

UPDATE: Paycheck Protection Program Guidance on Eligible Self-Employed Individuals and Inclusion of Partners/Members in Calculation of Payroll Costs

On April 14, 2020, the Small Business Association (SBA) issued an Interim Final Rule providing guidance on the CARES Act Paycheck Protection Program (PPP) and eligible self-employed individuals.

Importantly, the new guidance clarifies that self-employment income of general active partners or members may be reported as a Payroll Cost (up to \$100,000.00) on a PPP Loan application filed by or on behalf of the partnership or LLC. As such, a partner in a partnership or member in an LLC may not submit a separate PPP Loan application as a self-employed individual. The guidance states that limiting a partnership and its partners, or an LLC filing taxes as a partnership, to one PPP Loan ensures maximum availability to eligible borrowers, increases efficiency, and reduces confusion.

Partnerships and LLCs that have previously submitted PPP Loan applications but have not yet had their application processed by their lender may revise their applications to include the additional payroll costs of their partners and members. For those partnership and LLCs that are affected, we encourage you to contact your lenders as soon as possible.

The guidance provides further clarifications for eligible self-employed individuals applying for a PPP Loan. Individuals with self-employment income who are not partners or members are eligible for the PPP loan if they:

1. Were in operation on February 15, 2020;
2. Are individuals with self-employment income (such as independent contractors or sole proprietors);
3. Have a principal place of residence in the U.S.; and
4. Filed or will file a Form 1040 Schedule C for 2019.

Instructions for how to calculate the maximum loan amount for eligible self-employed individuals with or without employees may be found [here](#) on pages 6-8.

The proceeds of a PPP Loan for eligible self-employed individuals may be used for the following expenses:

1. Owner compensation replacement, calculated based on 2019 net profit (2019 IRS Form 1040 Schedule C line 31);
2. Employee payroll costs;
3. Mortgage interest payments on any business mortgage obligation on real or personal property, business rent payments; and business utility payments, all of which must have been claimed or entitled to claim a deduction on the 2019 Form 1040 Schedule C;
4. Interest payments on any other debt obligations that were incurred before February 15, 2020; and
5. Refinancing an SBA EIDL loan made between January 31, 2020 and April 3, 2020 if the EIDL proceeds were used for payroll costs.

Like other issued PPP Loans, at least 75% of the loan proceeds must be used towards payroll costs. The amounts eligible for forgiveness are payroll costs, owner compensation replacement, business mortgage payments, business rent payments, and business utility payments.

The attorneys at Bond, Schoeneck & King can assist you in determining your eligibility, maximum loan amount, and the application process as proscribed under the CARES Act and SBA guidance. Please contact [Jeffrey B. Scheer](#), any of the [attorneys](#) in our [Business and Transactions Practice](#) or the attorney at the firm with whom you are regularly in contact.



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