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Client Alert: New SBA Guidance for Paycheck Protection Program Loans for Self-employed Individuals and Partnerships, the Gaming Industry and Shareholders and Directors of PPP Lenders

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The Small Business Administration ("SBA") has issued additional guidance regarding the process for self-employed individuals and sole proprietors and clarifies how partners in a partnership (for example, members of a limited liability company ("LLC") taxed as a partnership), should apply for loans under the Paycheck Protection Program ("PPP"). In addition, the new Guidance addresses eligibility for businesses in the gaming industry and businesses owned by directors or shareholders of a PPP lender for loans through the PPP lender with which they are associated. This deals in part with calculation of forgiveness as well as updates for PPP eligibility once Congress replenishes with \$250B.

Sole Proprietors and Independent Contractors

Sole proprietors and independent contractors who file a Form 1040, Schedule C are eligible for PPP loans if they have self-employment income, were in operation on February 15, 2020, principally resided in the U.S., and filed or will file a Form 1040 Schedule C for 2019. These individuals are instructed to file for a PPP loan individually. Partners¹ in a partnership, such as members of an LLC taxed as a partnership, are instructed to report their income as a payroll cost of the partnership (up to the \$100,000.00 cap, of course).

Maximum Loan Amount for Independent Contractors and Sole Proprietors:

If the business has no employees:

- 2019 IRS Form 1040 Schedule C, Line 31: Net profit, reduced to \$100,000, if this amount is zero the individual is not eligible for a PPP loan²
- Divide Net profit by 12
- Multiply by 2.5
- Add the outstanding amount of an Economic Injury Disaster Loan ("EIDL") made between January 31, 2020 and April 2, 2020 to be refinanced.

If the business has employees:

- 2019 IRS Form 1040 Schedule C Line 31, Net profit, reduced to \$100,000, if this amount is zero, set the amount at zero, plus
- 2019 gross wages and tips paid to employees who principally reside in the U.S.³, subtract amounts in excess of \$100,000.00 annualized, plus
- 2019 employer health insurance contributions, plus
- State and local taxes on employee compensation
- Divide the sum of the above amounts by 12
- Multiply the average monthly amount by 2.5
- Add EIDL made between January 31, 2020 and April 2, 2020 to be refinanced.

Appropriate Uses of PPP Loan by Sole Proprietors and Independent Contractors (subject to limitations below)

- Owner compensation replacement
- Employee payroll costs
- Mortgage interest on equipment or real estate
- Utilities
- Rent
- Any such expenses must have been claimed or entitled to be claimed as a deduction on the 2019 Form 1040, Schedule C
- Interest payments on other debt obligations incurred before February 15, 2020 (not eligible for forgiveness)
- Refinancing a SBA EIDL Loan made between January 31, 2020 and April 3, 2020. If the EIDL was used for payroll the PPP loan must be used to refinance the EIDL (advances up to \$10,000 on the EIDL are not eligible for forgiveness)
- Importantly, at least 75 percent must be used for payroll costs (including amount of refinanced EIDL)

What is Eligible for Forgiveness?⁴

- Up to the full amount of the principal amount of loan, plus interest
- Payroll costs up to \$100,000.00, annualized, for eight weeks (a maximum of \$15,385 per individual)
- Covered benefits for employees (not owners) (excluding CARES sick or family leave benefits)
- State taxes on employee payroll paid by the employer (e.g., unemployment insurance premiums)
- Payments of mortgage interest on real or personal property
- Rent on lease agreements in place prior to February 15, 2020 (to the extent deductible)
- Utility payments (to the extent deductible)
- Owner Net Profit equal to eight weeks of 2019 net profit

Directors and Shareholders of PPP Lenders

Subject to the PPP lender's internal policies and other applicable state and federal regulations, directors and shareholders of a PPP lender who hold less than a 30 percent equity interest in the PPP lender are permitted to apply for a loan through the PPP lender with whom they are affiliated, although the PPP lender may not show favoritism to the director or shareholder and must follow the same procedures as for other borrowers.

Gaming Industry

Businesses who have receipts from legal gaming revenues are not rendered ineligible for a PPP loan if:

- The existing standard in 13 CFR 120.110 (g) is met; or
- The business's 2019 gaming revenue, net of payouts (but not other expenses) does not exceed \$1 million or comprise less than 50 percent of the business's total revenues.

Shumaker's Financial Services Practice Group has extensive experience in representing both financial institutions and commercial borrowers in a variety of transactions and structures, in all areas of commercial lending. Please contact us if you have questions regarding this Client Alert or if we can be of assistance in reviewing loan documentation and advising of potential courses of action."

¹ The guidance states that such partners are "general active partners", presumably distinguishing these partners from passive limited partners.

² Even if the tax payer has not filed 2019 taxes, the Form 1040 Schedule C must be completed and provided with the loan application. Also the self-employed individual must provide a 2019 Form 1099-MISC, invoice, or book of record showing the individual is self-employed. The SBA also requires a 2020 invoice bank statement or other record showing that the individual was in business on or around February 15, 2020.

³ Use 2019 IRS Form 941 Taxable Medicare Wages and Tips plus pretax employee contributions for health insurance and other benefits excluded from Taxable Medicare Wages and Tips. The individual must provide the 2019 Form 1040, Schedule C, Form 941, state quarterly wage unemployment insurance tax reporting forms for each quarter in 2019, evidence of retirement and health insurance contributions. The tax payer must provide a payroll statement or other documentation showing it was in business on February 15, 2020. For business's that were in operation on February 15, 2020 but not in operation in 2019, the SBA will provide additional guidance.

⁴ SBA will require documentation for forgiveness consisting of Form 941, state quarterly wage unemployment insurance tax reporting forms or equivalent payroll records, evidence of retirement and health insurance contributions, evidence of business rent, utility and mortgage interest payments, and the 2019 Form 1040, Schedule C.

For the most up-to-date legal and legislative information related to the coronavirus pandemic, please visit our Shumaker COVID-19 Client Resource Center at shumaker.com. We have also established a 24/7 Legal & Legislative Helpline at 1.800.427.1493 monitored by Shumaker lawyers around the clock