PPP Loan Forgiveness Application Guidance

May 19, 2020

You know that your Paycheck Protection Program (PPP) loan will be 100% forgiven if you use the borrowed funds on the right expenses in the appropriate timeframe, maintain or increase employee headcount and keep your workers paid at the same level as before. But we also know this is an oversimplification of a highly complex calculation that we continue to receive additional guidance for — almost daily.

PPP Loan Forgiveness Application Guidance

The PPP Loan Forgiveness Application was released on May 15, 2020 by the SBA and Department of the Treasury. The application and accompanying guidance clarified some of the most frequently asked questions of the PPP. Keep in mind that, while the application comes from these groups, PPP loan forgiveness is facilitated through the lender you received the funding from. The application contains additional guidance and insight on how to determine loan forgiveness.

Payroll Costs

Most importantly, the loan forgiveness application allows an eligible borrower to elect an "alternative payroll covered period." This alternative payroll period allows an eligible borrower to align the eight-week covered period to the first day of its first pay period following the PPP loan disbursement date.

To be eligible for this alternative payroll period, a borrower must have a biweekly or more frequent payroll schedule and if the alternative method is elected, a borrower must use the alternative method wherever it is referenced in the loan forgiveness application. The application provides an example of the alternative method in practice:

"For example, if the Borrower received its PPP loan proceeds on Monday, April 20, and the first day of its first pay period following its PPP loan disbursement is Sunday, April 26, the first day of the Alternative Payroll Covered Period is April 26 and the last day of the Alternative Payroll Covered Period is Saturday, June 20."

In another important clarification, payroll costs can be both paid and incurred during the eight-week covered period or alternative covered period. Payroll costs incurred can be included in the elected covered period if the amounts are earned during the elected covered period and paid on or before the next regular payroll date.

Non-payroll Eligible Costs

Unlike payroll costs, a borrower cannot elect the alternative measurement date for purposes of non-payroll costs. Amounts for eligible non-payroll costs can be paid or incurred during the covered period but cannot exceed 25% of the total forgiveness amount. Eligible non-payroll costs include mortgage interest obligations, rent obligations and utility payments.

The application also provides additional favorable guidance, that a borrower's non-payroll costs allow for both payments and amounts incurred for both real and personal property related to mortgage interest and rent. If the amounts incurred are paid after the end of the covered period, the amount must be paid on or before that next billing date to be eligible. The agreements must be in place before to Feb. 15, 2020.

Measuring FTEs and FTE Reduction

The application provides clarity on how borrowers are to measure full-time equivalents (FTEs). To compute the FTEs, a borrower is to take the number of hours paid per week, divide by 40, and round the total to the nearest tenth. However, while not unexpected, but not as favorable to borrowers, an employee can only count as a maximum of 1.0. In a simplification convention a borrower can also assign an FTE of 1.0 to an employee that works 40 hours or more per week and an FTE of 0.5 to an employee that works fewer than 40 hours more per week.

As many are aware, the loan forgiveness amount is to be reduced for reductions in FTEs. To compute the reduction, a borrower is to use the total average weekly

FTEs during the reference period of its choosing (either Feb. 15, 2019 to June 30, 2019 or Jan. 1, 2020 to Feb. 29, 2020 for most borrowers – note seasonal employers are to use a different period). This testing period is compared to the average weekly FTEs during the elected covered period. Borrowers must use the same FTE computation methodology for both periods.

The PPP provides that a reduction in FTEs between Feb. 15, 2020 and Apr. 26, 2020 can be mitigated if a borrower restores the FTE level to the FTE level in the borrower's pay period that includes Feb. 15, 2020 not later than June 30, 2020. The application requires a borrower to provide the FTEs as of June 30, 2020, so more guidance is needed as to whether a borrower must retain workers through the pay period that includes June 30, 2020 if the eight-week period ends prior to such date.

Many borrowers may be having difficulty in restoring their workforce due to unemployment insurance benefits or employees having found other jobs. In addition, during the elected covered period, a borrower may need to terminate an employee for cause, or an employee may leave voluntarily.

The SBA provides that a borrower will not have its loan forgiveness reduced for any positions for which the borrower made a good-faith, written-offer to rehire an employee during the elected covered period and the employee rejects such offer. Also, if any employee is fired for cause, voluntarily resigns or voluntarily requested and received a reduction of their hours, the borrower's loan forgiveness amount is not reduced. Borrowers are to only list the FTE reduction exceptions if the position was not filled by a new employee.

Other Guidance Provided

- You cannot include prepayments of mortgage interest as qualified expenses.
- You are not required to include amounts for mortgage interest, rent or utilities if you do not want the amounts forgiven.
- Utility payments are defined as electricity, gas, water, transportation, telephone or internet access for services under contract prior to Feb. 15, 2020.

Loan Forgiveness Process

While every lender may have a slightly different process, it is your responsibility to:

- Complete and Submit a Loan Forgiveness Application to your lender (most banks are developing an online application);

- Provide supporting documents requested from your lender. Here is a list of documents you will likely be required to submit to your PPP:
  - Payroll: Documentation verifying the eligible compensation and benefits from the Covered Period or the Alternative Payroll Covered Period including bank account statements, tax forms for the periods that overlap with the Covered Period or the Alternatives Payroll Covered Period and documentation for health insurance and retirement plan benefit expenses included in the loan forgiveness calculation.

  - FTE: Documentation showing the average FTE employees for the comparison period selected by the borrower.

  - Nonpayroll: Documentation verifying the existence of the obligations/services prior to Feb. 15, 2020 and eligible payments for the Covered Period, including statements, cancelled checks, and lease agreements.

The bank will review your application and supporting documentation to determine how much of your PPP loan will be forgiven.

Important Dates and Time Periods

The guidance confirms the eight-week (56 day) covered period begins on the date of disbursement. If a borrower received more than one disbursement, the period begins on the date of the first disbursement. For payroll costs, the SBA provides an administrative choice of covered period to allow better alignment with pay periods. However, for eligible non-payroll costs the borrower must use the eight-week period beginning on the date of disbursement.

To calculate the FTE reduction mitigation provisions, the application requires the borrower's total FTE as of June 30, 2020. For some borrowers, the June 30 date may be after the eight-week period and for others it may be during the eight-week period.

For purposes of the salary and wage reduction, the application instructs borrowers to use the testing period of Jan. 1, 2020 to Mar. 31, 2020.

Loan Forgiveness Impact on Taxable Income

The U.S. Treasury has confirmed that no deduction is allowed for qualified expenses use for PPP loan forgiveness. In other words, taxpayers can't exclude PPP loan proceeds from taxable income AND take a tax deduction for expenses used to determine loan forgiveness. Several legislators have taken issue with the position, stating it is against the congressional intent of the program. We are carefully monitoring future legislation and whether this position remains at year end.

Guidance We're Waiting On

Significant questions include a response to President Trump's recommendation to extend the 8-week covered period. We expect additional PPP modifications to be announced soon and potentially, frequently thereafter. We encourage you to visit our Coronavirus Resources webpage for updated information on the PPP and the loan forgiveness process.