Quick Reference Guide to SBA Paycheck Protection Program Loan Forgiveness Application

In General

On Friday, May 15th the SBA released the application PPP loan borrowers will use to calculate and apply for loan forgiveness. While the application generally follows previous guidance of how forgiveness will be calculated, some significant changes and clarifications have been included that provide more favorable results for borrowers. This Quick Reference summarizes critical highlights borrowers should be aware of.

Calculation of Payroll Costs – Use of "Alternative Payroll Covered Period"

Borrowers with a bi-weekly (or more frequent) payroll schedule may elect to calculate payroll costs over the eight-week period starting on the first day of the first pay period following the date the PPP loans were disbursed from the lender (the "Alternative Payroll Covered Period," or "ACP"), or the eight-weeks starting on the date of loan disbursement (the "Covered Period," or "CP").

- Previously, borrowers could only calculate payroll costs over the CP.
- Borrowers who utilize the ACP must apply the ACP wherever there is a reference to the option of the CP or the ACP in the application.
- Non-payroll costs must be calculated during the Covered Period.

Clarification of "Paid *or* Incurred" For Payroll and Non-Payroll Costs

The text of the CARES Act stated that only eligible costs paid *and* incurred during the covered period would be included for forgiveness. The application instructions modify this to state *that eligible costs paid or incurred may be included for forgiveness*.

- Payroll Costs are:
  - Considered "paid" on date paychecks are distributed or an ACH payment is originated.
  - Considered "incurred" on the day an employee's pay is earned.
- Non-Payroll Costs must be: Paid during the Covered Period; or Incurred during the Covered Period and paid on or before the next regular billing date, even if this date is after the CP.

Clarification of Non-Payroll Costs

The application clarifies that non-payroll costs eligible for forgiveness include mortgage interest and rent or lease payments for *personal property*, as well as real property.

Covered utilities listed are electricity, gas, water, transportation, telephone and internet access. Transportation costs referenced here are costs attributable to transporting a utility to the place of business.

Calculation for Full Time Equivalent Employees

For purposes of determining any reduction in loan forgiveness due to a reduction in workforce, borrowers have two options to calculate their average Full Time Equivalent Employees (FTEs).

- Borrowers may average the hours paid each week to each employee and divide by 40 to determine that employee's FTE number
  - Ex. An employee who works 20 hours per week would count as 0.5 FTE (20/40). Borrowers should measure FTEs to the nearest tenth (i.e. 5 hrs a week would count as .10 FTE)
- Borrowers may treat each employee who works an average of 40 hours or more per week as 1.0 FTE and any employee who works less than 40 hours per week as 0.5 FTE.

FTE Reduction Exception

When determining their average FTEs, borrowers may exclude from the calculation employees who meet one of the following four criteria:

1. Were given a good-faith, written offer for reemployment, at the same salary/wage and same number of hours, which was rejected;
2. Were fired for cause;
3. Voluntarily resigned; or
4. Voluntarily requested and received a reduction in hours.

Borrowers should only exclude such employees from the FTE calculations if their positions were not filled by a new employee. Accordingly, any FTE reduction attributable to one of these situations will not reduce the borrower's loan forgiveness.

FTE and Salary/Wage Reduction Safe-Harbors

A borrower's loan forgiveness will generally be reduced if, during the period between 2/15 and 4/26, the borrower reduces its FTEs and/or reduces the salary and wages of its employees (with an annualized salary/pay of $100,000 or less) by more than 25% of their normal pay.
The application clarifies that if an employer restores its average FTEs and its employees' average annual salary or average hourly wages to the associated averages as of 2/15 by June 30, the borrower is exempt from the loan forgiveness reduction.

Supporting Documentation Included with Application or Retained in Borrower's Records

The application provides a list of documentation the borrower must submit with its application in order to substantiate the requested loan forgiveness:

- For Payroll:
  - Bank statements or 3rd party payroll reports showing cash compensation
  - Tax forms or equivalents for the CP or ACP (e.g., IRS Form 941, state quarterly reports)
  - Receipts, checks, or account statements showing employer contributions for employee health insurance and retirement benefits
- For Non-Payroll:
  - *Covered Mortgage Interest*: Amortization schedule & receipts for payments for CP; or lender account statements for 2/20 and CP through one month after end of CP verifying interest and payments
  - *Covered Rent or Lease*: Copy of current lease and receipts for payments for CP; or lessor account statements for 2/20 and CP through one month after end of CP verifying payments.
  - *Covered Utilities*: Invoice from 2/20 and those paid during CP plus receipts, checks, or account statements.
- For FTE:
  - Federal payroll tax and state quarterly business and employee wage reporting and unemployment insurance tax filings showing avg FTEs per month for, at election of borrower:
    - 2/15/19 to 6/30/19; or
    - 1/1/20 to 2/29/20; or
    - Special periods for seasonal employers.
  - Period must be same as used when calculating FTE reduction comparisons.
  - Documentation may cover periods longer than specified periods

The application also states that borrowers must maintain the following documentation in its records, but that such documents do not need to be submitted with the application:

- Documents identifying the individual employees used to calculate payroll costs and FTEs, including salary reduction calculations where necessary.
- Documents regarding employee rehire offers and rejections, firings for cause, voluntary resignations, and employee written requests for hourly reductions.
- Documentation supporting FTE Reduction Safe Harbor calculations.

Borrowers must maintain all of the above-mentioned documentation for a *minimum of six years* after the date the loan is forgiven or repaid in full and must permit authorized SBA representatives to access these files on request.