

Sole Proprietors, Independent Contractors and Self-Employed Individuals Addressed in Latest Paycheck Protection Program Guidance

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On April 14, 2020, the Small Business Administration (“SBA”) issued its interim final rules regarding the Paycheck Protection Program (“PPP”), a \$350 billion part of the Coronavirus Aid, Relief and Economic Security (“CARES Act”), to sole proprietors, independent contractors and self-employed individuals. Four days earlier the PPP loan application process opened for this group of applicants. These interim rules provide information for sole proprietors, independent contractors and self-employed individuals who are seeking a PPP loan.

Eligibility

Self-employed individuals are eligible to apply for a PPP loan provided certain eligibility requirements are met. To be eligible for a PPP loan, the individual must: (1) have filed a Form 1040 Schedule C for 2019; (2) have been in operation as of February 15, 2020; and (3) have a principal place of residence in the United States. The interim rules clarify that partnerships, instead of partners, are eligible to apply for a PPP loan. The partnership should file the application and claim each partner’s share of self-employment income from the partnership as “Payroll Costs” (see below).

Maximum Loan Amount

“Payroll Costs” are the base for determining the maximum loan amount for self-employed applicants. Payroll Costs for a self-employed applicant include wages, commissions, income or other similar compensation paid to employees, and net earnings from self-employment. Net earnings from self-employment are indicated on Schedule C of Form 1040 as net profit. Self-employment earnings in excess of \$100,000 are excluded from the calculation of Payroll Costs. Payroll Costs also include health insurance, retirement benefits and unemployment benefits. The maximum amount of a PPP loan for a self-employed applicant is the lesser of \$10,000,000 or 2.5 times the average monthly Payroll Costs.

Allowable Uses and Loan Forgiveness

Self-employed applicants are subject to the same limitations on allowable uses of PPP loan proceeds and loan forgiveness as business concerns. The amount of loan forgiveness will depend on the amount of loan proceeds spent by the self-employed applicant during the 8-week period following the first disbursement of PPP loan proceeds. A self-employed applicant must have claimed, or be entitled

to a claim, a deduction for business expenses on Form 1040 Schedule C for those expenses to be considered for forgiveness. Those expenses must also qualify as allowable uses of PPP loan funds.

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