Cornell Cooperative Extension
Eastern NY Commercial Horticulture Program

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Central New York Dairy, Livestock and Field Crops

April 8th Update to the Paycheck Protection Program (PPP) – Where the only constant is change!

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Since Liz's last PPP article (was it only last Friday?), there have been some updates to the PPP and we are seeing it start to roll out across the state. This program has been extremely popular! The PPP is also first come first served, so we encourage farmers whose markets are looking iffy due to COVID-19 or who may be facing cash-flow problems this season to seriously consider applying soon. All loans need to be finalized by June 30, 2020, so time is of the essence and lenders will be very busy. Because of demand, It is likely that Congress will authorize another round of funding, so there is still an opportunity to participate if you are hearing rumors about the funding running out. Most businesses, including sole proprietors were eligible to apply as of April 3. Contractors and self-employed individuals without any employees are eligible to apply starting on April 10th.

Each business can only receive 1 PPP loan, so you should think through your farm's cash-flow needs this season for payroll, rent, utilities and mortgage interest and budget accordingly. The maximum loan amount your business can receive is calculated as 2.5 x your monthly average payroll expense in 2019 – up to $10 million. A suggestion from a lender, as a rule of thumb for thinking about your loan size, is to take your payroll for 1 month, multiply that by 2.5 and then by 25%. This will help you ballpark what you should ask for.

What is also attractive about this program, that maybe wasn't clear enough in earlier outreach publications, is that sole proprietors (which includes LLCs that are not organized as corporations), contractors and the self-employed (with no employees) can use their net farm income (the net income in their 2019 Schedule F or Schedule C, depending on the business) towards the owner's "wages" for the purpose of this program, up to the $100,000 salary limit. This program could be a huge help to small farm businesses, like many of our regions CSAs and farms who sell to restaurants or do agritourism, who anticipate a decline in revenue this year!

This program is a bit of a land rush. If you want to participate, you will need to be persistent and keep trying to find a lender to work with. Not all lenders are participating in the program yet, and some are limited in how many loans they can handle. Check with all of the banks you have a relationship with, including a deposit relationship as most banks are requiring that your farm has at least a checking account with them to get started. Also, when you go to a bank, you need to have all of your information ready. Look at the sample application on SBA's website to get a sense of what documentation you will need. https://www.sba.gov/document/sba-form--paycheck-protection-program-borrower-application-form. Check out your bank's website to see what information they have up as some banks have additional forms they want completed. We looked at a few bank websites and the PPP is generally listed under "Business Banking".

New Information and Changes

The SBA did issue an interim rule for the program (https://www.sba.gov/sites/default/files/2020-04/PPP--IFRN%20FINAL_0.pdf) and a new FAQ has been released, dated April 6, 2020 (https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequenty-Asked-Questions.pdf) , which helps to provide some additional guidance to the program.

The biggest change from initial information was the interest rate increased from .5% to 1%. The interim rule also made it clear that the amount of the loan that can be forgiven for utility, rent and mortgage interest payments is capped at 25%, 75% must go towards eligible payroll expenses. Still, not a bad deal overall, even for the portion that isn't forgiven – at 1% interest, with no fees, and 100% federal guarantee, you would be hard pressed to get more favorable terms on a loan.

You will not have to make any payments for six months following the date of disbursement of the loan. However the interim guidance makes it clear that interest will continue to accrue on PPP loans during this six-month deferment.

I had some questions from folks about whether only US citizens are eligible for the loans from groups that work with refugee and immigrant farmers. Anyone eligible for SBA 7(a) loans is eligible for this program, and there are some additional groups that can participate in the PPP program, like non-profits. So, refugees, green card holders and other folks who are in the US legally can participate in this program. Eligibility for the 7(a) program can be found https://www.sba.gov/document/sop-50-10-5-lender-development-company-loan-programs.

There are some grey areas still. For loan forgiveness the PPP requires you to maintain the same number of positions (based on full time equivalents (FTE)) as last year, but there is no definition of the number of hours in an FTE. Based on other sections of the CARES Act and other federal programs, it would be reasonable to assume that 30 hours is the FTE rate, and many groups that are educating their members about the program are using that number, but that has not been clarified by SBA. Because loan forgiveness is based on the employer maintaining or quickly rehiring employees and maintaining salary levels knowing your initial FTE is important. Forgiveness will be reduced if full-time headcount declines, or if salaries and wages decrease.

Another grey area is whether or not the salaries of H2A workers who meet the resident alien test would be eligible. The language only says that payroll does not include "Any compensation of an employee whose principal place of residence is outside of the United States", but principle place of residence is not defined. One test for this could potentially be federal income tax filing requirements for resident vs non-resident. This is TBD, but most lenders right now will probably NOT include H2A in your monthly payroll estimate.

There are differences between what is counted in payroll costs (from 2019) to determine the size of the loan and what is counted in eligible payroll costs for use of the loan funds in 2020. Excluded from payroll costs in the interim rule for both the loan size calculation and from loan payments are:

- Any compensation of an employee whose principal place of residence is outside of the United States; so your employees who are not US citizens but whose principle place of residence is the US would likely be eligible. This would seem to exclude most H2A workers, but there are some H2A workers who meet the IRS test as a resident alien, so there are some grey areas. One test for this could be federal income tax filing requirements for resident vs non-resident alien. This is TBD, but most lenders will probably NOT include H2A in your monthly payroll estimate right now.

- The compensation of an individual employee in excess of an annual salary of $100,000, prorated as necessary. This includes the incomes of sole proprietors on the schedule C or F above $100,000.

These expenses can be used to calculate the loan amount, but loan dollars cannot be used to pay these costs in 2020:

- 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 income taxes required to be withheld from employees (for reimbursement – basically the feds aren't going to pay your taxes for you); and
- Qualified sick and family leave wages for which a credit is allowed under sections 7001 and 7003 of the Families First Coronavirus Response Act (Public Law 116–127) (this would be double-dipping).

Average monthly payroll cost is equal to

- Gross wages and salary paid to employees (not including any payments to independent contractors) for all of 2019. Cap this at $100,000 per employee.
- For sole proprietors, the "wages" for the owner(s) would be their net farm income on their Schedule F or Schedule C, capped at $100,000, per Schedule F or Schedule C. So, if you are a married couple filing jointly with one Schedule F, the income cap for owner wages would most likely be $100,000 for both of you.
- Payments for vacation, parental, family, medical or sick leave for all employees.
- Allowance for dismissal or separation.
- Payment for group medical insurance.
- Payments of retirement benefits (from the business).
- Payment of state or local tax assessed on employees.
- Reduce this sum by the amount paid to any employee whose principal place of residence is outside the US. (you do not remove your expenses for their workman's comp or disability insurance or benefits).

For purposes of calculating "Average Monthly Payroll," most applicants will use the average monthly payroll for 2019, excluding costs over $100,000 on an annualized basis for each employee. For seasonal businesses, the Applicant may elect to instead use average monthly payroll for the time period between February 15, 2019 and June 30, 2019, excluding costs over $100,000 on an annualized basis for each employee. For new businesses, average monthly payroll may be calculated using the time period from January 1, 2020 to February 29, 2020, excluding costs over $100,000 on an annualized basis for each employee.