

The PPP Partnership Question - An Update

By: Thomas Prewitt on May 19, 2020 on graydon.law

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We previously reported on the SBA's April 14, 2020 guidance on *The PPP Partnership Question*, i.e., whether the compensation of partners in a partnership could be included in "payroll costs" when calculating the amount of the partnership's loan under the Payroll Protection Program ("PPP"). The April 14 guidance answered "yes" to the question. We concluded that blog by saying "Assuming that Congress replenishes the funding for this program, this new guidance will give those partnerships and LLCs that have not already applied for loans the tool they need to obtain relief for their owners in addition to their employees [emphasis added]." On Tuesday, SBA provided further relief for those partnerships and LLCs that had already applied for their PPP loans at the time the April 14 guidance came out, using only employee compensation. The difference could be significant, depending upon the size of the partnership.

In its May 19, 2020 Interim Final Rule, SBA said: "If a partnership received a PPP loan that only included amounts necessary for payroll costs of the partnership's employees and other eligible operating expenses, but did not include any amount for partner compensation, the lender may electronically submit a request through SBA's E-Tran Servicing site to increase the PPP loan amount to include appropriate partner compensation, even if the loan has been fully disbursed." That is good news for those partnerships that applied for loans before being aware of the eligibility of partner compensation for inclusion in the loan amount.

But there is an important catch that is beyond the control of borrowers and may make loan increases impossible. Specifically, for each PPP loan, lenders must file with SBA an SBA Form 1502 report on the loan. A partnership seeking to increase the amount of its loan to include partner compensation must do so before its lender submits the Form 1502 for the partnership's loan. If the lender has already submitted the Form 1502 to SBA, the loan cannot be increased.

On May 8, 2020, SBA extended the deadline for lender submission of Form 1502s from May 18 to May 22, 2020. Partnerships desiring to increase their PPP loans pursuant to Tuesday's new guidance should contact their lenders immediately to determine if their Form

1502 has been filed. If so, you're stuck with the original loan. If not, you've got a few days to seek an increase. Good luck.