10 TAKEAWAYS ON THE PPP LOAN FORGIVENESS APPLICATION

On May 15, 2020, the SBA published the Paycheck Protection Program Loan Forgiveness Application (SBA Form 3508). While the application clears up several of the outstanding questions that borrowers may have with regards to forgiveness eligibility, there are still some questions left unaddressed.

As a crisis management professional, I have been immersed in all things related to the PPP for several months, and so I would like to share my top 10 takeaways from the application. This list is not intended to be all-encompassing , but focuses on those issues that have provided some of the bigger questions over the past weeks.

Please note that there are still several moving parts and many of the calculations involve some decisions that need to be made in key areas. Businesses will need to work with their financial, accounting or consulting specialists to make sure they are able to maximize forgiveness.

1. **Alternative Payroll Covered Period**

   For borrowers with payroll schedules that are biweekly or more frequent, the application allows them to choose an eight-week (56-day) period that begins on the first day of the first pay period that begins after disbursement of PPP funds (the “alternative payroll covered period”).

   But if a borrower chooses an alternative payroll covered period, they must apply this pay period to wherever there is a reference to “the covered period or the alternative payroll covered period” but must use the covered period where only the covered period is referenced.

2. **Payroll Costs (Paid Versus Incurred)**

   The application states that “borrowers are generally eligible for the payroll costs paid and payroll costs incurred ”during the appropriate period. Based on this language, it appears that the SBA will be allowing both payroll paid in the appropriate period for work performed just prior to the covered period and for payroll accrued within the eight weeks, even if paid after the covered period, provided that proof of payment is submitted.

   This means that borrowers may be forgiven for more than the eight weeks of payroll originally anticipated, although individuals will still be capped at $15,385 based on an annualized $100,000.

3. **Non-Payroll Costs (Paid Versus Incurred)**

   The allowable non-payroll costs do not seem as clear at the payroll costs, but it can be read in a similar manner. The application states, “An eligible non-payroll cost must be paid during the covered period or incurred during the covered period and paid on or before the next regular billing cycle.”

4. **Personal Property Included**

   There were many questions surrounding the initial meaning of "rent" with regards to approved uses of PPP funds. The application clears up that ambiguity. The application includes "lease agreements for real or personal property in force before Feb. 15, 2020." This opens the door to include leases for personal property such as vehicles and office machinery.

   It should be noted that covered utility payments include"transportation." Given that vehicle leases are included, and the SBA has defined utilities to include fuel costs in guidance provided to self-employed individuals, fuel cost may be ultimately allowed as a utility cost.

5. **FTE Defined**

   Many of the questions we received from borrowers revolved around the definition of a full-time equivalent. The application uses a 40-hour work week as the standard for an FTE and rounds to the nearest tenth. It also allows for a “simplified method that assigns a 1.0 for employees who work 40 hours or more per week and 0.5 for employees who work fewer hours.” Borrowers should calculate using both methods to see which is more advantageous.

6. **Baseline FTE**

   There was an anticipation that the baseline FTE calculation would involve calculating the FTE for each pay period in the chosen baseline period and taking the average of all of the pay periods. The methodology outlined in the application appears to be easier. Here is the methodology for calculating the baseline FTE for forgiveness reduction purposes.

   First, for each hourly employee, add up the number of hours worked in one of the chosen baseline time periods. Salaried full-time employees are one FTE. Borrowers can choose from the following options:

   - Baseline 1: Feb. 15, 2019, through June 30, 2019

- Baseline 2: Jan. 1, 2020, through Feb. 29, 2020
- Baseline 3: For seasonal employers, any consecutive 12-week period between May 1, 2019, and Sept. 15, 2019.

Then, divide each employee's hours by the following:

- Baseline 1: 768 hours (19 weeks + 1 day x 40 hours per week)
- Baseline 2: 344 hours (8 weeks + 3 days x 40 hours per week)
- Baseline 3: 480 hours (12 weeks x 40 hours per week)

Finally, average the calculated FTE across all employees. The maximum FTE per employee is 1.0. The simplified method described above can also be used.

7. **Potential Number of FTE Calculations**
   An interesting aspect of the application is the number of FTE calculations that may be required including the following:

   - FTE for employees during the covered period making less than $100,000 during 2019
   - FTE for employees during the covered period making more than $100,000 during 2019
   - FTE for baseline FTE (one of three possible time periods)
   - FTE at time of loan application
   - FTE at time of forgiveness application
   - FTE from Feb. 15, 2020, through April 26, 2020
   - FTE at Feb. 15, 2020
   - FTE at June 30, 2020

8. **FTE Safe Harbor**
   There is a forgiveness reduction should the average number of FTEs in the covered period (or alternate) fall below the baseline average FTE. A borrower need not calculate the reduction if both the following safe harbor conditions are met:

   - FTE for the period between Feb. 15, 2020, and April 26, 2020, is less than the total FTE in the borrower's pay period that includes Feb. 15, 2020; and,

- The borrower's FTE as of June 30, 2020, is greater than or equal the total FTE in the borrower's pay period inclusive of Feb. 15, 2020.

9. **Payroll Reduction Clarification**
   The baseline comparison period for evaluating whether there is more than a 25 percent reduction for each employee is Jan. 1, 2020, and March 31, 2020. Given that the baseline salary is 13 weeks and the covered period is eight weeks, the salaries need to be normalized. The application has provided some clarity on this issue. For hourly employees, it appears that the comparison is based on an hourly rate comparison. For salaried, the comparison is based on the annualized salary for each of the period as prorated for the covered period.

10. **Still Some Questions...**
    While the application did clear up many of the outstanding questions that we have seen, there are still a few open issues that require clarification. Here are some of them:

    - What if the covered period per the application extends past June 30, 2020?
    - Economic Injury Disaster Loan overlap: The amount of PPP forgiveness will be reduced by any EIDL advances received. But what if you received an EIDL? Can you pay down if you received the EIDL after application for the PPP? How does the EIDL paydown affect the 75 percent payroll requirement, especially when the loan proceeds included repayment of an EIDL?

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