First Draw Paycheck Protection Program ("PPP") Loans: How 501(c)(3)s Calculate Maximum Loan Amounts and What Documentation to Provide

Earlier this month, the PPP was reopened to accept applications from borrowers applying for their first PPP loan or for modifications to their existing loan ("First Draw PPP Loan"). On January 17, 2021, the Small Business Administration ("SBA"), in consultation with the Department of the Treasury, provided updated guidance to assist businesses in calculating their payroll costs (and the relevant documentation that is required to support each set of calculations) for purposes of determining the maximum amount of a First Draw PPP Loan for each type of business.

Although the guidance describes payroll costs using calendar year 2019 as the reference period, borrowers are permitted to use payroll costs from either calendar year 2019 or calendar year 2020 for their First Draw PPP Loan amount calculation. Documentation, including IRS forms, must be supplied for the selected reference period.

Question #6 from the SBA's guidance describes how nonprofit organizations in existence in 2019 and 2020 calculate the maximum amount of a First Draw PPP Loan.

> **Question #6:** How is the maximum First Draw PPP Loan amount calculated for eligible nonprofit organizations (up to $10 million)? (Note that PPP loan forgiveness amounts will depend, in part, on the total amount spent during the covered period following disbursement of the PPP loan.)
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> **Answer:** The following methodology should be used to calculate the maximum amount that can be borrowed for eligible nonprofit organizations (those that file a Form 990, 990EZ or 990N):
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> **Step 1:** Compute 2019 payroll costs by adding the following:
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> - 2019 gross wages paid to your employees whose principal place of residence is in the United States, up to $100,000 per employee, 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, and
    - Minus (i) any amounts paid to any individual employee in excess of $100,000, and (ii) any amounts paid to any employee whose principal place of residence is outside the U.S.;
- 2019 employer group health, life, disability, vision, and dental insurance contributions (if you file a Form 990, the amount is the portion of Part IX line 9 attributable to those contributions);
- 2019 employer retirement contributions (If you file a Form 990, the amount is on 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 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).

The 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 (if applicable) or other documentation of any retirement and group health, life, disability, vision, and dental 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 you were in operation and had employees on that date. Nonprofits that file Form 990-EZ should rely on that form, and nonprofits that file Form 990N should provide other documentation to substantiate these costs.

Question #10 addresses how nonprofits that were in operation on February 15, 2020, but not in operation between February 15, 2019, and June 30, 2019 calculate the maximum amount of a First Draw PPP loan.

Question #10: I am a nonprofit and was in operation on February 15, 2020, but was not in operation between February 15, 2019, and June 30, 2019. What reference period should I be using to compute my First Draw PPP Loan amount?

Answer: In this case, you may choose one of two ways to calculate your First Draw PPP Loan amount. The first option is for borrowers to follow the applicable instructions in Questions 6 and use payroll information for all of 2020 instead of 2019. The second option is for borrowers to calculate their loan amount using their average monthly payroll costs incurred in January and February 2020. For borrowers choosing the second option, the following methodology should be used to calculate the maximum amount that you can borrow:

Step 1: Compute January and February 2020 payroll costs by adding the following:

- Gross pay to employees for those two months whose principal place of residence is in the United States, up to $16,667 per employee;
- Employer group health, life, disability, vision, and dental insurance contributions for those two months;
- Employer retirement contributions for those two months; and
- Employer state and local taxes assessed on employee compensation for those two months, primarily state unemployment insurance tax.

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

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 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).

If you choose the second option, you must provide payroll records from January and February 2020, your IRS Form 941 for the first quarter of 2020, and documentation of any employer retirement and group health, life, disability, vision, and dental insurance contributions from that period.

The guidance addresses two other important questions applicable to nonprofit organizations when calculating a First Draw PPP Loan amount. Question #12 describes *all the pre-tax employee contributions to include, and Question #13 explains to what extent federal employment taxes are included in the calculation.*

Question #12: In addition to pre-tax employee contributions for health insurance, what are the other pre-tax employee contributions for fringe benefits that may have been excluded from IRS Form 941 Taxable Medicare wages & tips that is part of employee gross pay?

Answer: Employee contributions and deductions from pay for flexible spending arrangements (FSA) or other nontaxable benefits under a section 125 cafeteria plan, qualified transit or parking benefits (up to $270 a month), and group life insurance (for up to $50,000 of coverage) may have been excluded from IRS Form 941 Taxable Medicare wages & tips. However, pre-tax employee contributions to retirement plans are included in Taxable Medicare wages & tips and should not be added to that figure to arrive at gross pay.

Question #13: How should a borrower account for federal taxes when determining its payroll costs for purposes of the maximum loan amount, allowable uses of a PPP loan, and the amount of a loan that may be forgiven?

Answer: Payroll costs are calculated on a gross basis without regard to federal taxes imposed or withheld, such as the employee’s and employer’s share of Federal Insurance Contributions Act (FICA) and income taxes required to be withheld from employees. As a result, payroll costs are not reduced by taxes imposed on an employee and required to be withheld by the employer. However, payroll costs do not include the employer’s share of payroll tax. For example, the wages of an employee who earned $4,000 per month in gross wages, from which $500 in federal taxes was withheld, count as $4,000 in payroll costs. However, the employer-side federal payroll taxes imposed on the $4,000 in wages are excluded from payroll costs under the statute.