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| Description: CA_Logo-Sq-Color-XS  **Release Date: May 5, 2020**  <https://home.treasury.gov/system/files/136/IFR-Nondiscrimination-and-Additional-Eligibility-Criteria.pdf> | **PPP Nondiscrimination &**  **Other Eligibility Criteria**  **Interim Final Rule Summary** |
| **Background**  On April 2, 2020, the Small Business Administration (SBA) issued an Interim Final Rule implementing sections 1102 and 1106 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). Section 1102 of the Act temporarily adds a new type of loan named the “Paycheck Protection Program” (PPP) to the SBA’s existing 7(a) Loan Program, and Section 1106 of the Act provides for forgiveness of up to the full principal amount of qualifying loans. The Program and loan forgiveness are intended to provide economic relief to small businesses nationwide adversely affected by the Coronavirus Disease 2019 (COVID-19) Emergency Declaration.  **Overview**  On the evening of May 5, 2020, the SBA released this eighth PPP Interim Final Rule (Rule). This Rule supplements the prior PPP Interim Final Rules by providing guidance on nondiscrimination obligations and additional eligibility requirements related to student workers. As a whole, the Rule supplements implementation of sections 1102 and 1106 of the CARES Act, and the SBA requests public comment on all parts of the Rule, just as it has with all prior Interim Final Rules.  **Timing**  Effective Date: The Rule is effective on the date of publication in the Federal Register. (As of publication of this summary, the Rule has not been published in the Federal Register).  Applicability Date: The Rule covers applications submitted under the Paycheck Protection Program through June 30, 2020, or until funding is exhausted.  Comment Period: Comments on the Rule must be received within 30 days of publication in the Federal Register. (As of publication of this summary, the Rule has not been published in the Federal Register). Once published, you may submit comments through the Federal eRulemaking Portal: <http://www.regulations.gov> (use identifying number SBA-2020-0024).  **Non-Discrimination**  Are those who receive PPP loans entitled to the same exemptions provided in Federal nondiscrimination laws in connection with adoption or foster care practices?  Yes. The nondiscrimination provisions in the SBA regulations incorporate those provided in corresponding Federal nondiscrimination provisions for:   * Sex-specific admissions practices at preschools; * Non-vocational elementary or secondary schools; * Private undergraduate higher education institutions under Title IX of the Education Amendments of 1972; * Sex-specific emergency shelters; * Coreligionist housing under the Fair Housing Act of 1968; and * Adoption or foster care practices giving child placement preferences to Indian tribes under the Indian Child Welfare Act of 1978.   In addition, SBA regulations do not bar a religious nonprofit entity from making decisions with respect to the membership or the employment of individuals of a particular religion to perform work connected with the nonprofit’s activities.  **Student Workers and PPP Loan Eligibility**  Do student workers count when determining the number of employees for PPP loan eligibility?  Yes, student workers generally count as employees, unless:   1. The applicant is an institution of higher education, as defined in the Department of Education’s Federal Work-Study regulations; and 2. The student worker’s services are performed as part of a Federal Work-Study Program or a substantially similar program of a State or political subdivision.   Institutions of higher education must exclude work study students when determining the number of employees for PPP loan eligibility, and also exclude payroll costs for work study students in calculating payroll costs used to determine the maximum PPP loan amount. These programs generally provide part-time jobs for students with financial need, and their services are incident to and for the purpose of pursuing a course of study. To support this, the SBA points out that work study students are excluded from the definition of employees in other areas of federal law. Any educational institutions that filed loan applications prior to the issuance of this Rule are not bound by this interpretation but may rely on it. Lenders may continue to rely on borrower certifications as part of their good faith review process. | |
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