes this loan request necessary to support the ongoing operations of the business.” Business need to make this certification in good faith, taking into account their current business activity and their ability to access other sources of liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business. The U.S. Department of Treasury guidance noted that a public company with a substantial market value and access to capital markets would be unlikely to make such a certification.

## 3. Maximum Loan Amount

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The U.S. Department of Treasury issued guidance on April 25 on how to calculate the maximum loan amount by entity type. The maximum loan amount is calculated by EIN. *Please note that the W-2 employer should be the applicant. Leasing employees is not sufficient to demonstrate payroll.*

A. For C-corporations, S-corporations or LLCs that file as corporations

- **Step 1:** Compute 2019 payroll costs by adding the following:
  - 2019 gross wages and tips paid to your employees whose principal place of residence is in the United States, which can be computed using 2019 IRS Form 941 Taxable Medicare wages & tips (line 5c-column 1) from each quarter plus any pre-tax employee contributions for health insurance or other fringe benefits excluded from Taxable Medicare wages & tips, subtracting any amounts paid to any individual employee in excess of \$100,000 and any amounts paid to any employee whose principal place of residence is outside the U.S;
  - 2019 employer health insurance contributions (portion of IRS Form 1120 line 24 or IRS Form 1120-S line 18 attributable to health insurance);
  - 2019 employer retirement contributions (IRS Form 1120 line 23 or IRS Form 1120-S line 17); and
  - 2019 employer state and local taxes assessed on employee compensation, primarily state unemployment insurance tax (from state quarterly wage reporting forms).
- **Step 2:** Calculate the average monthly payroll costs (divide the amount from Step 1 by 12)
- **Step 3:** Multiply the average monthly payroll costs from Step 2 by 2.5
- **Step 4:** Add the outstanding amount of any EIDL made between January 31, 2020 and April 3, 2020 that you seek to refinance, less the amount of any advance under an EIDL COVID-19 loan (because it does not have to be repaid).

B. For LLCs that file as a partnership

- **Step 1:** Compute 2019 payroll costs by adding the following:

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- 2019 Schedule K-1 (IRS Form 1065) Net earnings from self-employment of individual U.S. based general partners that are subject to self-employment tax, computed from box 14a (reduced by any section 179 expense deduction claimed, unreimbursed partnership expenses claimed, and depletion claimed on oil and gas properties) multiplied by 0.9235, up to \$100,000 per partner (if 2019 schedules have not been filed, fill them out);
  - 2019 gross wages and tips paid to your employees whose principal place of residence is in the United States, which can be computed using 2019 IRS Form 941 Taxable Medicare wages & tips (line 5c-column 1) from each quarter plus any pre-tax employee contributions for health insurance or other fringe benefits excluded from Taxable Medicare wages & tips, subtracting any amounts paid to any individual employee in excess of \$100,000 and any amounts paid to any employee whose principal place of residence is outside the U.S;
  - 2019 employer health insurance contributions (portion of IRS Form 1065 line 19 attributable to health insurance);
  - 2019 employer retirement contributions (IRS Form 1065 line 18); and
  - 2019 employer state and local taxes assessed on employee compensation, primarily state unemployment insurance tax (from state quarterly wage reporting forms).
- **Step 2:** Calculate the average monthly payroll costs (divide the amount from Step 1 by 12)
  - **Step 3:** Multiply the average monthly payroll costs from Step 2 by 2.5
  - **Step 4:** Add the outstanding amount of any EIDL made between January 31, 2020 and April 3, 2020 that you seek to refinance, less the amount of any advance under an EIDL COVID-19 loan (because it does not have to be repaid).

## C. For LLCs that file as a sole proprietor

- **Step 1:** Compute 2019 payroll costs by adding the following:
  - 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; and if this amount is less than zero, set this amount at zero;

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- 2019 gross wages and tips paid to your employees whose principal place of residence is in the United States, which can be computed using 2019 IRS Form 941 Taxable Medicare wages & tips (line 5c-column 1) from each quarter plus any pre-tax employee contributions for health insurance or other fringe benefits excluded from Taxable Medicare wages & tips, subtracting any amounts paid to any individual employee in excess of \$100,000 and any amounts paid to any employee whose principal place of residence is outside the U.S;
  - 2019 employer health insurance contributions (portion of IRS Form 1040 Schedule line 14 attributable to health insurance);
  - 2019 employer retirement contributions (IRS Form 1040 Schedule C line 19); and
  - 2019 employer state and local taxes assessed on employee compensation, primarily state unemployment insurance tax (from state quarterly wage reporting forms).
- **Step 2:** Calculate the average monthly payroll costs (divide the amount from Step 1 by 12)
  - **Step 3:** Multiply the average monthly payroll costs from Step 2 by 2.5
  - **Step 4:** Add the outstanding amount of any EIDL made between January 31, 2020 and April 3, 2020 that you seek to refinance, less the amount of any advance under an EIDL COVID-19 loan (because it does not have to be repaid).

The Equipment Dealers Association (EDA) and Polsinelli, one of EDA's trusted industry partners, are hosting a free webinar for EDA's members on dealer eligibility for Paycheck Protection Program (PPP) loans. This webinar will be presented by Matthew Layfield, Sara Ainsworth and Phil Feigen on Tuesday, April 28<sup>th</sup> at 10:00am (Central).

- **DATE: Tuesday, April 28, 2020**
- **TIME: 10:00am (Central)**
- **[CLICK HERE TO REGISTER NOW](#)**

Remember, EDA Members also have access to our legal hotline. Natalie Higgins, EDA's general counsel, is a practicing labor and employment attorney who can assist dealers with implementation questions. Email Natalie at [nhiggins@equipmentdealer.org](mailto:nhiggins@equipmentdealer.org).

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