BROWNEDWARDS
certified public accountants

May 20, 2020

First Look: PPP Loan Forgiveness Application

By Adam Berebitsky, Lisa Haffer, Jeff Tubaugh

On Friday, May 15, 2020, the Small Business Administration (SBA) released the Paycheck Protection Program (PPP) Loan Forgiveness Application. Concurrent with the application's release, the Department of the Treasury announced that guidance and regulations will be issued soon to further assist borrowers and lenders. In anticipation of that guidance, we wanted to highlight a few key aspects of the application. We will provide a deeper dive into future guidance as it is issued.

Before we jump into the highlights, let us answer the question that restaurants are most interested in: whether the application includes restaurant-specific computations or instructions. Simply put, no. While we continue to hold out hope for restaurant-specific loan forgiveness guidance, for now at least, restaurant owners and operators must follow the generic instructions and computations contained in the loan application.

Highlights of the Application Include:

- A new Alternative Payroll Covered Period. For purposes of calculating payroll costs, restaurants with biweekly (or more frequent) payrolls can elect to use the 8-week period that begins on the first day of their first pay period following disbursement of the loan. Restaurants that elect to use the new Alternative Payroll Covered Period for payroll costs will thus be able to align the start of their covered period with the beginning of a pay period.
- Example: if a restaurant 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.

Insight:

Electing the Alternative Payroll Covered Period may allow restaurants to capture additional amounts of payroll costs in their loan forgiveness computations by pushing more of the 8-week period into weeks during which they are incurring higher payroll costs.

- Clarification that average full-time equivalents are to be computed with reference to 40 hours per week, and a new, optional election to use a simplified method for determining FTEs. Under this election, employees who work 40 hours or more per week are assigned 1 FTE and employees that work less than 40 hours per week are assigned .5 FTE.

319 McClanahan Street, S.W. • Roanoke, Virginia 24014-7705 • 540-345-0936 • Fax: 540-342-6181 • www.BEcpas.com

- Clarification of the term "paid and incurred". Readers will recall that the language in the CARES Act provides loan forgiveness for "costs incurred and payments made" during the covered period. The application clarifies this with respect to both payroll and nonpayroll costs:
  - Payroll Costs: Restaurants are generally eligible for forgiveness for payroll costs paid and payroll costs incurred during either the 8-week Covered Period or the Alternative Payroll Covered Period. Payroll costs are considered paid on the day that paychecks are distributed or the restaurant initiates an ACH credit transaction, and are considered incurred on the day that the employee's pay is earned. The application allows something we have not seen before: payroll costs incurred during the last pay period of the Covered Period (or Alternative Payroll Covered Period) but not paid during the restaurant's elected covered period are eligible for forgiveness so long as they are paid on or before the next regular payroll date.
  - Nonpayroll Costs: Nonpayroll costs (mortgage interest, rent, and utilities) are eligible for forgiveness if paid during the Covered Period or incurred during the Covered Period and paid on or before the next regular billing date, even if the billing date is after the covered period.

Insight:

The application provides greater flexibility with respect to both payroll and nonpayroll costs. Restaurants can obtain forgiveness for nonpayroll costs incurred prior to the covered period to the extent these costs are paid during the covered period (and assuming the 25% limitation on nonpayroll costs is met). Restaurants can include payroll costs incurred at the end of the elected covered period in their loan forgiveness computation, so long as these costs are paid timely after the elected covered period. A literal interpretation of the instructions appears to allow forgiveness for payroll earned prior to the Covered Period (or Alternative Payroll Covered Period) and paid during the elected covered period. We are cautiously optimistic that upcoming guidance will confirm this interpretation.

- Clarification of the June 30th rehire exceptions to reductions in loan forgiveness:
  - Restaurants can avoid a reduction in their loan forgiveness for decreases in employee salary and wages if: i) average annual salary or hourly wage between February 15, 2020 and April 26, 2020 is equal to or greater than the annual salary or hourly wage as of February 15th or ii) the average annual salary or hourly wage as of June 30, 2020 is equal to or greater than the annual salary or hourly wage as of February 15th,
  - Restaurants can avoid a reduction in their loan forgiveness for decreases in FTEs if they i) reduced their FTE count during the period between February 15, 2020 – April 26, 2020 and then ii) restored their FTE count by June 30, 2020 to their FTE count in the pay period that included February 15th.

- Implementation and expansion of the FTE Reduction Exception. When counting FTEs for purposes of computing the potential reduction to loan forgiveness, restaurants can include in their FTE count any positions for which they made a good-faith, written offer to rehire an employee during the elected covered period which was rejected by the employee. Restaurants can also include in their FTE count employees who, during the elected covered period: were fired for cause, voluntarily resigned or voluntarily requested and received a reduction of hours. In any of the instances described, FTEs can only be included if the position was not filled by a new employee.
- New limitation on owner and partner compensation: these amounts are limited to the lower of $15,384 (the 8-week equivalent of $100,000 per year) or the 8-week equivalent of their applicable compensation for 2019.

Insight:

This new limitation will prevent an owner from increasing his or her compensation during the covered period in order to maximize forgiveness.

Necessary Documentation

Restaurants must submit documentation with their applications to support the following:

- Payroll Costs: Verification of cash compensation and non-cash benefit payments from the Covered Period or Alternative Payroll Covered Period
- FTE: Average number of FTE employees on payroll per month between February 15, 2019 – June 30, 2019 or January 1, 2020 and February 29, 2020
- Nonpayroll Costs: Proof of existence of the obligations and services prior to February 15, 2020 plus proof of eligible payments made

Restaurants must maintain additional documentation for six years after their loan is forgiven or repaid:

- Employee-by-employee listing, including: cash compensation, each employee's FTE equivalent count, computation of Salary/Hourly Wage Reduction and FTE Reduction Safe Harbor.
- Loan application documentation and certification regarding the necessity of the loan
- Demonstration of borrower's material compliance with PPP requirements