

Business Loan Program Temporary Changes; Paycheck Protection Program – Revisions to Loan Amount Calculation and Eligibility

I have income from self-employment and file an IRS Form 1040, Schedule C. How do I calculate the maximum amount I can borrow, and what documentation is required?

How you calculate your maximum loan amount depends upon whether you employ other individuals. If you have no employees, use the following methodology to calculate your maximum loan amount:

Step 1: From your 2019 or 2020 IRS Form 1040, Schedule C, you may elect to use either your line 31 net profit amount or your line 7 gross income amount. (If you are using 2020 to calculate payroll costs and have not yet filed a 2020 return, fill it out and compute the value.) If this amount is over \$100,000, reduce it to \$100,000. If both your net profit and gross income are zero or less, you are not eligible for a PPP loan.

Step 2: Calculate the average monthly net profit or gross income amount (divide the amount from Step 1 by 12).

Step 3: Multiply the average monthly net profit or gross income amount from Step 2 by 2.5. This amount cannot exceed \$20,833.

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. Do not include the amount of any advance under an EIDL COVID-19 loan (because it does not have to be repaid).

You must provide the 2019 or 2020 (whichever you used to calculate your loan amount) IRS Form 1040, Schedule C with your PPP loan application to substantiate the applied-for PPP loan amount and a 2019 or 2020 (whichever you used to calculate your loan amount) IRS Form 1099-MISC detailing nonemployee compensation received (box 7), invoice, bank statement, or book of record that establishes you are self-employed. If using 2020 to calculate your loan amount, this is required regardless of whether you have filed a 2020 tax return with the IRS. You must provide a 2020 invoice, bank statement, or book of record to establish you were in operation on or around February 15, 2020.

If you have employees, use the following methodology to calculate your maximum loan amount:

Step 1: Compute 2019 or 2020 payroll (using the same year for all items) by adding the following:

- a. At your election, either (1) the net profit amount from line 31 of your 2019 or 2020 IRS Form 1040, Schedule C, or (2) your 2019 or 2020 gross income minus employee payroll costs, calculated as your gross income reported on IRS Form 1040, Schedule C, line 7, minus your employee payroll costs reported on lines 14, 19, and 26 of IRS Form 1040, Schedule C (for either option, if you are using 2020 amounts and have not yet filed a 2020 return, fill it out and compute the value), up to \$100,000 on an annualized basis, as prorated for the period during which the payments are made or the obligation

to make the payments is incurred (if this amount is over \$100,000, reduce it to \$100,000, or if this amount is less than zero, set this amount at zero);

b. 2019 or 2020 gross wages and tips paid to your employees whose principal place of residence is in the United States, computed using 2019 or 2020 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; subtract any amounts paid to any individual employee in excess of \$100,000 on an annualized basis, as prorated for the period during which the payments are made or the obligation to make the payments is incurred, and any amounts paid to any employee whose principal place of residence is outside the United States; and

c. 2019 or 2020 employer contributions to employee group health, life, disability, vision and dental insurance (portion of IRS Form 1040, Schedule C line 14 attributable to those contributions); retirement contributions (IRS Form 1040, Schedule C, line 19); and state and local taxes assessed on employee compensation (primarily under state laws commonly referred to as the State Unemployment Tax Act or SUTA from state quarterly wage reporting forms).

Step 2: Calculate the average monthly amount (divide the amount from Step 1 by 12).

Step 3: Multiply the average monthly 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 you seek to refinance. Do not include the amount of any advance under an EIDL COVID-19 loan (because it does not have to be repaid).

You must supply your 2019 or 2020 (whichever you used to calculate your loan amount) IRS Form 1040, Schedule C; Form 941 (or other tax forms or equivalent payroll processor records containing similar information); and state quarterly wage unemployment insurance tax reporting forms from each quarter in 2019 or 2020 (whichever you used to calculate your loan amount) or equivalent payroll processor records, along with evidence of any retirement and health insurance contributions, if applicable. A payroll statement or similar documentation from the pay period that covered February 15, 2020 must be provided to establish you were in operation on February 15, 2020.

How can PPP loans be used by individuals with income from self-employment who file an IRS Form 1040, Schedule C?

The proceeds of a PPP loan are to be used for the following:

For borrowers that use net profit to calculate loan amount, owner compensation replacement, calculated based on 2019 or 2020 (using the same year that was used to calculate the loan amount) net profit as described in subsection B.4.b. For borrowers that use gross income to calculate loan amount, proprietor expenses (business expenses plus owner compensation), calculated based on 2019 or 2020 (using the same year that was used to calculate the loan amount) gross income as described in subsection B.4.b (this amount cannot exceed \$20,833). For borrowers who used gross income to calculate the loan amount and have no employees,

proprietor expenses equal gross income. For borrowers who used gross income to calculate the loan amount and have employees, proprietor expenses equal the difference between gross income and employee payroll costs.

Employee payroll costs (as defined in subsection B.4.g. of the consolidated interim final rule implementing updates to the PPP) for employees whose principal place of residence is in the United States, if you have employees.

Mortgage interest payments (but not mortgage prepayments or principal payments) on any business mortgage obligation on real or personal property (*e.g.*, the interest on your mortgage for the warehouse you purchased to store business equipment or the interest on an auto loan for a vehicle you use to perform your business), business rent payments (*e.g.*, the warehouse where you store business equipment or the vehicle you use to perform your business), and business utility payments (*e.g.*, the cost of electricity in the warehouse you rent or gas you use driving your business vehicle). You must have claimed or be entitled to claim a deduction for such expenses on your 2019 or 2020 (whichever you used to calculate loan amount) IRS Form 1040, Schedule C for them to be a permissible use. For example, if you did not claim or are not entitled to claim utilities expenses on your 2019 or 2020 IRS Form 1040, Schedule C, you cannot use the proceeds for utilities.

Interest payments on any other debt obligations that were incurred before February 15, 2020 (such amounts are not eligible for PPP loan forgiveness).

Refinancing an SBA EIDL loan made between January 31, 2020 and April 3, 2020 (maturity will be reset to PPP's maturity of two years for PPP loans made before June 5, 2020 unless the borrower and lender mutually agree to extend the maturity of such loans to five years, or PPP's maturity of five years for PPP loans made on or after June 5).

Covered operations expenditures, as defined in section 7A(a) of the Small Business Act, to the extent they are deductible on IRS Form 1040, Schedule

Covered property damage costs, as defined in section 7A(a) of the Small Business Act, to the extent they are deductible on IRS Form 1040, Schedule C.

Covered supplier costs, as defined in section 7A(a) of the Small Business Act, to the extent they are deductible on IRS Form 1040, Schedule C.

Covered worker protection expenditures, as defined in section 7A(a) of the Small Business Act, to the extent they are deductible on Form IRS 1040, Schedule C.

Limited safe harbor with respect to certification concerning need for PPP loan request

The CARES Act requires each applicant applying for a PPP loan to certify in good faith “that the uncertainty of current economic conditions makes necessary the loan to support the ongoing obligations” of the applicant. SBA, in consultation with Treasury, issued additional guidance concerning how SBA will review the required good-faith certification. See FAQ 46 (as originally posted May 13, 2020). This guidance included a safe harbor providing that any PPP borrower, together with its affiliates,

that received PPP loans with an original principal amount of less than \$2 million will be deemed to have made the required certification concerning the necessity of the loan request in good faith. In light of the additional flexibility being provided to certain borrowers to use their gross income amount, as reported on line 7 of IRS Form 1040, Schedule C, borrowers that elect to use gross income to calculate their maximum loan amount for a First Draw PPP Loan and that report more than \$150,000 in gross income on the Schedule C that was used to calculate the borrower's loan amount will not automatically be deemed to have made the required certification concerning the necessity of the loan request in good faith. SBA may review their certification that "Current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant." If SBA determines that a borrower lacked an adequate basis for the required certification concerning the necessity of the loan request, SBA may determine that the borrower was not eligible for the loan, for the loan amount, or for loan forgiveness.

Are there caps on the amount of loan forgiveness available for owner-employees and self-employed individuals' own payroll compensation?

Yes. Forgiveness is capped at 2.5 months' worth (2.5/12) of an owner-employee or self-employed individual's 2019 or 2020³⁸ compensation (up to a maximum \$20,833 per individual in total across all businesses). The individual's total compensation may not exceed \$100,000 on an annualized basis, as prorated for the period during which the payments are made or the obligation to make the payments is incurred. For example, for borrowers that elect to use an eight-week covered period, the amount of loan forgiveness requested for owner-employees and self-employed individuals' payroll compensation is capped at eight weeks' worth (8/52) of 2019 or 2020 compensation (i.e., approximately 15.38 percent of 2019 or 2020 compensation) or \$15,385 per individual, whichever is less, in total across all businesses. For borrowers that elect to use a ten-week covered period, the cap is ten weeks' worth (10/52) of 2019 or 2020 compensation (approximately 19.23 percent) or \$19,231 per individual, whichever is less, in total across all businesses. For a covered period longer than 2.5 months, the amount of loan forgiveness requested for owner-employees and self-employed individuals' payroll compensation is capped at 2.5 months' worth (2.5/12) of 2019 or 2020 compensation (up to \$20,833) in total across all businesses. In particular, C-corporation owner-employees are capped by the prorated amount of their 2019 or 2020³⁹ employee cash compensation and employer retirement and health, life, disability, vision and dental insurance contributions made on their behalf. S-corporation owner-employees are capped by the prorated amount of their 2019 or 2020⁴⁰ employee cash compensation and employer retirement contributions made on their behalf. However, employer health, life, disability, vision and dental insurance contributions made on their behalf cannot be separately added; those payments are already included in their employee cash compensation. Schedule C or F filers are capped by the prorated amount of their owner compensation replacement (calculated based on 2019 or 2020 net profit) or proprietor expenses (calculated based on 2019 or 2020 gross income).⁴¹ General partners are capped by the prorated amount of their 2019 or 2020 net earnings from self-employment (reduced by claimed section 179 expense deduction, unreimbursed partnership expenses, and depletion from oil and gas properties) multiplied by 0.9235. For self-employed individuals, including Schedule C or F filers and general partners, retirement and health, life, disability, vision or dental insurance contributions are included in their net self-employment income and therefore cannot be separately added to their payroll calculation. LLC members are subject to the rules based on their LLC's tax filing status in the reference year used to determine their loan amount.

What documentation are borrowers who are individuals with self-employment income who file an IRS Form 1040, Schedule C or F required to submit to their lender with their request for loan forgiveness?

For borrowers that received loans of \$150,000 or less that use the SBA Form 3508S, the borrower must submit the certification and information required by section 7A(I)(1)(A) of the Small Business Act and, for a Second Draw PPP Loan, revenue reduction documentation if such documentation was not provided at the time of application. All other borrowers must submit the certification required by section 7A(e)(3) of the Small Business Act, and (if the borrower has employees) IRS Form 941 and state quarterly business and individual employee wage reporting and unemployment insurance tax forms or equivalent payroll processor records that best correspond to the covered period (with evidence of any retirement and group health, life, disability, vision, and dental insurance contributions). Whether or not the borrower has employees, the borrower must submit evidence of business rent, business mortgage interest payments on real or personal property, business utility payments, or payments for a covered operations expenditure, covered property damage cost, covered supplier cost, or covered worker protection expenditure during the covered period if the borrower used loan proceeds for those purposes. This documentation may include cancelled checks, payment receipts, transcripts of accounts, purchase orders, orders, invoices, or other documents verifying payments on nonpayroll costs. For all loans, the 2019 or 2020 IRS Form 1040, Schedule C or F that the borrower provided at the time of the PPP loan application must be used to determine the amount of net profit or proprietor expenses allocated to the owner for the covered period.

Eligibility

The consolidated interim final rule implementing updates to the PPP provided, among other things, that a PPP loan applicant is ineligible if an owner of 20 percent or more of the equity of the applicant has been convicted of, pleaded guilty or nolo contendere to, or commenced any form of parole or probation (including probation before judgment) for (1) a felony involving fraud, bribery, embezzlement, or a false statement in a loan application or an application for federal financial assistance within the last five years, or (2) any other felony within the last year. This provision reflected the PPP eligibility requirements as revised in an interim final rule titled “Business Loan Program Temporary Changes; Paycheck Protection Program – Additional Revisions to First Interim Final Rule,” published on June 18, 2020 (85 FR 36717). SBA has further reviewed these eligibility restrictions and, in consultation with Treasury, has determined that modification to the consolidated interim final rule implementing updates to the PPP is appropriate to ensure consistency with Congressional intent to provide relief to small businesses and their employees, expand access to the PPP, and remove barriers people with prior convictions face when working to restart their lives and contribute to our economy. SBA has determined that the one-year lookback restriction related to non-financial fraud felonies should be removed and only the five-year lookback restriction for those felonies involving fraud, bribery, embezzlement, or a false statement in a loan application or an application for federal financial assistance will limit an applicant’s eligibility for the PPP. Removing the one-year lookback restriction related to non-financial fraud felonies is consistent with Congressional support for reducing criminal background checks in the PPP11 and the important policies underlying recent criminal justice reforms in Congress, such as last year’s Fair Chance to Compete for Jobs Act of 2019 (Pub. L. 116-92, Div. A, Tit. XI, Subtit. B,) and the First Step Act of 2018 (Pub. L. 115-391).

In light of the unique, emergency nature of the PPP and the higher fraud risk that exists due to the PPP's emphasis on speed in loan approvals and disbursements, the remaining restrictions on eligibility related to an applicant or owner's criminal history will help mitigate the risk of default, fraud, or misuse of PPP loan funds that are intended to benefit small business employees. By removing barriers for applicants with non-financial fraud felonies, this interim final rule balances the need to increase access to the PPP and remove barriers for people with prior convictions while still ensuring basic guardrails against fraud exist for this emergency program. Preserving the five-year lookback for financial fraud-related felonies is one of these guardrails.

The consolidated interim final rule implementing updates to the PPP also provided that a PPP loan applicant is ineligible for a PPP loan if the applicant, or any business owned or controlled by the applicant or any of its owners, has ever obtained a direct or guaranteed loan from SBA or any other Federal agency that is currently delinquent or has defaulted within the last seven years and caused a loss to the government. SBA, in consultation with Treasury, has decided to eliminate the restriction in the consolidated interim final rule to the extent it applies to Federal student loans.¹² SBA has determined that eliminating consideration of delinquent or defaulted Federal student loans is appropriate to ensure consistency with Congressional intent to provide relief to small businesses and their employees and expand access to the PPP. This change will make PPP loans available to more borrowers with financial need and is consistent with Congress's intent that PPP loans be prioritized for small business concerns owned and controlled by socially and economically disadvantaged individuals as defined in section 8(d)(3)(c) of the Small Business Act.¹³ According to the Department of Education, "Black and Brown students rely more heavily on student loan debt than their peers and experience delinquency at disproportionately high rates. As a result prohibiting delinquent student loan borrowers from obtaining PPP loans is more likely to exclude business owners of color from access to the loans they need."¹⁴ In addition, this change is consistent with the policy set in section 3513 of the CARES Act and the Department of Education's ongoing actions to provide economic relief to student loan borrowers whose loans are held by the agency by suspending Federal student loan payments and collections during the pandemic and keeping the interest rate at 0 percent.¹⁵ At the request of the Department of Education by letter dated February 27, 2021, Treasury also has granted an exemption from the bar in 31 U.S.C. § 3720B and 31 C.F.R. § 285.13, with respect to PPP borrowers with Federal student loans in delinquent status. The change in PPP regulations relating to Federal student loans and the Treasury exemption apply to new PPP applicants as well as those borrowers who have already received a PPP loan. In this way, PPP borrowers with delinquent or defaulted student loan debts are treated equally, without regard to when they submitted their PPP application. Although PPP applications previously required applicants to disclose whether they had a delinquent Federal debt, student loan borrowers may have been confused about the status of their loans due to the current suspension on the payment and collection of Federal student loans or uncertain about whether loans not directly serviced or held by the Department of Education constitute Federal debt. This confusion may have led some borrowers to make innocent errors on their PPP application. For these reasons, SBA will apply this change to any First Draw PPP Loan or Second Draw PPP Loan, regardless of when the PPP loan was made.

Part IV.(e) of the interim final rule titled "Business Loan Program Temporary Changes; Paycheck Protection Program Second Draw Loans," published on January 14, 2021 ("Second Draw Interim Final Rule") (86 FR 3712), provides that an applicant is not eligible for a Second Draw PPP Loan if the applicant is excluded from eligibility under the consolidated interim final rule implementing updates to the PPP. The following revisions to Part III.B.2.a. of the consolidated interim final rule implementing updates to the PPP also affect eligibility for Second Draw PPP Loans.

What businesses, organizations, and individuals are ineligible?

a. Could I be ineligible even if I meet the eligibility requirements in section 1?

You are ineligible for a PPP loan if, for example:

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iii. An owner of 20 percent or more of the equity of the applicant is presently incarcerated or, for any felony, presently subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction; or has been convicted of, pleaded guilty or nolo contendere to, or commenced any form of parole or probation (including probation before judgment) for a felony involving fraud, bribery, embezzlement, or a false statement in a loan application or an application for federal financial assistance within the last five years; or

iv. You, or any business owned or controlled by you or any of your owners, has ever obtained a direct or guaranteed loan from SBA or any other Federal agency (other than a Federal student loan made under Parts B, D, and E of the Higher Education Act of 1965, as amended, or other programs now administered by the U.S. Department of Education, which include the William D. Ford Federal Direct Loan program, the Federal Family Education Loan (FFEL) program, the Federal Perkins Loan program, the Health Education Assistance Loan (HEAL) program, or the Teacher Education Assistance for College and Higher Education (TEACH) program) that is currently delinquent or has defaulted within the last seven years and caused a loss to the government;

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Subsection B.2.a. is amended to add after subsection B.2.a.ix:

The exclusion of Federal student loans from the restriction on applicants with delinquent or defaulted Federal debt in subsection (iv) applies to any loan made pursuant to section 7(a)(36) or 7(a)(37) of the Small Business Act, including forgiveness of such a loan, regardless of when the loan was made.