



WRIGHT LINDSEY JENNINGS

COVID-19 CLIENT ALERT: SECOND INTERIM FINAL RULE ON PAYCHECK PROTECTION PROGRAM

April 14, 2020

The Small Business Administration issued a Second Interim Final Rule (the “Rule”) for the Paycheck Protection Program (“PPP”) on April 14, 2020. The Rule provides further guidance on the CARES Act, enacted March 27, 2020, and comes after the initial Interim Final Rule, issued April 2, 2020, informal Dept. of Treasury guidance, issued March 31, 2020. The Rule is effective immediately but SBA will consider public comments and consider additional regulations and clarification in the future. The Rule addresses two major issues relating to “self-employment”: whether partners in a partnership (or members of an LLC taxed as a partnership) should pursue the PPP separately from the partnership as self-employed individuals and how self-employed individuals should calculate their “payroll costs” under the PPP.

The clarification regarding how partners should pursue the PPP runs contra to how most interpreted earlier guidance. Under the new guidance of the Rule, the SBA has declared that partners and partnerships should file for the PPP together rather than the partnership filing and each individual partner filing. This also applies to limited liability companies and their members. This should be easier for all parties. The partner and partnership do not have to worry with allocating expenses between the partner and partnership level, and the SBA will have fewer applications to process. Just as with other employees, payment of partner compensation with loan proceeds will be capped at \$100,000. **If you are a partnership that has already submitted a loan application, you should immediately call your bank and ask to have your application amended to include partners in the total payroll cost calculation.** The SBA has not issued guidance for loans that have already been processed and approved.

The Rule also provides additional information for self-employed individuals who may not take a traditional salary. Self-employed borrowers may now calculate both their loan amounts and their amounts eligible for forgiveness by using their net profits from 2019, reported on Schedule C of Form 1040 (the individual tax return form). The 2019 net profits must be used for the calculation and a copy of Schedule C and substantiation must be included with the PPP application, regardless of whether the self-employed borrower’s 2019 return has been filed. The net profits serve as the self-employed borrower’s “pay” for PPP purposes—the net profits are capped at \$100,000 and divided by 12 to give an average monthly payroll cost for the self-employed borrower, who may borrow up to 2.5 times that payroll cost. One important distinction is that self-employed borrowers may only be forgiven for eight-weeks’ worth of profits (the annual net profit amount divided by 52 and multiplied by 8). The SBA feels that self-employed individuals have fewer expenses on average and sees forgiveness of the full 2.5 months’ worth of profits as a windfall in this situation.

With guidance on how self-employed individuals can calculate payroll costs, the Rule expands the number of people who may seek funds under the PPP. By asking partners to apply with their partnerships, it streamlines the process for many individuals. Further guidance on the PPP is expected in the future.

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