KRIEG DEVAULT

Insights

SBA Issues New Guidance on Loan Forgiveness

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On August 4, 2020, the SBA issued guidance in the form of new FAQs regarding loan forgiveness applications for the Paycheck Protection Program. The guidance comes out in anticipation of the SBA accepting loan forgiveness applications beginning August 10, 2020. The FAQs mostly reinforce previously issued guidance and provide some additional information to assist borrowers in preparing their loan forgiveness applications.

The FAQs are broken down into four separate subcategories: (1) General Loan Forgiveness FAQs; (2) Loan Forgiveness Payroll Costs FAQs; (3) Loan Forgiveness Nonpayroll Costs FAQs; and (4) Loan Forgiveness Reductions FAQs. Below is a short overview of each subcategory.

General Loan Forgiveness FAQs

The General Loan Forgiveness FAQs subsection generally covers information that has been highlighted and discussed in the Loan Forgiveness EZ Application and FAQs and includes three new FAQs. The first FAQ clarifies that independent contractors, sole proprietors, and self-employed individuals who have no employees should use the Loan Forgiveness EZ Application Form. This information confirms the instructions for the Loan Forgiveness EZ Application Form. In addition, the section confirms that lenders may use scanned copies of signed loan forgiveness applications or any form of electronic signature.

Loan Forgiveness Payroll Costs FAQs

The Loan Forgiveness Payroll Costs FAQs section includes eight new FAQs. This section again reiterates previous guidance regarding calculation of payroll costs and when payroll costs are eligible for forgiveness. In addition, the SBA reconfirmed that group health care and retirement benefits that are paid or incurred by the borrower during the Covered Period are eligible payroll costs. However, the SBA stated that any health care or retirement benefits that have been accelerated from periods outside of the Covered Period would not be considered eligible payroll costs. This distinction was not previously discussed in prior guidance.

In addition, FAQ number 8 provides examples for calculating the amount of owner compensation that is eligible for loan forgiveness. The answer provides specific examples of how owner compensation is treated for owners of C and S Corporations, general partners, LLC members, and Schedule C filers based on using the 24-week Covered Period. Of particular note, for those who own more than one business, the compensation from all businesses will be aggregated to determine if the cap of $20,833 per individual is satisfied (calculated as 2.5/12 times 2019 compensation up to $100,000).

Loan Forgiveness Non-Payroll Costs FAQs

The Loan Forgiveness Non-Payroll Costs FAQs section includes seven new FAQs. The main clarification in this section is that payments for utility fees do not include mileage reimbursement or fuel charges. Prior to this FAQ, commentators had speculated that transportation costs eligible for forgiveness may include mileage reimbursement or fuel charges. This speculation was quashed by the SBA officially confirming that these transportation costs eligible for forgiveness are limited to transportation utility fees assessed by state and local governments.

Loan Forgiveness Reductions FAQs

The Loan Forgiveness Reductions FAQs section includes five new FAQs. Again, this particular subcategory reconfirms previously published guidance on how certain reductions in labor may reduce the total amount of forgiveness a borrower can receive. One important highlight is the SBA clarified that, when taking into account the salary/wage hour reductions in excess of 25% for certain employees, the borrower should only take into account decreases in salaries or wages, and not other forms of compensation.

Krieg DeVault is committed to helping you and your business during these unprecedented times. With your needs in mind, we have established a **COVID-19 Resource Center** to assist you through this process.

If you have any further questions, comments or concerns, please feel free to contact **Robert A. Greising**, **Corben A. Lee** or a member of our **Business, Acquisitions & Securities team**.