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June 3, 2021

Honorable Therese M. Terlaje, Speaker
I Mina'trentai Sais Na Leheslaturan Guåhan
Guam Congress Building
163 Chalan Santo Papa
Hagatna, Guam 96910

Re: Resolution No. 93-36 (LS) - Relative to establishing priorities for the spending of American Rescue Plan (ARP) funds designated for Guam, for consideration and incorporation by the Governor into a consolidated government of Guam ARP spending plan

Hafa Adai, Speaker Terlaje!

Please find attached the proposed Guam Private Education Emergency Protection Program.

As you will find, the Guam Private Education Emergency Protection Program is necessary for a number of Guam's private schools and will ensure they successfully complete school year 2021-2022.

This proposed program mirrors and is a replica of the federal Paycheck Protection Program. Unfortunately, the federal government is not extending financial assistance to private schools for 2021-2022. The Pandemic caused a reduction in the number of students enrolled in most if not all private schools on Guam. Additionally, for many of these schools, the families that did enroll their children over the past few years are now not able to pay the tuition as a result of the Pandemic. This threatens the education of many students and the continued employment of many private school employees.

Thank you for any consideration you and the Legislature are able to provide. I look forward to your favorable response.

Si Yu'os Ma'ase',


MICHAEL F. PHILLIPS

Attachments

“ I Erensia, Lina'la', Espiritu-ta ”

Guam Private Education Emergency Protection Program

Section 1. **Short Title.** This statute or Governor's Program shall be known and may be cited as the "*Guam Private Education Emergency Protection Program*".

Section 2. Intent.

The Organic Act of Guam and Guam law mandate Guam children have the right to an adequate education. To that extent, private schools on Guam have partnered with the Government of Guam and Department of Education to fulfill this mandate. Together, public and private schools create the special and historic Guam education. The Government of Guam recognizes the contribution private schools make towards increasing the availability and variety of schools available to Guam students and families. The Government of Guam has saved and continues to save large amounts of money because of the historic availability of Guam's private schools. Many private schools on Guam have operated and served our community for over sixty (60) years. The Government of Guam and people of Guam rely on the continued existence of the current private schools in order to meet our mandate and goal of providing the best education possible to the students of Guam. As with our Sponsored Charter Schools, forced, unplanned closure of any of these schools at this time would create irreparable harm for the students, employees, and add further chaos to an already challenging time in education resulting from the Covid 19 Pandemic.

The Enrollment in private schools since the onset of the Pandemic has decreased resulting in unplanned reductions in private school revenue. Additionally, the Pandemic has prevented many enrolled families from paying the tuition charged further harming the schools, students and employees. Without supplemental revenue, many private schools will be forced to close this 2021-2022 school year. The intent of this program is to provide emergency aid to private schools ensuring their ability to continue to participate in providing education to the students of Guam. The Government of Guam hereby creates The Guam Private Education Emergency Protection Program modeled after the federal Paycheck Protection Program.

It is likely that not all Guam private schools will avail themselves of this program. The Government intends to help our private schools survive shortfalls in revenue resulting from insufficient enrollment and families' inability to pay full tuition rates.

Section 3. Guam Private Education Emergency Protection Program.

(A) Definitions.—In this paragraph—

- (i) the term "covered loan" means a loan made under this paragraph during the covered period;
- (ii) the term "covered period" means the period beginning on August 1, 2020 and ending on June 30, 2021;

- (iii)** the term “eligible recipient” means a nonprofit private school operating in Guam that was eligible to or did receive a covered loan pursuant to 15 USC §636(a)(36)(d)(ii);
- (iv)** the term “nonprofit organization” means an organization that is described in section 501(c)(3) of U.S.C. title 26 and that is exempt from taxation under section 501(a) of U.S.C. title 26;
- (v)** the term “Authority” means the Guam Economic Development Authority;
- (vi)** the term “payroll costs” means—the sum of payments of any compensation with respect to employees that is a—
 - (a)** salary, wage, commission, or similar compensation;
 - (b)** payment of cash tip or equivalent;
 - (c)** payment for vacation, parental, family, medical, or sick leave;
 - (d)** allowance for dismissal or separation;
 - (e)** payment required for the provisions of group health care benefits, including insurance premiums;
 - (f)** payment of any retirement benefit; or
 - (g)** payment of State or local tax assessed on the compensation of employees; and
 - (h)** the sum of payments of any compensation to or income of a sole proprietor or independent contractor that is a wage, commission, income, net earnings from self-employment, or similar compensation and that is in an amount that is not more than \$100,000 in 1 year, as prorated for the covered period; and
- (vii)** shall not include—
 - (a)** the compensation of an individual employee in excess of an annual salary of \$100,000, as prorated for the covered period;
 - (b)** taxes imposed or withheld under chapters 21, 22, or 24 of USC title 26 during the covered period;
 - (c)** any compensation of an employee whose principal place of residence is outside of the United States;
 - (d)** qualified sick leave wages for which a credit is allowed under section 7001 of the Families First Coronavirus Response Act (Public Law 116–127); or

(e) qualified family leave wages for which a credit is allowed under section 7003 of the Families First Coronavirus Response Act (Public Law 116–127);

(B) Paycheck protection loans.—

Except as otherwise provided in this paragraph, the Authority shall grant loans under the same terms, conditions, and processes as a loan made under 15 USC §636(a)(36)(d)(ii).

(C) In general.—

During the covered period, nonprofit private schools on Guam shall be eligible to receive a covered loan if the nonprofit private school employs not less than ten (10) employees and not more than one hundred (100) employees as of September 1, 2020;

(D) Documentation.—

A nonprofit Guam private school seeking a covered loan shall submit such documentation as is necessary to establish such individual as eligible, including payroll tax filings reported to the Internal Revenue Service, Forms 1099–MISC, and income and expenses from the sole proprietorship, as determined by the Authority.

(E) Automatic Qualification. –

An eligible Guam Private School that previously qualified and received a Paycheck Protection Program Loan from the U.S. Small Business Administration shall automatically be qualified and receive a Guam Private Education Emergency Protection Program Loan from the Authority under this Chapter.

(F) Employee.—

For purposes of determining whether a Guam Private School described in section (C) of this chapter employs not more than 100 employees under this program, the term “employee” includes individuals employed on a full-time, part-time, or other basis.

(G) Affiliation.—

The provisions applicable to affiliations under section 121.103 of title 13, Code of Federal Regulations, or any successor thereto, shall apply with respect to a Guam Private School in the same manner as with respect to a small business concern.

(H) Maximum loan amount.—During the covered period, with respect to a covered loan, the maximum loan amount shall be the sum of—

(i) the product obtained by multiplying—

the average total monthly payments by the applicant for payroll costs incurred during the 1-year period before the date on which the loan is made, except that, in the case of an applicant that is a seasonal employer, as determined by the Authority, the average total monthly payments for payroll shall be for the 12-week period beginning August 15, 2020 through November 15, 2020; by five (5).

(I) Allowable uses of covered loans.—

(i) In general.—During the covered period, an eligible recipient may, in addition to the allowable uses of a loan made under this subsection, use the proceeds of the covered loan for—

(a) payroll costs;

(b) costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums;

(c) employee salaries, commissions, or similar compensations;

(d) payments of interest on any mortgage obligation (which shall not include any prepayment of or payment of principal on a mortgage obligation);

(e) rent (including rent under a lease agreement);

(f) utilities; and

(g) interest on any other debt obligations that were incurred before the covered period.

(ii) Delegated authority.—

(a) In general.—

For purposes of making covered loans for the purposes described in clause (I)(i), the Authority is approved to make loans under this subsection shall be deemed to have been delegated authority by the Guam Legislature to make and approve covered loans, subject to the provisions of this paragraph.

(b) Considerations.—In evaluating the eligibility of a borrower for a covered loan with the terms described in this paragraph, the Authority shall consider whether the borrower—

(I) was in operation on August 1, 2020; and

(AA) had employees for whom the borrower paid salaries and payroll taxes; or

(BB) paid independent contractors, as reported on a Form 1099–MISC.

(iii) Nonrecourse.—

Notwithstanding the waiver of the personal guarantee requirement or collateral under subparagraph (L), the Authority shall have no recourse against any individual shareholder, member, or partner of an eligible recipient of a covered loan for nonpayment of any covered loan, except to the extent that such shareholder, member, or partner uses the covered loan proceeds for a purpose not authorized under clause (I).

(J) Borrower requirements. –

(i) Certification.—An eligible recipient applying for a covered loan shall make a good faith certification—

(a) that the uncertainty of current economic conditions makes necessary the loan request to support the ongoing operations of the eligible recipient;

(b) acknowledging that funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments;

(c) that the eligible recipient does not have an application pending for a loan under this subsection for the same purpose and duplicative of amounts applied for or received under a covered loan; and

(d) during the period beginning on August 1, 2020 and ending on June 30, 2021, that the eligible recipient has not received amounts under this subsection for the same purpose and duplicative of amounts applied for or received under a covered loan.

(ii) Duplication. –

(a) Loans by the Authority under the Guam Private Education Emergency Protection Program are not intended and shall not be considered duplicative of amounts applied for or received under the Paycheck Protection Program set forth

under 15 USC §636(a)(36)(d)(ii). The US Small Business Paycheck Protection Program (“PPP”) commencing April 6, 2020, initially intended its loan proceeds to be used during an eight (8) week period from receipt of the funds and then extended the deadline to exhaust the funds through December 31, 2020, without increasing the loan amounts or renewing the Federal PPP under a second stimulus package.

(b) Nothing in this paragraph shall prohibit a recipient of an economic injury disaster loan made under 15 USC §636(d) during the period beginning on January 31, 2020 and ending on the date on which covered loans are made available that is for a purpose other than paying payroll costs and other obligations described in subparagraph (I) from receiving assistance under this paragraph.

- (K) Fee. During the covered period, with respect to a covered loan, the Authority shall be authorized to collect a fee for the processing of applications under this Chapter equal to no more than one percent (1%); and
- (L) Waiver of personal guarantee requirement. During the covered period, with respect to a covered loan—
 - (i) no personal guarantee shall be required for the covered loan; and
 - (ii) no collateral shall be required for the covered loan.
- (M) Maturity for loans with remaining balance after application of forgiveness.—With respect to a covered loan that has a remaining balance after reduction based on the loan forgiveness amount under this Program,
 - (i) the remaining balance shall continue to be guaranteed by the Authority under this subsection; and
 - (ii) the covered loan shall have a minimum maturity of 5 years and a maximum maturity of 10 years from the date on which the borrower applies for loan forgiveness under that section.

(N) Interest rate requirements.—

A covered loan shall bear an interest rate not to exceed 4 percent.

(O) Loan deferment.—

(i) Definition of impacted borrower.—

(a) In general.—In this subparagraph, the term “impacted borrower” means an eligible recipient that—

(b) is in operation on August 1, 2020; and

(c) has an application for a covered loan that is approved or pending approval on or after November 15, 2020.

(ii) Presumption.—

For purposes of this subparagraph, an impacted borrower is presumed to have been adversely impacted by COVID-19.

(iii) Deferral.—During the covered period, the Authority shall—

(a) consider each eligible recipient that applies for a covered loan to be an impacted borrower; and

(b) provide complete payment deferment relief for impacted borrowers with covered loans, including payment of principal, interest, and fees, until the date on which the amount of forgiveness determined under 15 USC §9005 is remitted to the Authority.

(iv) Rule of construction.—

If an eligible recipient fails to apply for forgiveness of a covered loan within 10 months after the last day of the covered period defined in (A)(ii) above, such eligible recipient shall make payments of principal, interest, and fees on such covered loan beginning on the day that is not earlier than the date that is 10 months after the last day of such covered period.

(P) Waiver of prepayment penalty.— Notwithstanding any other provision of law, there shall be no prepayment penalty for any payment made on a covered loan.

This is a mirror program of the recent federal Paycheck Protection Program which is not offered by the federal government for school year 2021-2022. Without this direct supplement which primarily benefits employees of private schools, many private schools will fall short of the revenue necessary to remain operational through school year 2021-2022.