MISSOURI Restaurant News

April 7, 2020

SBA Issues Interim Final Rule for Paycheck Protection Program

Today's newsletter updates previous MRA-provided information regarding the Paycheck Protection Program (PPP) under the Small Business Administration's (SBA) expanded § 7(a) lending program. The prior information includes:

Small Business Owner's Guide to the CARES Act - March 28, 2020
NRA CARES Act FAQ – March 31, 2020
Littler ASAP - Analysis of CARES Act - March 26, 2020
MRA April 1 Newsletter

On the evening of Thursday, April 2, 2020, the SBA issued an **Interim Final Rule** (IFR) regarding implementation of the PPP, and the next morning, published a final borrower **loan application.** The IFR and revised application form clarify certain issues raised under the CARES Act and previously issued guidance on the PPP. This newsletter summarizes certain key aspects of the IFR.

First-Come, First-Served. The IFR indicates that PPP loans will be made on a first-come, first served basis. Given the anticipated high demand for this program, prospective borrowers should submit their loan applications as soon as possible. If your financial institution is an SBA lender, MRA recommends you contact them first, although that is not required. For your convenience, MRA obtained a list of SBA lenders in **Eastern & Central Missouri** and **Western Missouri & Eastern Kansas.**

Interest Rate. Contrary to earlier guidance from the U.S. Treasury (Treasury), all PPP loans will have an interest rate of 1.00%, rather than 0.50%. The Treasury and SBA believe the higher interest rate, combined with the SBA guaranty and the substantial processing fee SBA pays to lenders, will provide "ample inducement" for more lenders to offer PPP loans.

Independent Contractors. Although prior guidance was unclear on the point, the IFR states that independent contractors may not be taken into account by businesses for PPP purposes (including, for example, in calculations of payroll costs) because independent contractors are eligible to apply for their own PPP loans.

Federal Employment Taxes. The IFR confirms that federal employment taxes imposed or withheld between February 15, 2020 and June 30, 2020 are excluded from calculations of payroll costs.

Minimum Use of Loan Proceeds for Payroll Costs. The IFR adds a new requirement that not less than 75% of loan proceeds be used for payroll costs, and therefore not more than 25% of loan proceeds may be used for non-payroll costs otherwise eligible under the PPP. Borrowers are required to certify in their loan applications that they understand this restriction, and the SBA will direct borrowers who violate this restriction to repay amounts improperly used i.e., such amounts will not become part of the PPP loan.

Loan Forgiveness Limitations. While the IFR confirms that PPP loans will be eligible for forgiveness of up to 100% of the principal loan amount and all accrued interest, it also adds a cap on forgiveness for non-payroll costs equal to 25% of the loan forgiveness amount.

Liability for Unauthorized Use of Loan Proceeds. The IFR provides that borrowers who use loan proceeds for unauthorized purposes will be directed to repay those amounts and may also be subject to additional liability (e.g., fraud) for knowingly using such proceeds for unauthorized purposes. The IFR further provides that owners of a borrower may be held directly liable for their own unauthorized use of loan proceeds.

MISSOURI
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