SBA Provides Additional PPP Guidance for Self-employed Individuals and Independent Contractors

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Lowndes
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Related Attorneys

Nicole C. Leath

Yesterday, the SBA announced that it would no longer be accepting new applications for the Emergency Injury Disaster Loan Program or the Payroll Protection Program ("PPP"). However, several congressional leaders such as Senator Marco Rubio, chairman of the Senate Small Businesses and Entrepreneurship Committee, and U.S. House Speaker Nancy Pelosi have indicated that a fourth stimulus bill will more than likely include additional funding for small businesses.

Assuming additional funding becomes available, self-employed individuals, and independent contractors interested in applying for relief under the PPP should be aware of new guidance published by the SBA on April 14, which, among other things, provides clarification on eligibility and the application process for self-employed individuals and independent contractors.

Per the latest guidance, self-employed individuals and sole proprietors are eligible for a PPP loan if such individuals: (i) filed a Form 1040 Schedule C with their latest federal income taxes, (ii) primarily reside in the United States, and (iii) were in operation on February 15, 2020. However, partners in a partnership will not be eligible to apply for a PPP loan separately from the partnership, as the partnership itself will be considered the eligible entity. Further, the self-employment income of general active partners may be reported as a payroll cost on a PPP loan application filed by or on behalf of the partnership.

The latest guidance also sets forth the process for self-employed individuals to calculate their maximum loan amounts and provided guidance on forgivable expenses. While the maximum loan amount and forgiveness provisions under the new guidance are similar to other PPP loans, there are some caveats for self-employed individuals.

Calculating an Individual's Maximum Loan Amount

In determining an individual's maximum loan amount, the calculation will depend on whether an individual has other employees or not.

If an individual has no employees, the calculation is as follows:

Step 1: Find your 2019 IRS Form 1040 Schedule C line 31 net profit amount (if you have not yet filed a 2019 return, fill it out and compute the value). If this amount is over $100,000, reduce it to $100,000. If this amount is zero or less, you are not eligible for a PPP loan.

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

Step 3: Multiply the average monthly net profit amount from Step 2 by 2.5.

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

If an individual has employees, the calculation of maximum loan amount is slightly different. In Step 1, instead of using the net profit amount from the Form 1040 Schedule C, the individual must instead compute 2019 payroll by adding the following:

1. Your 2019 Form 1040 Schedule C line 31 net profit amount (if you have not yet filed a 2019 return, fill it out and compute the value), up to $100,000 annualized, if this amount is over $100,000, reduce it to $100,000, if this amount is less than zero, set this amount at zero;
2. 2019 gross wages and tips paid to your employees whose principal place of residence is in the United States 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; subtract any amounts paid to any individual employee in excess of $100,000 annualized and any amounts paid to any employee whose principal place of residence is outside the United States; and
3. 2019 employer health insurance contributions (health insurance component of Form 1040 Schedule C line 14), retirement contributions (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).

After completing Step 1 by calculating 2019 payroll, continue with Steps 2, 3, and 4 as shown above.

Determining an Individual's Forgiveness Amount

As to forgiveness, the full principal amount of the loan plus accrued interest may be forgiven, but the actual forgiveness amount will depend, in part, on the total of the following expenses paid during the covered period:

1. Payroll costs, including salary, wages, and tips, up to $100,000 of annualized pay per employee (for eight weeks, a maximum of $15,385 per individual), as well as covered benefits for employees (but not owners), including health care expenses, retirement contributions, and state taxes imposed on employee payroll paid by the employer (such as unemployment insurance premiums);
2. Owner compensation replacement, calculated based on 2019 net profit, with forgiveness of such amounts limited to eight weeks' worth (8/52) of 2019 net profit, but excluding any qualified sick leave equivalent amount

for which a credit is claimed under section 7002 of the Families First Coronavirus Response Act (FFCRA) (Public Law 116-127) or qualified family leave equivalent amount for which a credit is claimed under section 7004 of FFCRA;

3. Payments of interest on mortgage obligations on real or personal property incurred before February 15, 2020, to the extent they are deductible on Form 1040 Schedule C (business mortgage payments);
4. Rent payments on lease agreements in force before February 15, 2020, to the extent they are deductible on Form 1040 Schedule C (business rent payments); and
5. Utility payments under service agreements dated before February 15, 2020, to the extent they are deductible on Form 1040 Schedule C (business utility payments).

The guidance reaffirmed that the general PPP requirement that at least 75% of the loan proceeds be used for payroll costs applies to self-employed individuals. The SBA further clarified that self-employed individuals may use PPP proceeds as "owner compensation replacement", which is calculated based on 2019 net profits.

Additional PPP Loan Updates

The SBA also clarified that bank directors and shareholders may be eligible for PPP loans provided by their banks. Under previous programs, the SBA limited the eligibility of such candidates, but for the purposes of PPP loans such limits shall not apply to an otherwise eligible business owned (in whole or part) by an outside bank director or individuals holding less than a 30% equity interest in their PPP lender. These individuals must follow the same process as other applicants. However, officers and key employees of lenders, while still eligible, must apply for PPP loans through different lenders.

Lastly, in an FAQ issued on Tuesday, the SBA stated that lenders are expected to collect borrower certifications and review maximum loan amount payroll calculation documentation prior to submitting the loan to the SBA. Lenders not in compliance who have already submitted applications are not required to withdraw applications, but have been asked to fulfill the aforementioned duties no later than the PPP loan closing.