



ATTORNEYS AND COUNSELORS AT LAW

James Richard Martin • Jack H. Petty  
Robert R. Redwine • Christopher W. Cotner  
Mark H. Price • Ryan C. Owens  
and Joseph C. Schubert

Ryan C. Owens, Attorney  
Direct Line: 405-603-5080  
[Ryan@BethanyLaw.com](mailto:Ryan@BethanyLaw.com)

6666 NW 39th Expressway  
Bethany, Oklahoma 73008  
Phone: 405/787-6911  
Fax: 405/787-6913  
Direct Fax: 405/470-9400  
[www.BethanyLaw.com](http://www.BethanyLaw.com)

MEMORANDUM

**TO:** Business Clients  
**RE:** SBA Guidelines on Forgiveness of PPP Loans for Self-Employed Borrowers  
**DATE:** Thursday, April 23, 2020

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This memorandum is designed to provide general advice to employers seeking federal financial assistance via the federal Paycheck Protection Program in order to respond to the global COVID-19 Pandemic. This situation is dynamic, and negotiations are already underway on a fourth congressional stimulus bill to address the financial needs of Americans in response to this crisis. **Each situation is unique; therefore, we recommend that you contact our office to discuss your individual concerns.**

**A. The Paycheck Protection Program Forgiveness Guidelines**

On Friday, April 17, 2020 the federal Small Business Administration (“SBA”) made available an Interim Final Rule (“IFR”) regarding PPP eligibility requirements for Individuals with Self-Employment Income and what documents SBA will require when those PPP Borrowers seek forgiveness of their loan.

The IFR took effect immediately and is applicable to Self-Employed PPP Borrowers.

A key provision of the PPP is the potential for 100% forgiveness of a PPP loan if used for authorized purposes. The SBA will be paying the full amount of approved forgiven loans to lenders on behalf of borrowers. While the SBA has not yet promulgated an Interim Final Rule fully outlining the documentation and processes necessary for a non-Self-Employed PPP Borrower, the IFR of April 17, 2020 provides a glimpse into what the SBA will require of lenders and borrowers before forgiving a PPP loan.

***1. Self-Employed Restricted Eligibility for PPP Loan***

Self-Employed eligibility for a PPP loan:

- i. you were in operation on February 15, 2020;
- ii. you are an individual with self-employment income (such as an independent contractor or a sole proprietor);
- iii. your principal place of residence is in the United States; **and**
- iv. you filed or will file a Form 1040 Schedule C for 2019.
  - a. Regardless of whether you have filed a 2019 tax return with the IRS, you must provide the 2019 Form 1040 Schedule C with your PPP loan application to

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substantiate the applied-for PPP loan amount **and** a 2019 IRS Form 1099-MISC detailing nonemployee compensation received (box 7), invoice, bank statement, or book of record that establishes you are self-employed.

- b. You must provide a 2020 invoice, bank statement, or book of record to establish you were in operation on or around February 15, 2020.

**PARTNERSHIP EXCEPTION:** Partners in a partnership may not submit a separate PPP loan application for themselves as a self-employed individual. Instead, the self-employment income of general active partners may be reported as a payroll cost, up to \$100,000 annualized, on a PPP loan application filed by or on behalf of the partnership. Partnerships are eligible for PPP loans under the Act.

### *2. What Amounts Will be Forgiven?*

The amount of loan forgiveness can be up to the full principal amount of the loan plus accrued interest. The actual amount of loan forgiveness will depend, in part, on the total amount spent over the covered period (eight weeks following initial PPP loan disbursement) on:

- i. payroll costs including salary, wages, and tips, up to \$100,000 of annualized pay per employee (**for eight weeks, a maximum of \$15,385 per individual**), as well as covered benefits for employees (**but not owners**), including health care expenses, retirement contributions, and state taxes imposed on employee payroll paid by the employer (such as unemployment insurance premiums);
- ii. owner compensation replacement, calculated based on 2019 net profit as described in Paragraph 1.b. above, with forgiveness of such amounts limited to eight weeks' worth (**8/52 of 2019 net profit**), but excluding any qualified sick leave equivalent amount for which a credit is claimed under section 7002 of the Families First Coronavirus Response Act (FFCRA) (Public Law 116-127) or qualified family leave equivalent amount for which a credit is claimed under section 7004 of FFCRA;
- iii. payments of interest on mortgage obligations on real or personal property incurred before February 15, 2020, **to the extent they are deductible on Form 1040 Schedule C** (business mortgage payments);
- iv. rent payments on lease agreements in force before February 15, 2020, **to the extent they are deductible on Form 1040 Schedule C** (business rent payments); and
- v. utility payments under service agreements dated before February 15, 2020 **to the extent they are deductible on Form 1040 Schedule C** (business utility payments).

The Administrator, in consultation with the Secretary, has determined that it is appropriate to limit the forgiveness of owner compensation replacement for individuals with self-employment income who file a Schedule C to eight weeks' worth (8/52) of 2019 net profit. This is most consistent with the structure of the Act and its overarching focus on keeping workers paid and **will prevent windfalls that Congress did not intend.** Allowing such a self-employed individual to treat the full amount of a PPP loan as net income would result in a windfall. The entire amount of the PPP loan (a maximum of 2.5 times monthly payroll costs) would be forgiven even though Congress designed this program to limit forgiveness to certain eligible expenses incurred in an eight-week covered period.

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***3. Documentation Required for Forgiveness***

In addition to the borrower certification required by Section 1106(e)(3) of the Act, to substantiate a request for loan forgiveness the Borrower must submit:

- If a self-employed Borrower has employees, Form 941 and state quarterly wage unemployment insurance tax reporting forms or equivalent payroll processor records that best correspond to the covered period (with evidence of any retirement and health insurance contributions).
- Whether or not the Self-employed Borrower has employees, evidence of business rent, business mortgage interest payments on real or personal property, or business utility payments during the covered period for which PPP loan proceeds were used for those purposes.
- The 2019 Form 1040 Schedule C that was **provided at the time of the PPP loan application** must be used to determine the amount of net profit allocated to the owner for the eight-week covered period.

The Administrator, in consultation with the Secretary, determined that for purposes of PPP loan forgiveness it is appropriate to require self-employed individuals to rely on the 2019 Form 1040 Schedule C to determine the amount of net profit allocated to the owner during the covered period for the reasons described in Paragraph 1.d. above.

**ACCESS U.S. DEPARTMENT OF TREASURY GUIDANCE:**

<https://home.treasury.gov/policy-issues/top-priorities/cares-act/assistance-for-small-businesses>

**ACCESS SBA INTERIM FINAL RULE ON PPP**

[https://www.sba.gov/sites/default/files/2020-04/PPP--IFRN%20FINAL\\_0.pdf](https://www.sba.gov/sites/default/files/2020-04/PPP--IFRN%20FINAL_0.pdf)

**ACCESS SBA INTERIM FINAL RULE ON SELF-EMPLOYED BORROWERS**

<https://home.treasury.gov/system/files/136/Interim-Final-Rule-Additional-Eligibility-Criteria-and-Requirements-for-Certain-Pledges-of-Loans.pdf>

**ACCESS TEXT OF H.R. 748**

<https://www.congress.gov/bill/116th-congress/house-bill/748/text>