COVID-19: Paycheck Protection Program Loan Guidance for Partnerships and Independent Contractors

April 17, 2020

On April 14, 2020, the U.S. Small Business Administration (SBA) clarified the treatment of companies treated as partnerships for income tax purposes, and partners and sole proprietors/independent contractors for Paycheck Protection Program (PPP) loan purposes in its second interim final rule.

The guidance restricts "general active partners" from filing separate PPP loan applications for their self-employment (SE) income attributable to a partnership. Instead, to ease the administrative processing of individual partner loan PPP applications, the guidance allows a partnership to include the SE income of "general active partners" in determining the partnership's payroll costs for purposes of a partnership's PPP loan application. The term "active general partner" is not defined under the guidance, but it is reasonable to conclude that the term includes members of professional service partnerships (legal, medical, engineering) and partners in other partnerships that are actively performing services for such partnerships and have SE income attributable to such services. If a partnership includes the active partners' K-1 income (whether a guaranteed payment or distributable share of partnership income) in the computation of each partner's payroll cost, such compensation will be subject to the $100,000 annual limit on compensation applied to employees. Including such amounts may help many partnerships in reaching the 75% payroll allocation requirement threshold for PPP loan forgiveness and increase their PPP loan eligibility.

The guidance does not provide any indication if "active general partners" will be considered employees when assessing whether a partnership has more than 500 employees, which would generally render it ineligible for PPP loans.

The guidance also provides administrative rules for the PPP loan application process for sole proprietors and independent contractors. These clarifications include, but are not limited to:

- An explanation of how maximum amounts available to be borrowed are calculated;
- An explanation of how the PPP loan proceeds may be used for taxpayers filing a Schedule C;
- A clarification that the 75% of PPP loan proceed allocation to payroll costs requirement also applies to sole proprietors seeking loan forgiveness;
- An explanation of what amounts are eligible for forgiveness;
- An explanation of what documentation is required to submit to PPP loan lenders for forgiveness of the PPP loan; and,
- A caution that taking a PPP loan may affect one's ability to receive relief from one's state unemployment assistance programs.

Finally, the guidance clarifies that certain SBA regulations do not apply to PPP loans which will allow PPP loans to be made without SBA approval of loan documents.

Presently, the initial funding allocation for PPP loans has been exhausted, so the SBA is not taking new applications. It is anticipated that Congress will approve additional funding shortly, at which point, applications should be submitted promptly, as the funds are expected to be made available on a first-come, first-served basis.

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Please contact any of the authors or your Miller Canfield attorney with further questions.

This information is based on the facts and guidance available at the time of publication, and may be subject to change.