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A LIMITED LIABILITY LAW PARTNERSHIP

Labor and Employment Law

CARES ACT UPDATE P.S. For Partners

April 15, 2020 at 3:30 p.m.

The Small Business Administration published yet another “Interim Final Rule” yesterday addressing self-employed individuals and partners in a partnership. For the latter, the SBA decided your income has to be included in the Payroll Protection Program (PPP) loan for the partnership, not in separate loans for partners. Unfortunately, these rules came out *after* many partnerships applied for PPP loans.

For those partners who assumed they could apply for their own PPP loan as self-employed, the SBA kyboshed that. Thanks for telling us.

What do you do if your partnership has already applied for a loan and/or been approved? Check with your bank. No one wants to go to the back of the line, but if a partnership applied for a PPP loan using only income to employees, it may be getting less than it is otherwise entitled to.

For self-employed individuals, if you file a Form 1040 Schedule C and were in operation as of February 15, 2020, and your principal residence is in the United States, you can apply for a PPP loan. For those with no other employees, your loan amount is your 2019 net profit up to \$100,000, divided by 12 multiplied by 2.5. You must include your 2019 Schedule C with your loan, regardless of whether you have filed your 2019 tax return.

For self-employed individuals who also have employees, use the same formula and then compute 2½ months of payroll costs for the employees (up to \$100K annualized for employees) using the standard CARES approach of including health care premiums.

Forgiveness will follow the general CARES forgiveness rules, *i.e.*, at least 75% must be used for payroll costs. The maximum payroll for forgiveness purposes for anyone during the eight weeks is \$15,385 (eight weeks of \$100K/year). For self-employed individuals, it will be eight weeks of net profit based on 2019 net profit.

We now know the answer to a question some of you had: Can we count as payroll costs during the loan period annualized compensation in excess of \$100,000? The answer from yesterday’s rule is NO - only a maximum of \$15,385 in wages during those eight weeks plus medical premiums, and state taxes.

And there is talk once again of additional funding for the PPP, but that did not end well last time. No predictions other than the situation will continue to evolve.

The April 14, 2020 SBA Interim Final Rule is available at: <https://www.sba.gov/sites/default/files/2020-04/Interim-Final-Rule-Additional-Eligibility-Criteria-and-Requirements-for-Certain-Pledges-of-Loans.pdf#page=1&zoom=auto,-97,792 0>.