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What's in the PPP loan forgiveness application form and what's not

By Jeff Blumenthal – Reporter, Philadelphia Business Journal
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The long-awaited application form Paycheck Protection Program borrowers must use when applying for loan forgiveness was released late Friday with expectations that it might clear up several issues that have been vexing business owners. Local lawyers and accountants, though, said while it answered some important questions, others are still up for debate.

Here’s a deep dive into the details:

First, some background. The forgiveness application is to be completed by the small business borrower and is submitted to the lender from who they received their PPP loan. The program is supposed to provide a loan at 1% interest for eight weeks that can be forgiven if the business owner rehires or keeps employees and uses at least 75% of the proceeds for payroll and the rest for utilities, rent or mortgage interest. The forgiveness component is what attracted many business owners to PPP, so securing it is of great importance.

The 11-page forgiveness application form provides some important clarifications with respect to how businesses are supposed to calculate payroll costs.

Calculations are done in a three-step process that starts with the aforementioned payroll and qualifying non-payroll costs for the eight weeks, then a reduction in the amount forgiven if the business reduced employee pay by more than 25% or if you have not brought back the same number of full-time equivalent employees (more on that definition later). The third step is the 75% payroll cost test.

Mike Malloy, a partner at law firm Obermayer Rebmann Maxwell & Hippel in Philadelphia, said payroll costs are deemed paid the day paychecks are distributed or the employer originates an ACH credit transaction. Payroll costs are incurred the date that the employee’s pay is earned.

Businesses must provide the name, last four digits of the social security number and cash compensation for each employee, with those making $100,000 or more annually listed in a separate table. Employers must also provide the amount they paid for employee health insurance and retirement plans as well as state and local taxes the company pays — including unemployment insurance payments made to the state.

For documentation, businesses will need to provide bank accounts or third-party payroll service reports documenting employee compensation, tax forms for the eight weeks and payroll forms and state quarterly wage and unemployment filings.

While the so-called “covered period” for loan forgiveness continues to be the eight-week period that starts when the borrower receives the loan, the application form offers a new option. The “Alternative Covered Period” allows borrowers to begin the eight week period on the first pay day following loan disbursement. That could help businesses with a biweekly or more frequent payroll schedule.

“They absolutely gave us the calculations they are going to use,” said Jordan Kendall, a partner at accounting firm Marcum. “That helps accountants and other professionals with their models.”

Kendall said some of his business clients were not clear about whether the lease of personal property was an amount that could be included in rent, and thus forgiven, as long as the agreement was in force by Feb. 15. So in addition to the office space lease, personal property such as copiers, servers and vehicles can be included in non-payroll costs. Similarly, mortgage interest can also include interest paid on loans for equipment and vehicles. There was also more clarity provided on what constitutes utilities, as the application lists electricity, gas, water, transportation, telephone or internet access.

When determining the number of full-time equivalent (FTE) employees before and during the eight-week period, Malloy noted the application form does not use the SBA’s prior 30-hour full-time metric. Instead, it provides two acceptable calculation methods.

One option is to take the average number of hours paid weekly for each employee, divide it by 40 and round the total to the nearest 10th. The second, and perhaps more simple method, allows businesses to count any employee who works 40 or more hours a week as one employee and those working less than that are counted as half an FTE.

Jordan Kendall of Marcum

That’s quite a lot of detail in the forgiveness application form. But it didn’t clear up everything.

Both Kendall and Malloy said the chief concern for many businesses, particularly those in retail, restaurants and hospitality that have been closed for almost two months now, is that the eight-week period of too short to have a meaningful impact.

“This has been going on since the bill was signed into law,” Kendall said. “People began realizing the impact this was going to have because eight weeks is not enough time to get a company back up and running at 100% capacity. If I am a retailer and I haven’t opened yet, then what good was the money when I could have let my employees collect unemployment. This lays at the feet of Congress and not the SBA.”

On Friday, the U.S. House of Representatives passed the Health and Economic Recovery Omnibus Emergency Solutions Act, or HEROES Act — a $3 trillion proposal that expected to meet stiff opposition from Senate Republicans and some moderate Democrats. The bill tackles some fixes for PPP, including extending the period for when businesses need to spend loan proceeds from eight weeks to 24, eliminating the 25% cap on eligible non-payroll expenses and extending the loan period of two years to five years.

Both Malloy and Kendall also advise business owners not to get too creative with their math. For example, Malloy said adding independent contractors as full-time employees for the eight-week period and removing them afterwards will be sniffed out by the IRS.

And while forgiveness application form did not specifically address whether business owners can hire family members, Kendall advises against it.

“I advise clients that you have to make business decisions and not selfish decisions,” Kendall said. “If you are hiring a family member, there better be a business reason for that. You can’t have your spouse or your kids on the payroll and then expect to take them off when the loan period is over. You can’t treat them as employees and then they are not employees. That’s going to be a red flag for the IRS.”