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On Friday, May 15, 2020 the SBA issued Form 3508, Paycheck Protection Program Loan Forgiveness Application. Contained within the instructions was clarity on some of the biggest questions that were left unanswered within the CARES Act, subsequent Final Interim Rules, and Frequently Asked Questions.

- Affiliated Borrowers: Borrowers who received greater than $2 million must check a box on the application for forgiveness stating as such. This will identify those loans to be reviewed, consistent with FAQ question 39. It goes on to state that a borrower, including its affiliates, receiving greater than $2 million must also disclose that in the checked box.
- The Alternative Payroll Covered Period: Allows businesses to use the eight-week payroll cost beginning with the first payroll period beginning AFTER the loan disbursement.
    - One concern for many businesses had related to the timing of hours worked (costs incurred) and payroll disbursements (payments made). This allows use of the first payroll period beginning after the loan disbursement, ending in the first end date following the covered period.
    - Loan received on April 20, 2020 would have a covered period through June 15, 2020. If the start of the next payroll period is April 26, 2020 the Alternative Payroll Covered Period allows the covered period to run until June 20, 2020.
- Costs Incurred vs. Payments Made with respect to payroll costs: Costs are considered incurred on the day the employee's pay is earned. Payments are considered made on the date the funds are distributed to employees. For purposes of the last payroll period, any payments made on the payroll date immediately following the covered (or alternative covered) period are considered eligible for forgiveness.
- Costs Incurred vs. Payments Made with respect to non-payroll costs: Eligible non-payroll costs must be paid during the covered period or incurred during the covered period and paid in the first billing cycle following the covered period. Here are examples using the same April 20, 2020 loan date.
    - Rent: Payments made on April 30, 2020 for May rent and May 31, 2020 for June rent would be considered allowed.
    - Utilities: Gas payments made May 22, 2020 for April's billing and June 22, 2020 for May's Billing cycle would be considered eligible for forgiveness.
    - In the rent example, a business would lose 10 days of April rent, but gain 15 of June rent, covering roughly the eight-week period. In the utility example, payments made for the first 20 days of April are within the covered period, but the 15 days of June are not. Again, this results in roughly an eight-week period without allowance for prepayments.

- Personal Property Rental Expense: The form explicitly states that all real or personal property rent and/or lease payments made during the covered period are applicable. This confirms the assumptions of many.
- Owner "Windfall" Provision: Business owners must represent that the compensation received during the eight-week period does not exceed 2019 compensation. This includes any owner-employee or self-employed individual/General Partner. It does not address other payroll costs outside of taxable compensation, including retirement benefit or group health benefit.
- Compensation Reductions of Greater than 25%: Reductions in compensation are to be calculated based on the average annual salary or hourly wage as compared to the pervious calendar quarter. There was concern that the language stating "total salary or wages" would mean that a 13-week quarter would be compared to the covered period, creating an immediate reduction in income. This has been rectified for a more appropriate comparison.
- Average FTE: The SBA has not followed their own guidance of a 30 hours FTE. This will likely help some borrowers who have part time employees from the prior period who worked more than 30 hours but less than 40 hours. The reduction in base will help improve the ratio and increase forgiveness. Although it goes against the original SBA information, it should be considered borrower friendly.
- FTE Reduction: In the FAQ's, question 40, the SBA clarified that if a good faith offer was made to former employees to return to employment and was rejected, that would count towards the average FTE count. This was further clarified to state that any employees that were fired for cause, resigned, or requested a reduction in hours, should be included in the FTE count for the covered period. This is not applicable if the reduction above was replaced with a new employee.
- FTE Reduction Safe Harbor: A new addition to the FTE count was added stating that a reduction in average FTE's from February 15, 2020 to April 26, 2020, that is restored back to February 15, 2020 levels by June 30, 2020 is exempt from the FTE Calculation. This is a win for borrowers because the prior average FTE periods may be higher than the FTE's as of February 15, 2020. The safe harbor could reduce the burden of additions to staff as of June 30, 2020.

All things considered, this application should be considered a positive for borrowers. The rules were clarified in some places and relaxed in others. We will be providing updates as the occur so please continue to monitor our COVID-19 Resource center (https://www.peasecpa.com/covid-19-resource-center/) for the latest developing information.