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SBA Issues Additional Guidance for Self-Employed Individuals and Clarifies Eligibility Requirements for Legal Gambling Businesses and PPP Lenders

On April 14, 2020, the U.S. Small Business Administration issued an Interim Final Rule providing additional guidance on the Paycheck Protection Program (PPP) implemented under the CARES Act. This Interim Final Rule supplements the Interim Final Rule issued on April 2, 2020, and primarily addresses issues faced by self-employed individuals as well as certain eligibility questions facing all types of entities.

With respect to self-employed individuals, the latest Interim Final Rule:

- Clarifies that self-employed individuals (such as independent contractors and sole proprietors) are eligible for PPP loans so long as such individual (i) was in operation on February 15, 2020, (ii) had self-employment income, (iii) his/her principal place of residence is in the United States, and (iv) he/she filed or will file a Form1040 Schedule C for 2019.
- Notes that partners may not submit a separate PPP loan application for themselves as self-employed individuals. Instead, the SBA has limited a partnership and its partners to a single PPP application, and the self-employment income of general active partners may be reported as payroll cost, up to \$100,000 annualized, on such application.
- Provides detailed instructions for calculating the amount self-employed individuals with or without employees can borrow and details the permissible uses of PPP loan proceeds.
- Sets forth that borrowers can only use loan proceeds for those eligible expenses they also incurred in 2019. For

example, if a borrower did not deduct expenses for utilities in 2019, the borrower may not use the PPP loan proceeds to pay utilities costs during the 8-week period after the lender makes the first disbursement of the PPP loan (the “covered period”). Further, proceeds of a PPP loan must be used for the following purposes:

- - Owner compensation replacement.
 - Employee payroll costs for employees whose principal place of residence is in the United States.
 - Mortgage interest payments (but not mortgage prepayments or principal payments) on any business mortgage obligation on real or personal property (e.g., the interest on the mortgage for the warehouse purchased to store business equipment, or the interest on an auto loan for a vehicle used to perform the business), business rent payments (e.g., the rent for the warehouse where business equipment is stored, or the vehicle used to perform the business), and business utility payments (e.g., the cost of electricity in the warehouse rented, or gas used driving the business vehicle).
 - Interest payments on any other debt obligations that were incurred before February 15, 2020 (such amounts are not eligible for PPP loan forgiveness).
 - Refinancing an existing SBA EIDL loan made between January 31, 2020, and April 3, 2020 (maturity will be reset to PPP’s maturity of two years). Note, if the applicant’s prior EIDL loan was not used for payroll costs, it does not affect the applicant’s eligibility for a PPP loan. If the applicant’s prior EIDL loan was used for payroll costs, the applicant’s PPP loan must be used to refinance the EIDL loan. Proceeds from any advance up to \$10,000 on the EIDL loan will be deducted from the loan forgiveness amount on the PPP loan.

- Emphasizes that even for self-employed individuals, at least 75% of the PPP loan proceeds must be used for payroll costs.
- Explains how borrowers can calculate the portion of the PPP loan (up to 100%) that the SBA will forgive and limits the amount of owner compensation expenses self-employed individuals may recover to eight weeks' worth of net profit in 2019.
- Lists the required documents self-employed individuals must submit, which are:
 - The borrower certifications required under §1106(e)(3) of the CARES Act;
 - If the self-employed individual has employees, IRS Form 941 and state quarterly wage unemployment insurance tax reporting forms (or equivalent payroll processor records);
 - Evidence of the business' rent, mortgage interest payments on real property, and utility payments during the covered period if using the loan proceeds to satisfy those expenses; and
 - 2019 Form 1040 Schedule C (regardless of whether the borrower has filed).
- States that the SBA will issue additional guidance for those individuals with self-employment income who: (i) were not in operation in 2019 but were in operation on February 15, 2020, and (ii) will file a Form 1040 Schedule C for 2020.

The Interim Rule also sets forth additional guidance for all entities:

- Allows certain principals who hold ownership interests in PPP lenders obtaining loans from those lenders.
 - Where an otherwise eligible business was owned (in whole or part) by an outside director or holder of a less than 30% equity interest in a PPP Lender, the business *is* eligible for a PPP loan from that lender as long as the lender follows its normal PPP loan processes for "any

similarly situated customer or account holder.” Officers and key employees of PPP lenders, however, must obtain a loan from a different institution.

- Expands eligibility for businesses receiving gambling revenues.
 - An otherwise eligible business that, in 2019, (i) received not more than \$1 million in revenue from legal gaming, and (ii) received less than 50% of its total revenues from legal gaming, is eligible for a PPP loan.
- Determines that the additional requirements of 13 CFR 120.434 dealing with 7(a) loan pledges to a Federal Reserve Bank or the Federal Home Loan Bank do not apply to the PPP program.

This Interim Final Rule answers several common questions that have arisen since the PPP’s announcement. The SBA committed to issuing additional guidance as needed to ensure the effective implementation of the program.

Our team of attorneys is here to help you analyze the availability and features of these lending programs. For more information on the Paycheck Protection Program and other financial assistance available to businesses under the CARES Act, please contact [Becky Moore](#), [Maria Kroeger](#), [Joe Brammer](#) or any attorney in Frost Brown Todd’s [Finance](#) Practice Group.

To provide guidance and support to clients as this global public-health crisis unfolds, Frost Brown Todd has created a Coronavirus Response Team, including a special team focusing on SBA funding options under the CARES Act. Our attorneys are on hand to answer your questions and provide guidance on how to proactively prepare for and manage any coronavirus-related threats to your business operations and workforce.

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