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SBA, Treasury Release Interim Final Rules Providing Additional Guidance on Paycheck Protection Program

The Small Business Administration (SBA) and the Department of the Treasury recently released two interim final rules that provide additional guidance to Paycheck Protection Program (PPP) lenders and borrowers. The guidance primarily relates to the rules and process for applying for loan forgiveness. Highlights from these interim final rules follow.

Loan Forgiveness Application Process
Borrowers must complete and submit the Loan Forgiveness Application to its lender or the lender servicing the loan, which will review the application and make a decision regarding eligibility for forgiveness. Within 60 days of receiving a complete application, the lender must issue a decision to the SBA and request payment. The SBA will, subject to review of the loan or loan application, remit the appropriate amount to the lender, including any interest, within 90 days. The lender is responsible for notifying the borrower of how much of the loan will be forgiven. If the lender determines that the borrower is not eligible for some or all of the amount requested for forgiveness, the lender must provide a rationale and supporting documentation to the SBA.

Loan Forgiveness Oversight
Borrowers are responsible for providing accurate calculations of the loan forgiveness amount and the required documentation. Lenders are responsible for conducting a good-faith review of the borrower's calculations and supporting documents. The SBA will conduct oversight of the PPP and may review a loan at any time at its discretion. If the SBA undertakes such a review, it will notify the lender and the lender must notify the borrower within five business days. Borrowers must retain files related to the loan for six years after the date the loan is forgiven or repaid in full, including the Loan Forgiveness Application Schedule A Worksheet and other documents to support the application at the individual employee level.

PPP Eligibility Determinations and Loan Repayment (For Amounts Not Forgiven)
During a review of an application for loan forgiveness, the SBA may determine that a borrower is not eligible for forgiveness (in whole or part) or may find that the borrower was not eligible for the loan. Borrowers will have the opportunity to engage with the SBA during any investigation into their eligibility for either the loan or loan forgiveness and also can appeal any adverse decision. In instances where the borrower is found ineligible for the program, the SBA may seek repayment of the outstanding PPP loan balance and pursue other remedies. In addition, the SBA will seek to recover the lender

processing fee. In instances where some or all of a loan is not forgiven, any remaining balance must be repaid before the two-year maturity of the loan.

Guidance on Completing the Loan Forgiveness Application

The SBA provides additional guidance for borrowers on the loan forgiveness application:

- **Determining Payroll Costs.** Payroll costs include salary, wages, commissions, or similar compensation, including compensation paid to furloughed employees during the loan period, as long as no individual employee's compensation exceeds an annual salary of $100,000 (as prorated for the covered period).

For purposes of the PPP, payroll costs paid or incurred during the eight consecutive weeks of the covered period (or the alternative payroll covered period, as defined below) of the loan are eligible for forgiveness. Borrowers may seek forgiveness for payroll costs that began on either the date of disbursement of the loan or, alternatively, the first day of the first payroll cycle following the loan disbursement date. Payroll costs are considered paid on the day that paychecks are distributed or the borrower originates an ACH credit transaction. The SBA acknowledges that the eight-week covered period will not always align with a borrower's payroll cycle and allows the borrower to elect to use an alternative payroll covered period that begins on the first day of the first payroll cycle following the loan disbursement date and continues for eight weeks thereafter.

- **Nonpayroll Costs Eligible for Loan Forgiveness.** Certain nonpayroll costs may be eligible for loan forgiveness, such as rent, mortgage interest payments and utilities. These costs must either be paid during the covered period or incurred during the covered period and paid on or before the next regular billing date, even if the billing date is after the covered period.

- **Reductions to Loan Forgiveness Amount.** Borrowers may not be eligible for full loan forgiveness in certain scenarios, including if they reduced the number of full-time equivalent (FTE) employees or reduced salary and wages of any employees by more than 25% during the covered period (as compared to salary and wages between Jan. 1, 2020 and March 31, 2020). There are some exemptions for instances when the borrower has either rehired or restored the compensation levels of employees by June 30, 2020. Borrowers also may be exempt if they have offered to rehire employees or restore employee hours, even if the employees have not yet accepted or have rejected the offer.

The SBA will not "double penalize" borrowers by counting both reductions in FTEs and reductions in wages for the same employee(s). In addition, borrowers will not face reductions in the loan amounts for reductions in the number of FTEs when an employee is fired for cause, voluntarily resigns, or voluntarily requests a reduced schedule during the covered period or the alternative payroll covered period.

- **Calculating Full-time Equivalent Employees.** For purposes of the PPP, "full-time equivalent employee" means an employee who works 40 hours or more, on average, each week. Employees who work more than 40 hours per week are considered a single employee. In other words, an employee who routinely works 50 hours per week counts as one full-time equivalent employee, not 1.25. Part-time employees (i.e., those who work less than 40 hours per week) are calculated in one of two ways: 1) a borrower can calculate the average number of hours for which each part-time employee was paid per week during the covered period (by adding the weekly hours and dividing by 40), or 2) a borrower can count each part-time employee as ½ a FTE employee. Borrowers must select one of these methods and apply it consistently to all part-time employees for the covered period or the alternative payroll covered period.

Further Questions

If you have questions, please contact AHA at 800-424-4301.