Client Update
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SBA Releases Guidance Regarding Calculation of Maximum Loan Amounts by Business Type

On April 24, 2020, the Small Business Administration (SBA) in consultation with Treasury released guidance regarding calculation of payroll costs for purposes of determining the amount of a Paycheck Protection Program (PPP) loan. The update is organized by type of business or nonprofit entity.

Self Employed Person with No Employees

Self-employed persons with no employees should use the following methodology in applying for PPP loans:

- Step 1: Find the 2019 IRS Form 1040 Schedule C line 31 net profit amount. If this amount is over $100,000, reduce it to $100,000. If this amount is zero or less, a person is are not eligible for a PPP loan.
- Step 2: Calculate the average monthly net profit amount (divide the amount from Step 1 by 12).
- Step 3: Multiply the average monthly net profit amount from Step 2 by 2.5.
- Step 4: Add the outstanding amount of any Economic Injury Disaster Loan (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).

A person applying as a self-employed person with no employees must submit his or her 2019 IRS Form 1040 Schedule C to substantiate the applied-for PPP loan amount. Such a person must also provide a 2019 IRS Form 1099-MISC detailing nonemployee compensation received (box 7), invoice, bank statement, or book of record 2019 self-employment and a 2020 invoice, bank statement, or book of record establishing operation on February 15, 2020.

Self Employed Person with Employees

Self-employed persons with employees should use the following methodology in applying for PPP loans:

- Step 1: Compute 2019 payroll costs by adding the following:
    - 2019 IRS Form 1040 Schedule C line 31 net profit amount; 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;
    - 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 amount 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 contributions for employee health insurance (portion of IRS Form 1040 Schedule C line 14 attributable to health insurance);
    - 2019 employer contributions to employee retirement plans (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 amount (divide the amount from Step 1 by 12).
- Step 3: Multiply the average monthly payroll costs amount 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 is sought to refinanced, less the amount of any advance under an EIDL COVID-19 loan (because it does not have to be repaid).

The 2019 IRS Form 1040 Schedule C, IRS Form 941 and state quarterly wage unemployment insurance tax reporting form from each quarter (or equivalent payroll processor records or IRS Wage and Tax Statements) must be submitted. Documentation of any retirement or health insurance contributions must be provided to substantiate the applied-for PPP loan amount. A payroll statement or similar documentation from the pay period that covered February 15, 2020 must be provided to establish operations employees on that date.

Self-Employed Farmers

Self-employed farmers (i.e., those who report their net farm profit on IRS Form 1040 Schedule 1 and Schedule F) should use IRS Form 1040 Schedule F in lieu of Schedule C, and Schedule F line 34 net farm profit should be used to determine their loan amount in place of Schedule C line 31 net profit. The calculation is otherwise the same as for Schedule C filers above. The 2019 IRS Form 1040 Schedule 1 and Schedule F must be included with the loan application.

Partnerships

The following methodology should be used to calculate the maximum amount that can be borrowed for partnerships (partners' self-employment income should be included on the partnership's PPP loan application, individual partners may not apply for separate PPP loans):

- Step 1: Compute 2019 payroll costs by adding the following:
    - 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);
        - Note that this treatment follows the computation of self-employment tax from IRS Form 1040 Schedule SE Section A line 4 and removes the

"employer" share of self-employment tax, consistent with how payroll costs for employees in the partnership are determined.

    - 2019 gross wages and tips paid to employees whose principal place of residence is in the United States, if any, 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 contributions for employee health insurance, if any (portion of IRS Form 1065 line 19 attributable to health insurance);
    - 2019 employer contributions to employee retirement plans, if any (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), if any.
- 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 any outstanding amount of any EIDL made between January 31, 2020 and April 3, 2020 that is sought to be refinanced, less the amount of any advance under an EIDL COVID-19 loan (because it does not have to be repaid).

The partnership's 2019 IRS Form 1065 (including K-1s) and other relevant supporting documentation if the partnership has employees, including the 2019 IRS Form 941 and state quarterly wage unemployment insurance tax reporting form from each quarter (or equivalent payroll processor records or IRS Wage and Tax Statements) along with records of any retirement or health insurance contributions, must be provided to substantiate the applied-for PPP loan amount. If the partnership has employees, a payroll statement or similar documentation from the pay period that covered February 15, 2020 must be provided to establish the partnership was in operation and had employees on that date. If the partnership has no employees, an invoice, bank statement, or book of record establishing the partnership was in operation on February 15, 2020 must instead be provided.

Subchapter S and C Corporations

Subchapter S and C corporations should use the following methodology in applying for PPP loans:

- Step 1: Compute 2019 payroll costs by adding the following:
    - 2019 gross wages and tips paid to 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 is sought to be refinanced, less the amount of any advance under an EIDL COVID-19 loan (because it does not have to be repaid).

The corporation's 2019 IRS Form 941 and state quarterly wage unemployment insurance tax reporting form from each quarter (or equivalent payroll processor records or IRS Wage and Tax Statements), along with the filed business tax return (IRS Form 1120 or IRS 1120-S) or other documentation of any retirement and health insurance contributions, must be provided to substantiate the applied-for PPP loan amount. A payroll statement or similar documentation from the pay period that covered February 15, 2020 must be provided to establish operation and employees on February 15, 2020.

Eligible Nonprofit Organizations (Excluding Eligible Nonprofit Religious Institutions, Veterans Organizations and Tribal Businesses)

Eligible nonprofit organizations (i.e. 501(c)(3) tax exempt organizations) (excluding eligible nonprofit religious institutions, veterans organizations and tribal businesses, which are detailed in the next section) should use the following methodology in applying for PPP loans:

- 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 990 Part IX line 9 attributable to health insurance);
    - 2019 employer retirement contributions (IRS Form 990 Part IX line 8); 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 is sought to be refinanced, less the amount of any advance under an EIDL COVID-19 loan (because it does not have to be repaid).

The nonprofit organization's 2019 IRS Form 941 and state quarterly wage unemployment insurance tax reporting form from each quarter (or equivalent payroll processor records or IRS Wage and Tax Statements), along with the filed IRS Form 990 Part IX or other documentation of any retirement and health insurance contributions, must be provided to substantiate the applied-for PPP loan amount. A payroll statement or similar documentation from the pay period that covered February 15, 2020 must be provided to establish that it was in operation and had employees on that date. Eligible nonprofits that do not file an IRS Form 990, typically those with gross receipts less than $50,000, should see the next section.

Eligible Nonprofit Religious Institutions, Veterans Organizations and Tribal Businesses

Eligible nonprofit religious institutions, veterans organizations and tribal businesses) should use the following methodology in applying for PPP loans:

- Step 1: Compute 2019 payroll costs by adding the following:
    - 2019 gross wages and tips paid to 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;
    - 2019 employer retirement contributions; 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 any outstanding amount of any EIDL made between January 31, 2020 and April 3, 2020 that is sought to be refinanced, less the amount of any advance under an EIDL COVID-19 loan (because it does not have to be repaid).

The entity's 2019 IRS Form 941 and state quarterly wage unemployment insurance tax reporting form from each quarter (or equivalent payroll processor records or IRS Wage and Tax Statements), along with documentation of any retirement and health insurance contributions, must be provided to substantiate the applied-for PPP loan amount. A payroll statement or similar documentation from the pay period that covered February 15, 2020 must be provided to establish operation and employees on that date.

LLC Owners

Due to the "check-the-box" nature LLCs taxation, LLCs should follow the instructions that apply to their tax filing situation, for example, whether they file as a sole proprietor, a partnership, or a corporation.

What Other Documentation Will be Useful in Making a PPP Application?

IRS Form W-2s and IRS Form W-3 or payroll processor reports, including quarterly and annual tax reports, can be used in place of IRS Form 941. Additionally, very small businesses that file an annual IRS Form 944 instead of quarterly IRS Form 941 should rely on and provide IRS Form 944. Similarly, records from a retirement administrator can be used to document employer retirement contributions while records from a health insurance company or third-party administrator for a self-insured plan can document employer health insurance contributions.

Please reach out to us for the latest guidance, and see the SBA's guidance, here.

Contact Us

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