



**The CARES Act excludes from the definition of payroll costs any employee compensation in excess of an annual salary of \$100,000. Does that exclusion apply to all employee benefits of monetary value?**

**Answer:** No. The exclusion of compensation in excess of \$100,000 annually applies only to cash compensation, not to non-cash benefits, including employer contributions to defined-benefit (Cash Balance) or defined-contribution retirement plans; payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums; and payment of state and local taxes assessed on compensation of employees.

**What time period should borrowers use to determine their number of employees and payroll costs to calculate their maximum loan amounts?**

**Answer:** In general, borrowers can calculate their aggregate payroll costs using calendar year 2019. Applicants may use their average employment over the same time periods to determine the numbers of employees. An applicant not in business for the period between 2/15/19 and 6/30/19 may use the average payroll for the period 1/1/20 through 2/29/20.

**Should payments that an eligible borrower made to an independent contractor be included in calculations of the borrower's payroll costs?**

**Answer:** No. We understand some major banks are still requesting this figure but it is incorrect.

**How should a borrower account for federal payroll taxes and withholding when determining its payroll costs for the purposes of the maximum loan amount?**

**Answer:** Under the Act, payroll costs are calculated on a gross basis without making an adjustment for employee withholdings. The employer's portion of the FICA tax (Social Security and Medicare) is not added to payroll costs. We understand it is a cost, but it is not an eligible cost for the purposes of this program. Some major payroll companies have been including these totals in their reports which is incorrect. You can input some of the data from your payroll company's report onto our Rosen excel template to help you determine your eligible payroll costs. The excel template can be found on our website and calculates payroll costs in accordance with the Act and interim final guidance.

**Do lenders need to independently verify information about affiliates?**

**Answer:** No, it is the responsibility of the applicant to determine which entities are affiliates and determine the number of employees of the applicant and affiliates. Lenders are permitted to rely on the borrower's certifications. Please remember, the purpose of the affiliation schedule is to make sure that businesses under common management have less than 500 employees. If you have multiple offices or have a PC owning a partnership interest we are recommending disclosing the related entities, the number of employees, and that there is common management. As long as the aggregate number of employees is under 500, this information won't impact your loan application, it is just disclosure.

Stay safe and healthy.

Rosen & Associates, LLP



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## **Rosen & Associates, LLP**

1800 West Park Drive, Suite 300

Westborough, MA 01581

508-926-2400

[Reach Out To Us](#)

