



Emerging Confusion in the Paycheck Protection Program Loan Process

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The Paycheck Protection Program (“PPP”) loans under the CARES Act are a source of desperately needed capital for many businesses. Businesses must apply for PPP loans through independent lenders who have Small Business Administration (“SBA”) loan programs. The PPP program, and the CARES Act, were put in place very quickly, and rely not only on government bureaucracy to function correctly, but third-party lenders. Not surprisingly, there has been some confusion between the SBA and lenders; businesses applying for PPP loans can expect to see certain issues crop up.

What is the confusion in the PPP loan process? There are several issues that will have to be resolved through further legislation, the passing of regulations, or further SBA guidance, such as:

1. What if you are a business owner who is an LLC member or partner? While ‘self-employed’ individuals must wait until April 10th to apply, lenders are currently including the income of business owners who are LLC members or partners in the amount that can be borrowed (up to \$100k/owner). Whether payments to LLC member or partners for monthly draws, guaranteed payments, etc., will be allowed as part of the forgiveness program is in question.
2. Do payments to independent contractors count when calculating the amount you can borrow under the PPP program? Probably not; those persons can apply independently on April 10th. However, some banks are asking for those amounts in the application; furthermore, many independent contractors do not have the existing relationship with a bank that would allow them to easily apply for a PPP loan. This contradiction may leave many contractors in the cold.
3. Are employees who make \$100k/year or more included in the calculation of the PPP loan amount? Yes, but it is not clear how. Are benefits, commissions, etc. included, or only straight salary? This needs to be clarified.
4. Do you use the FY 2019 payroll numbers or the last 12 months? The law says the last 12 months; some lenders are asking for FY 2019. This needs to be clarified – as using the wrong numbers can lead to portions of the loan not being forgiven.

How do I deal with these issues? We are available to assist you in making your application and preparing a strategy to deal with uncertain areas of the law. We know your goals are to minimize risk, keep your business open, and ensure your employees are taken care of. Our COVID-19 Response Team is working every day on these issues for our clients.

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The Wisler Pearlstine team of business attorneys is ready to address your COVID-19 questions and concerns. Please contact any of us at 610.825.8400 you have concerns about the impact of COVID-19 in the workplace.

This article represents our best effort to assemble accurate information on an accelerated basis. However, the subject is complex, and many details have been summarized or omitted in the interest of focusing on key points. In addition, the law and the guidance issued by the government is constantly changing. You should not rely on the accuracy or completeness of this information for your business and personal decisions but, rather, should seek updated, personalized legal advice as needed.

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