

SBA Issues Guidance on PPP Loans for Law, Accounting, and Other Service Partnerships

April 14, 2020, the SBA issued new guidance on the treatment of service partners for Payroll Protection Program (PPP) loans. The Interim Final Rule [Paycheck Protection Program – Additional Eligibility Criteria and Requirements for Certain Pledges of Loans](#) clarifies that individuals treated as partners may not submit a separate PPP loan application as an "eligible self-employed individuals." Rather, K-1 service partners' income should be reported as a payroll cost, up to \$100,000 annualized, on a PPP loan application filed by the partnership.

The latest SBA guidance almost exclusively addresses PPP loan criteria for self-employed individuals. However, in what may have been a last-minute addition, the SBA dropped in five sentences to clarify the treatment of partners for purposes of a PPP loan. This guidance arguably creates more confusion than clarity.

The SBA's decision to treat K-1 partners' income as part of the partnership's "payroll costs" is surprising and backtracks on prior guidance. Previously, [the SBA indicated](#) that, for purposes of calculating PPP loan amounts, "payroll costs" only included compensation paid to employees and net earnings from self-employment or similar compensation paid to sole-proprietors and independent contractors. Section 1102 of the CARES Act provides the same definition. Given this language, [we previously hypothesized](#) that the only sensible reading of the CARES Act and initial SBA guidance was to treat service partners as eligible for their own PPP loans similar to independent contractors.

SBA Rationale for PPP Partnership Aggregation

Instead, the most recent SBA guidance has taken an aggregate approach for partners and partnerships. As a result, the SBA appears to have opened up the definition of "payroll costs" to partners' K-1 distributions and, presumably, guaranteed payments. According to the Interim Final Rule, limiting a partnership and its partners (and an LLC filing taxes as a partnership) to one PPP loan is necessary to help ensure that as many eligible borrowers as possible obtain PPP loans before the statutory deadline of June 30, 2020.

In addition, the SBA indicates that permitting partners to apply as self-employed individuals would create unnecessary confusion



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regarding which party, the individual or the entity, applied for the loan based on partner income. Finally, the SBA points out that rent, mortgage interest, utilities, and other debt service are generally incurred at the partnership level, not the partner level, so it is most natural to provide the funds for these expenses to the partnership, rather than the individual partners.

Implications of SBA Partnership Treatment

The SBA's conclusion is sensible but creates a host of new issues. For example, the most recent guidance does not indicate how partners should calculate their "payroll costs." Arguably, the partners should use their self-employment earnings at line 14A of their K-1, which would be consistent with SBA's instruction to use Schedule C line 31 net profit amount to determine payroll costs for self-employed individuals. Such a reading would also sweep guaranteed payments into the payroll costs for partners. But practitioners and prospective borrowers are unclear on how to calculate payroll costs for partnerships.

In addition, the new guidance creates more practical questions. Assume an accounting firm has 400 W-2 wage earners and 150 equity partners. Previously, such an accounting firm could have applied for the PPP loan because it had fewer than 500 employees. However, now with the similar treatment of W-2 wages and K-1 income, does that accounting firm exceed the 500 employee small business threshold?; Or worse, if the accounting firm already applied for the loan (based on the 400 W-2 wage earners), could the SBA's position impact forgiveness of the loan?

In short, the SBA has taken the aggregate approach to the treatment of partners and partnerships for purposes of PPP loans. However, absent further guidance, questions remain on how to implement the program for partnerships.

Individuals and business entities with questions about PPP loans or the CARES Act more generally can contact [Christopher Karachale](#) or the [Hanson Bridgett Coronavirus \(COVID-19\) Resource Center](#).

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