CLIENT ALERTS & INSIGHTS

The Paycheck Protection Program Loan Forgiveness Application

MAY 18, 2020

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On May 15 2020, the SBA released the The Paycheck Protection Program Loan Forgiveness Application. We address some of the highlights of the application below.

1. For administrative efficiency, if a borrower received proceeds of a loan in the middle of a pay period and processes payroll bi-weekly (i.e. 26 pays per year) or more frequently the borrower can calculate its payroll costs staring on the first day of the first full pay period after the loan was funded. This is known in the application as the "Alternative Payroll Covered Period"

   Note that if a client uses the Alternative Payroll Covered Period to calculate payroll costs it still must use the regular Covered Period (i.e. first 8 weeks after the loan was funded) to calculate the following:

   a. Interest payments
   b. Rent and lease payments
   c. Utility Payments

   If the borrower uses the Alternative Payroll Covered Period to calculate payroll costs, it must also use the same period to calculate FTEs and salary/hourly wage reductions.

2. To the extent non-payroll costs (i.e. rent, interest or utilities) are incurred during the Covered Period, but the bill for such amount is not due until after the Covered Period, the amount can still be forgiven as long as the amount is paid before the next regular billing date.
3. Payroll costs incurred during the borrower's last pay period, but not paid by the end of the Covered Period or the Alternative Payroll Covered Period, as applicable, can still be forgiven if paid on or before the next regular payroll date. This means that borrowers do not have to run a special payroll.
4. FTEs are calculated based on a 40 hour work week and the calculation is done to the tenth of an hour and on a per employee basis.
5. No single employee can count as more than one FTE. This means if a person worked over 40 hours per week, they still count as one employee.
6. For administrative efficiency, borrower's may designate anyone who worked less than 40 hours a week as one half of an FTE.

7. When determining if the forgiveness amount is reduced due to salary or wage reduction of more than 25%, you compare average salary/hour wages between 1/1/20 and 3/31/20 to average salary of hourly wages during the Covered Period or Alternative Payroll Covered Period.
8. FTE count does not have to be reduced for any of the following reasons:

   a. an employee was fired for cause;
   b. an employee voluntarily resigned;
   c. an employee voluntarily requested and received a reduction in their hours; or
   d. an employer offered in writing to re-hire an employee, but the employee refused the offer

9. If the borrower reduced FTEs during 2/15/20 through 4/26/20 and as calculated on June 30th, the borrower has the same number of FTEs it did during borrower's pay period that included February 15th, the forgiveness amount will not be reduced as result of lower number of FTEs.

Page 10 of the application contains a detailed description of the documentation that needs to be submitted for forgiveness. Note that documentation must be retained for 6 years from the date the loan is forgiven.

If you have any questions, please contact a member of Benesch's Commercial Finance & Banking Practice Group.

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Please note that this information is current as of the date of this Client Alert, based on the available data. However, because COVID-19's status and updates related to the same are ongoing, we recommend real-time review of guidance distributed by the CDC and local officials.

