

April 28, 2020

ADDITIONAL GUIDANCE FOR SEASONAL EMPLOYERS UNDER THE PAYCHECK PROTECTION PROGRAM

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On Monday, April 27, 2020, the U.S. Treasury and SBA released the Interim Final Rule on Additional Criterion for Seasonal Employers (the “**April 27 Guidance**”). The April 27 Guidance expands the time period at which seasonal employers can look in order to (i) calculate average monthly payroll expenses and (ii) determine whether a seasonal employer was operational when applying for a loan under the Paycheck Protection Program (“**PPP**”).

Previously, seasonal employers were permitted to use any 12-week period beginning February 15, 2019, or at the election of the borrower, March 1, 2019, and ending June 30, 2019 in order to calculate their maximum loan amount. Under the April 27 Guidance, the Treasury and SBA have added the period from May 1, 2019 to September 15, 2019 to the previously-specified reference period seasonal employers may use to calculate their maximum loan amount. As such, seasonal employers may now use any consecutive 12-week period from February 15, 2019 to September 15, 2019 when calculating their average total monthly payroll amount.

Previous guidance permitted lenders to consider whether a seasonal employer was in operation during any 8-week period between February 15, 2019 and June 30, 2019 in determining whether the employer could be considered operational on February 15, 2020 and, therefore, eligible to apply for a loan under the PPP. The April 27 Guidance also expands the timeframe for this consideration, and adds that businesses that were “dormant”) as of February 15, 2020, will be considered to have been operational as of such date if the business was operational for any 8-week period between May 1, 2019 and September 15, 2019.

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