PPP Loan Forgiveness – Still Many Unanswered Questions

By Bruce L. Blasnik, CPA, CGMA, Partner

Our clients and others all want to understand how to determine the amount of loan forgiveness they will qualify for under the CARES Act (the Act) Paycheck Protection Program (PPP) so they can make decisions about staffing, pay rates and the timing of payments. Unfortunately, we don't have all the answers for you; nor does anyone else. While there have been many articles published addressing forgiveness, including our own, none of these articles answer many of the questions that we are being asked.

The language in the Act is simply too ambiguous for anyone to interpret without regulatory guidance from the Treasury Department. This guidance, or at least initial guidance, should be available by the end of next week, as the Act provides a 30-day window from the date of passage (March 27th) for the issuance of interpretative guidance.

While we know this is not what you want to hear, that is the situation we all must deal with. For now, this is what we do know.

The amount of forgiveness will be equal to:

1. The amount *incurred and payments made* for the sum of eligible payroll, rent, mortgage interest and utility costs during the 8 weeks beginning on the date you receive the initial PPP loan advance.

2. Multiplied by: the ratio of average full-time equivalent employees during the 8-week post loan period to the average full-time equivalent employees during either the period February 15, 2019 to June 30, 2019 or January 1, 2020 to February 29, 2020.

3. The product above is then reduced by any reduction in total salary or wages of any employee during the 8-week post loan period that is in excess of 25% of the total salary or wages of the employee during the first quarter of 2020.

4. With regard to 2. and 3., if the reduction in the number of employees or reduction in pay rates occurred between February 15, 2020 and April 26, 2020 is *restored* by June 30, 2020, the amount of forgiveness will not be reduced.

The two most significant unanswerable questions raised by these provisions are:

1. **Are eligible costs determined on a cash, accrual, or some other basis?** What about the payroll paid 3 days after I receive the loan, but which relates to the period prior to receiving the loan? Or the payroll for the last 2 weeks of the 8-week period which doesn't get paid until 3 days after the end of the 8-week period? Or the rent I paid on the last day of the 8-week period that covers the next calendar month? Unfortunately, we just don't know.

2. **What does it mean to *restore* the number of employees or reduction in pay rates?** Do I just need to bring these people back on by June 30 with a pay rate not less than 75% of what they were paid in Q1-2020? Or, do I actually need to restore their back pay to within 75% of what they were paid in Q1-2020? Again, we just don't know.

Other Guidance

Payroll costs are computed in a manner similar to the way they were computed for purposes of determining the loan amount. Payroll costs must represent at least 75% of the amount to be forgiven.

Rent means rent obligated under a leasing agreement in force before February 15, 2020. The Act does not provide any limitations as to the type of rental property so, presumably, this may include real property as well as personal property such as trucks, machinery and equipment. The Act does not differentiate between a capital or finance type lease and an operating lease, so it is unclear if a lease that transfers ownership at the end of the term is still considered a lease under the Act.

Utilities include payments for electricity, gas, water, transportation, telephone or internet access for which service began before February 15, 2020. (A transportation utility is a financing mechanism used by some metropolitan areas whereby businesses and residents are charged fees based on estimated trip usage for different types of land usage.)

Mortgage interest is interest on a debt of the borrower that was outstanding prior to February 15, 2020 and is secured by a mortgage on real *or* personal property. Since mortgages are instruments that are generally used to create a security interest in real property, it is not clear what the Act means by a mortgage on personal property. It is likely this refers to interest on loans for certain types of business related personal property such as airplanes, boats, farm equipment and manufactured homes that are secured by chattel mortgages. Alternatively, but less likely, this could mean any loan that is secured by a perfected interest in any personal property.

The methodology to be used to calculate ***full-time equivalent employees***, or FTEs, is not defined. There are two general methods in practice. Both count full-time employees as one (1) regardless of the number of hours actually worked. One method takes the total hours worked by all part-time employees and divides that by 120 hours a month (or 30 hours a week), while the other method takes total hours worked by all part-time employees and divides that by the employer's standard number of hours in a work week. As long as you use the same divisor for both the base period and the 8-week post loan period, the ratio of FTEs during the 8-week post loan period to the FTEs during the base period should not differ significantly. However, guidance on this would be helpful.

Contact Us

We are monitoring this closely and as soon as additional guidance is available, we plan to have a webinar explaining the rules. As always, if you need any assistance, please reach out to your PKF O'Connor Davies client service team or Bruce L. Blasnik, CPA, CGMA, Partner at CLT-SBATechnical@pkfod.com. We are here to help.

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