

SBA Interim Rule Addresses PPP Loan Eligibility for Self-Employed Individuals

Late on April 14, 2020, the Small Business Administration (SBA), responsible for administering the Paycheck Protection Program under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, issued an Interim Final Rule establishing criteria for “individuals with self-employment income” to obtain loans under the Paycheck Protection Program (a PPP Loan). SBA also provided important clarification about the eligibility of partnerships, limited liability companies (LLCs) taxed as partnerships, and their partners or members seeking PPP Loans.

Here are some key answers to important PPP Loan questions:

Who is “self-employed” for purposes of applying for a PPP Loan?

Only sole proprietors, sole members of LLCs, and independent contractors may at this time apply as self-employed individuals for PPP Loans. Those eligible are referred to as “self-employed individuals.” Such individuals must have been in operation on February 15, 2020, maintained a principal residence in the U.S., and filed or will file a Form 1040, Schedule C, Profit or Loss From Business (sole proprietors) for 2019. Note: SBA stated that it will issue additional guidance for those self-employed individuals in operation on February 15, 2020, but not in operation in 2019, to apply for PPP Loans.

Can partners in partnerships and members of multi-member LLCs apply as self-employed individuals?

Short answer: no. Partners in partnerships and members in multi-member LLCs taxed as partnerships may **not** apply for PPP Loans. The partnership or multi-member LLC instead must apply as an entity for a single PPP Loan and include the self-employment income of such partners or members as payroll costs up to a maximum of \$100,000 annually per individual.

How do self-employed individuals calculate the maximum PPP Loan amount?

Self-employed individuals must calculate the maximum PPP Loan amount they can qualify for based on one of two methods, depending upon whether they employ other individuals.

- If the self-employed individual does not employ others, take net income from the 2019 Form 1040, Schedule C in line 31 (as filed or as prepared for this purpose), and use the lesser of the actual number (if in excess of \$0) or \$100,000. Then divide by 12. Take the resulting monthly average and multiply by 2.5 to determine the maximum loan amount. Note: if line 31 is \$0 or a negative number, the individual is not eligible for a PPP Loan.
- If the self-employed individual does employ others, take net income from Schedule C (as indicated above) and add (a) gross wages and tips paid to employees using 2019 Form 941 from each quarter, plus pre-tax employee contributions for health benefits and fringes excluded from wages but capped at \$100,000 per employee, and (b) employer health insurance, retirement contributions, and state unemployment taxes paid. Divide the sum by 12 and multiply the resulting monthly average by 2.5.

How is forgiveness determined for self-employed individuals?

Self-employed individuals may use PPP Loan funds for self-employment income replacement (but with forgiveness limited to 8/52 of the 2019 net income as described in Schedule C of the 2019 Form 1040) and as applicable employee payroll costs (limited to \$100,000 per employee annualized and pro-rated to a maximum of \$15,385 over the 8-week covered period), plus limited expenses for utility, mortgage interest, and interest on other debt incurred before February 15, 2020. Note: 75% of the PPP Loan must be used in the covered 8-week period only for payroll costs. Also, expenditures of PPP Loan funds on “other” debt obligations will not qualify for forgiveness.

How does a self-employed individual use a PPP Loan for mortgage interest?

To properly use PPP Loan funds for mortgage interest or utility expenses in the 8-week covered period, a self-employed individual must have claimed a mortgage interest deduction on their 2019 Form 1040.

SBA PPP Loan Next Steps

Although the Interim Final Rule is effective immediately, the SBA has requested comments from the public within 30 days. The SBA also will issue additional guidance as noted above for self-employed individuals in operation on February 15, 2020, but not in 2019.

Any partnership or limited liability company that has already applied for a PPP Loan and had the income of their owners excluded from the calculation of the approved PPP loan amount should immediately contact its lender if the loan has not yet been funded. There may still be time to amend your loan application to increase the amount of your PPP loan.

We will continue to monitor developments and report on further actions from the SBA as they become available. Please contact [Jim Catanzaro](#), [Justin Furrow](#), or your relationship attorney if you have questions or need additional information.

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