ELM

PPP Loan Forgiveness
Thoughts & Ideas

We have heard from several clients that have either already received their PPP loans or are in the process of getting those funds so we wanted to take a minute and point out some things to consider with regard to forgiveness. The three main areas that the SBA and banks will be looking at to determine how much of your loan will be forgiven is the 75% rule of payroll to other covered expenses, your FTE count, and your salary/wage reductions. It will be very important to not only follow your bank's policies regarding forgiveness but also to do it in a clear and concise manner.

1) **Separate Bank Account**

   Set up a separate bank account with your PPP funds and use that account to fund payroll starting the day you receive the loan proceeds for the next 8 weeks of payroll. What many of our clients are doing is allowing us to draft that new account for the total payroll invoice. After the 8 weeks have expired, they will then go back and reconcile that account against "payroll costs" and use the remaining funds for rent/mortgage/utilities… Please remember that not everything on our invoice will be considered "payroll costs" for PPP loan purposes. The only included items are Gross Payroll, State Unemployment, Client Share of Health Insurance and Client Contributions to a Retirement Plan.

2) **Talk to your Bank on a regular basis**

   They are going to be managing the forgiveness part of this so you need to make sure you are following their guidelines. The government has been a little slow putting out definitive rules so much is left to interpretation. It will also not be very surprising if the rules change along the way. Make sure your bank is keeping you up to date on those changes. It might even be wise to schedule a meeting with your banker during the 8-week period to have them review your files.

3) **Keeping your information clean and easy to understand**

   Part of setting up a separate account is to avoid the risk of co-mingling funds and making it harder to determine where and how the money was used. Since the clock starts on the day you receive the loan, it might even be necessary to break up a pay period. It would cause you to have more than one invoice and paycheck for that cycle but it could pay dividends down the road.

For Example: You run a weekly payroll from Monday to Sunday with a check date of Wednesday. You receive your loan on the Thursday during that pay cycle. You could run one payroll for the period of Monday – Wednesday and another payroll Thursday thru Sunday. They would both be check dated the same but we could draft your old account for the 1st 3 days and the new PPP account for the 2nd 4 days. After that, it would just go back to your regular pay cycle until we reach week 8.

It is not mandated that you have to do this and if it causes you any problems it might not be worth it but it would make the reconciliation process easier and less confusing to the banks and the SBA.

4) The 75% rule is vital

The early guidance we are hearing from area banks is that the 75% rule will be strongly enforced and failure to comply could cost you total forgiveness. They are taking a less aggressive stance on the FTEs and salary reduction policies allowing a prorated deduction for shortfalls and a make-up period extending until June 30th.

5) Coming up with your 75% amount

You are going to see a lot of different ways companies are going to try and manage it with some being better than others. I will mention one method that a client told me they were using and it seemed simplistic and easy to manage. They are going to take their total loan amount and multiply it by 75%. They will then take that number and divide it by 8 weeks. That total will then be used as their gross payroll figure. They are assured that their actual payroll costs will be higher than gross wages so they know they will stay above the 75% mark.

For example:

Company A receives a $100,000 PPP loan. They know that their gross wages need to be at least $9,375 per week.

$100,000
X 0.75

$75,000 / 8 = $9,375

You will need to determine what method is best for your company after consultation with your bank, accountant, and legal counsel but not a bad approach at all.

6) How to Calculate your FTEs

You begin by measuring the number of full-time equivalents (FTEs) during the eight-week period. The FTEs equal the average number of employees you have over a given period who work at least 40 hours per week. Say that for a given week you had three employees who worked 40 hours that week, two who worked 20, and four who worked 10. For that week, you would have five FTEs. For longer periods, you would take the numbers of regular hours (not to exceed 40 per week per employee) divide that by the number of weeks in the period, and divide that by 40. So, if during the eight-week period you had 1,472 regular hours, divided by eight weeks, that means 184 hours per week, then divide by 40 and you get an average of 4.6 FTEs.

After calculating your FTEs for the eight-week period, you will then compare this to the FTEs you had in either of two baseline periods. The baseline period can be either 2/15/19 to 6/30/19 or 1/1/20 to 2/29/20, whichever has fewer FTEs. If you had 10% fewer FTEs in the eight-week period than in your baseline period, then your loan forgiveness is proportionately reduced, by that same 10%.

7) Salary/Wage Reduction

Whatever forgiveness is left after the headcount reduction math can be further reduced, dollar-for-dollar, for major reductions in wages. To calculate this you first need to identify all employees during the eight-week period whom you employed at any point during 2019 and "who did not receive, during any single pay period during 2019, wages or salary at an annualized rate of pay in an amount more than $100,000." Call these the below-100 people. For each such employee, determine her average salary/wage rate for the first quarter of 2020. If 1/8th of the total amount of salary/wages paid to her for the eight-week period is at least 75% of her average weekly rate during Q1 of 2020, then there is no further reduction in loan forgiveness. But if she suffered such a major reduction in salary/wages that her pay for the eight-week period went down by more than 25%, then the dollar amount of the portion beyond 25% reduces, dollar-for-dollar, the amount of loan forgiveness.

8) The Grace Provisions for FTEs and Salary Reductions

The statute includes a "fix" for the headcount-related reduction in forgiveness. If by June 30, 2020 you bring your FTE levels back up to where they were at February 15, 2020, then that excuses whatever reduction in forgiveness was attributable to a drop in headcount between February 15, 2020 and April 26, 2020. (The CARES Act wording is that the employer by June 30 "has eliminated" that reduction in the number of FTEs. We await guidance from the SBA on precisely what this means.)

The statute also includes a separate "fix" for the salary/wage-related reduction in forgiveness. If by June 30, 2020 you have restored the salary/wage levels of the below-100 people to at least the level existing on February 15, 2020, then that excuses any salary/wage level reductions which occurred between February 15, 2020 and April 26, 2020. (Again, the statutory wording is that the employer "has eliminated" the reduction in salary/wage.)

9) Weigh All Your Options

We have heard from several clients that are not going to worry about the forgiveness and are going to concentrate more on what is best for their business. We are not in a position to give advice on this subject but we certainly understand their rationale. We do recommend that you consult with your bank, accountant and legal counsel to determine what is right for you.

We know all our clients that have already received their PPP loans or are about to receive them will need information from us especially when it comes to determining FTEs and getting all your documentation together for the loan forgiveness. Please address any report requests to your payroll coordinator and they will pass them along. We have been and will continue to be swamped but our job is to help each and every one of our clients navigate through this mess. Every job and every business lost represents one less family's ability to support themselves and that is the real tragedy of this situation.