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SBA Guidance Clarifies PPP Forgiveness & Felony Conviction Eligibility. Re-Opens Economic Injury Disaster Loan Program

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On June 11th and 12th, the Treasury Department and the Small Business Administration (SBA) unveiled consecutive days of revisions to the first interim final rule for the Paycheck Protection Program (PPP) as well as revised application forms for borrowers and lenders.

The June 11th revisions implement the Paycheck Protection Program Flexibility Act (Flexibility Act) signed into law by President Trump on June 5, 2020, a summary of which can be found [here](#). Importantly, these revisions included guidance resolving an issue created by the Flexibility Act as to a borrower's qualification for PPP loan forgiveness. While the wording of the Flexibility Act imposed a "cliff" requirement, that at least 60% of the loan proceeds be spent on payroll costs in order for the borrower to be eligible for any forgiveness, this new guidance clarifies the requirement such that a borrower's failure to meet the 60% threshold simply results in a proportional decrease in loan forgiveness, rather than barring the borrower from any loan forgiveness. According to the Administrator and the Secretary of the Treasury, this clarified interpretation of the 60% usage requirement under the Flexibility Act is consistent with Congress's purpose to increase the flexibility provided to borrowers related to PPP loan forgiveness.

The June 12th guidance eased the PPP loan eligibility restrictions for individuals with felony criminal histories. The first interim final rule provided, among other things, that a PPP loan would not be approved if an owner of 20% or more of the equity of the applicant had been convicted of a felony within the last five years. However, after further consideration, the Administrator and the Secretary of the Treasury found this restriction inconsistent with Congress's intent to provide relief to small businesses and determined that a shorter timeframe for certain felonies should be implemented. The look-back period has been reduced from five years to one year to determine eligibility for applicants or owners of applicants with non-financial felony convictions. The ineligibility period remains five years for felony convictions involving fraud, bribery, embezzlement, or a false statement in a loan application or an application for federal financial assistance.

The SBA issued revised PPP application forms that incorporate these changes. New borrower application forms can be found [here](#), and new lender application forms can be found [here](#).

Finally, on June 15th, the SBA announced it was re-opening its Economic Injury Disaster Loan (EIDL) grant and loan program. The SBA stopped taking applications for the EIDL program on April 16th after the initial

funding was exhausted. As of June 15th, the SBA is again accepting applications for EIDL grants and loans from all applicants if they have 500 or fewer employees and have been impacted by the coronavirus pandemic. EIDL loans can be used for debts, payroll, and other bills that can't be paid because of the impacts resulting from the pandemic (importantly, borrowers can apply for an EIDL loan in addition to a loan under the PPP, provided the loan proceeds are not used for the same purpose). These loans are offered at a 3.75% interest rate for businesses and a 2.75% interest rate for non-profits, though it remains unclear whether the total loan amount available to an applicant has been raised back to \$2,000,000 or continues to be limited to \$150,000. EIDL grants allow applicants to request an advance of up to \$10,000. These advances don't have to be repaid and small businesses are eligible for an advance even if they are not approved for an EIDL loan.

As has been the case since the introduction of the CARES Act and the implementation of the SBA's loan programs, the rules, requirements, and subsequent guidance continue to be fluid. Businesses should consider these new guidelines in determining whether and when to apply for the SBA's various loan programs.