

PPP Loans to Very Small Businesses

Although Very Small Businesses, i.e., those employing fewer than 20 employees, sole proprietorships, independent contractors, and self-employed individuals (“VSBs”) were given exclusive access to apply for PPP Loans in the two-week period commencing February 24, 2021, the absence of revisions to the Maximum Loan Amounts formula for VSBs (and accompanying application) precluded VSBs from acting. VSBs have been waiting since the President’s February 22, 2021 announcement of changes to Paycheck Protection Program (“PPP”) funding calculations to provide meaningful relief to VSBs. .

On March 3, 2021, the United States Small Business Administration (SBA) released [rules and guidance](#) regarding VSB Loans which closely follow our guidance of February 23, 2021. Although the PPP rules provide extensive detail regarding program changes for VSBs, the following guidance is designed to aid VSBs filing Form 1040 to assess PPP Loan amounts and uses.

Calculating PPP Maximum Loan Amount (MLA):

1. **No Employees.** If you have no employees, using your 2019 or 2020 1040 tax return (whichever has a greater gross income), take the gross income amount from Line item 7 or net profit from Line 31, not to exceed \$100,000 (“Income”). Divide Income by 12 and multiply by 2.5. This is your maximum eligible loan amount not to exceed \$20,833. Add to that the amounts of Economic Injury Disaster Loans (“EIDL”) between 1/31/2020 and 4/3/2020 you seek to refinance (caution, see below). If you are using your 2020 Form 1040, you must include your 2020 Schedule C as part of your PPP loan application regardless of whether you have filed your 2020 federal income tax return.
2. **With Employees.**
 - A. Compute 2019 or 2020 payroll limited to amounts paid to U.S. employees (“Payroll”):
 - i. An amount not to exceed \$100,000 from either (i) net profit from Line 31 of Schedule C, or (ii) gross income from Line 7 from Schedule C minus employee payroll costs from Lines 14, 19, and 26 from Form 1040; **plus**
 - ii. Employee wages and tips (Form 941, Line 5c, Column a) for 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;” **plus**
 - iii. Portions of Schedule C, Line 14 attributable to employer contributions to employee group health, life, disability, vision and dental insurance...; Schedule C, Line 19 retirement contributions; “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).”
 - B. Divide Payroll by 12 and multiply by 2.5. This is your maximum eligible loan amount. Add amounts of EIDL loans between 1/31/2020 and 4/3/2020 you seek to refinance (caution, see below).

Use of PPP Loan Proceeds:

1. If you calculated MLA using (i) Schedule C, Line 31, proceeds can be used to pay net profit from Line 31, not to exceed \$100,000; (ii) Schedule C, Line 7, proceeds can be used to pay business expenses plus owner compensation (“Proprietor Expenses”) during the year used to calculate MLA, not to exceed \$20,833. For VSBs lacking employees, Proprietor Expenses equals gross income; and for VSBs with employees, Proprietor Expenses equals gross income minus payroll costs;
2. Payroll Costs to employees (residing in the United States);
3. To the extent they are deductible from Form 1040, Schedule C:
 - a. Mortgage interest payments, business rent payments, and business utility payments;
 - b. Covered operations expenditures;

- c. Covered property damage costs;
 - d. Covered supplier costs; and
 - e. Covered worker compensation expenditures;
4. Eligible expenses not subject to loan forgiveness (i.e., loan only):
- a. Interest payments on debt incurred prior to 2/15/2020; and
 - b. Refinancing of EIDL loans made between 1/31/2020 and 4/3/2020 (for loans made after June 5, 2020, maturity reset to 5 years of PPP loan).

Safe Harbor Limitations. The presumption granted other PPP loan recipients of less than \$2 million as to the necessity of the loan request for the continued operations of the business does not apply to First Draw VSB borrowers using gross income to calculate MLA and reporting more than \$150,000 in gross income on Line 7 of Schedule C. The new rules provide that the SBA may review and revoke such a loan upon a determination that the loan is not necessary to support the continued operation of the business.

Second Draw Loans. If you have applied and received funding previously, you are eligible for a Second Draw provided you have expended all prior PPP loan proceeds and can demonstrate revenue shortfalls of 25% in a 2020 quarter relative to 2019. For a general discussion of Second Draw applications, go to the discussion at the following [link](#).

The Maximum Loan Amount of Second Draw PPP Loans for Schedule C filers:

1. **No employees:** the amount calculated in Paragraph 1 of the MLA Loan Calculation discussion above not to exceed \$20,833 (\$29,167 for NAICS Code 72 VSBs);
2. **With employees:** the lesser of
 1. \$2,000,000 or
 2. The product of
 - A. 2.5 (or 3.5 for NAICS 72 VSBs) times
 - B. The sum of either (i) an amount not to exceed \$100,000 from either (a) net profit from Line 31 of Schedule C, or (b) gross income from Line 7 from Schedule C minus employee payroll costs from Lines 14, 19, and 26 on Form 1040; and (ii) the average total monthly payment for employee payroll costs incurred or paid by the borrower during the same year elected by the borrower.

Do Not Wait to Apply. Fortunately, the exclusive VSB only PPP application window has been extended to March 17, 2021. Unfortunately, funding is limited. Note also that the PPP loan application window is scheduled to close on March 31, 2021. In short, submit your application as soon as possible.

What you need to do.

1. **Contact Your Bank.** If you haven't secured a bank, find one immediately. Here is a [link to locate participating banks](#) in your area.
2. **Obtain the new application.** The First Draw and Second Draw form applications published by the SBA can be found [here](#), but you want to make sure you follow the application published by your bank.
3. **Gather the requisite documents:** As per the application gather your documents. Chief among them is your **Federal Income Tax Return**. Obtain your income tax return from 2019 or 2020 (whichever contains higher gross receipts).

Whatever questions you may have regarding the PPP or any other matter that you believe impacts you or your business, our attorneys are ready to guide you and may be reached at 201.487.3800. As always, we are here to serve you.

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