Insights

SBA Forgiveness Application

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By: Robert A. Greising and Corben A. Lee

On Friday, May 15, 2020, the SBA published the Paycheck Protection Program Loan Forgiveness Application ("Application") and Instructions. To access the Application and instructions please click here.

The Application provides much needed guidance on the process by which borrowers will ultimately apply for loan forgiveness. Borrowers should begin preparing their Application and gathering the required documents now so that they can submit the Application in a timely manner.

In addition to providing guidance on how to calculate the amount of your PPP loan that is eligible for loan forgiveness, the Application introduces a few new concepts:

Alternative Payroll Covered Period. The Application allows for a borrower to elect to have its 8-week period begin on the first day of the first pay period following the date of the disbursement of its PPP Loan. This election allows the 8-week period to more closely align with the borrower's actual pay cycle.

Paid or Incurred. The Application allows for a borrower to include the payroll and non-payroll costs that were actually paid or ***incurred*** from the last pay period in the applicable covered period if the payment is made on or before the next regular payroll date. This additional coverage of incurred expenses helped address some uncertainties about permitted expenditures that occurred during the covered period even though not actually paid. These are now eligible for forgiveness if they are paid on or before the next regular payroll date or the next regular billing date. For example, if your 8-week period expires on a Monday, but your next payroll or utility bill is the following Friday, accrued but unpaid payroll costs or utility costs through that Monday will be eligible if they are paid by that following Friday.

Average FTE. The Application provides details on how to calculate the number of full-time equivalency employees during the applicable covered period. The borrower can choose either of two different calculation methods. The first calculation takes the average number of hours paid per week to each employee, divides by 40 and rounds to the nearest tenth, with a maximum cap for each employee at 1.0. The other option assigns 1.0 for each employee who works 40 hours or more per week and .5 for employees who work fewer hours.

FTE Reduction Safe Harbor. The Application also provides further information to the FTE Reduction Exemption previously introduced as FAQ #40. Previously, the FAQ allowed for an exemption from a reduction in FTE if an employee was laid off, offered to be rehired, but the employee declined the offer. This has been expanded to include an exemption for employees that were a) fired for cause, b) voluntarily resigned, or c) voluntarily requested and received a reduction of their hours. In order to qualify for these exemptions, the following two conditions must be met: a) the borrower reduced its FTE employee levels in the period beginning February 15, 2020, and ending April 26, 2020; and b) the borrower then restored its FTE employee levels by

no later than June 30, 2020 to its FTE employee levels in the borrower's pay period that included February 15, 2020.

Krieg DeVault is committed to helping you and your business during these unprecedented times. With your needs in mind, we have established a COVID-19 Resource Center to assist you through this process.

If you have any further questions, comments or concerns, please feel free to contact Robert A. Greising, Corben A. Lee or a member of our Business, Acquisitions & Securities team.