

# ***SBA Guidance on PPP Loans for Self-Employed Individuals***

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Jason practices in the areas of general business and corporate law, commercial finance, commercial real estate, land use, promotions, marketing and advertising law, and intellectual property. He has over 20-years experience working with individuals and business of all sizes, from small start-up entities to multi-national corporations.

# Interim Rules re: Self-Employed Individuals

- On April 14, 2020, the Small Business Administration (SBA) issued interim final rules clarifying eligibility and application processes for self-employed individuals.
- Self-employed individuals who filed Schedule C with their federal income taxes and were operating on February 15, 2020, are eligible for Paycheck Protection Program (PPP) loans.
- Partnerships (including LLCs taxed as a partnership) are eligible for PPP loans, with up to \$100,000 of net profit for each partner constituting payroll costs for determining the eligible loan amount
- Individual partners may not apply for separate PPP loans.

# PPP Eligibility Requirements

- Sole Proprietors/Independent Contractors
  - Must have been in operation as of February 15, 2020;
  - Principal place of business must be in the United States; and
  - Have or will file Form 1040 Schedule C for 2019.

# Determination of Maximum Amount of PPP Loan

If no employees:

1. Find 2019 Net Profit (Line 31 of Sch.); reduce to \$100,000 if over.
2. Divide #1 by 12.
3. Multiply #2 by 2.5.
4. Add the outstanding amount of any EIDL loan made between 1/31/2020 and 4/3/2020, less the amount of any advance received under an EIDL COVID-19 loan (the latter does not have to be repaid).

# Determination of Maximum Amount of PPP Loan

If have employees:

1. Calculate 2019 payroll by adding the following:
  - a. Your Net Profit (Line 31 of Sch. C); reduce to \$100,000 if over.
  - b. Gross wages and tips paid to employees whose principal residence is in United States (Form 941, line 5c, column 1) from each quarter, plus any health insurance or other fringe benefits excluded from taxable wage; subtract amounts paid to any individual employee in excess of \$100,000 annualized and amounts paid to employees whose principal place of residence is outside the United States.
  - c. 2019 health insurance contributions (line 14 of Sch. C), retirement contributions (line 19 of Sch. C) and SUTA.
  - d. Note, payments for owners' healthcare or retirement is not included in the calculation to determine the amount of the PPP loan

# Determination of Maximum Amount of PPP Loan

If have employees (cont.):

2. Divide amount in #1 by 12.
3. Multiple #2 by 2.5.
4. Add the outstanding amount of any EIDL loan made between 1/31/2020 and 4/3/2020, less the amount of any advance received under an EIDL COVID-19 loan (the latter does not have to be repaid).

# Permitted Uses of PPP Loan Proceeds

- Owner compensation replacement based on 2019 net profits, capped at \$100,000 per partner.
- Employee payroll costs.
- Costs related to the continuation of group healthcare benefits during paid leave (sick, family or medical).
- Business rent and utilities.



# Permitted Uses of PPP Loan Proceeds (cont.)

- Mortgage interest (not principal).
  - Note: if you work out of your home, you cannot deduct home mortgage payments (although home mortgage interest is generally otherwise deductible).
- Interest payments on other debt incurred prior to 2/15/20 (such amounts are not eligible for loan forgiveness).
- Refinancing an SBA EIDL loan made between 1/31/20 and 4/3/20.

# Permitted Uses of PPP Loan Proceeds

- Note re: EIDL loans
  - If EIDL loan was not used for payroll costs, it does not affect eligibility for PPP loan.
  - If EIDL loan was used for payroll costs, PPP loan proceeds must be used to refinance.
  - Proceeds from any advance up to \$10,000 on the EIDL loan will be deducted from loan forgiveness amount.

# Restrictions on Use of PPP Loan Proceeds

- 75% of loan proceeds must go toward payroll costs
  - For purposes of determining percentage of use (but not for forgiveness), the amount of any refinanced EIDL loan will be included.

# Loan Forgiveness

- Up to the full principal amount of the loan plus accrued interest may be forgiven.
- Actual amount of loan forgiveness will depend, in part, on amount spent over the covered period on:
  - Payroll costs up to \$100,000 per employee (8-week max. per employee is \$15,385), as well as covered benefits for employee, including health care costs, retirement contributions, and SUTA. Benefit costs for owners are NOT forgivable.
  - Owner compensation (limited to 8/52 of 2019 net profit, per owner).
  - Payment of mortgage interest for obligations incurred prior to 2/15/20.
  - Rent payment on lease agreement in force prior to 2/15/20, to the extent deductible as business rent expense.
  - Utility payments under service agreements dated prior to 2/15/20.

# Documentation Required for Loan Forgiveness

- Form 941 and state quarterly wage unemployment insurance tax reporting forms (or equivalent payroll processing reports).
- Supporting documentation evidencing claimed business expenses (mortgage interest, rent, utilities, etc.)
- 2019 Form 1040 Schedule C that was provided with the PPP Loan application.

# Key Take Away

- The CARES Act designated \$349 billion for the PPP, to be disbursed on a “first-come, first-served” basis.
- Over subscription is not addressed in current rules.
- With the inclusion of sole proprietors and independent contractors to the list of eligible applicants, it’s recommended to **APPLY AS SOON AS POSSIBLE.**
- Applicants can apply from April 3, 2020, to June 30, 2020. Initial application is done by submitting a completed SBA Form 2483 (Paycheck Protection Program Application Form) and payroll and other documentation to a PPP lender.