**NOTES FROM Q&A SESSION**

**MARCH 5, 2020 MONTHLY MEETING**

**(Via web conference)**

**Guest speakers:**

[**Bruce Adams**](https://www.cuinsight.com/press-release/the-credit-union-league-of-connecticut-names-bruce-adams-as-the-new-president-chief-executive-officer)**, President and CEO, Credit Union League of Connecticut**

[**Tim Bergstrom**](https://public.websteronline.com/people/timothy-d-bergstrom)**, Webster Bank Regional President for Hartford, CT**

[**Wendell Davis**](https://www.sba.gov/about-sba/sba-team/sba-leadership/wendell-g-davis)**, Region 1 Administrator, Small Business Administration**

[**Marc Finer**](https://www.murthalaw.com/our_people/marc-finer)**,** **Chair, Tax Practice Group, Murtha, Cullina LLP**

[**Jim Himes**](https://himes.house.gov/about)**, U.S. Congressman, 4th District Connecticut (Southwestern CT)**

Q: Is there any opportunity to extend the PPP period beyond 8 weeks in any circumstance?

At least for now, this is a hard and fast rule, with the 8 weeks triggered upon the disbursement of funds.

Q:  If you utilize both the PPP and the EIDL, you have to be sure to use the EIDL money for “expenses” like paying for raw materials for example.  PPP is Payroll, Utilities and Mtg/Rent.  BUT is it true that you can’t use it to pay for bonuses (even a Covid-related bonus for “showing up”) or buying back vacation time or anything other than straight payroll?.

The current guidance does not indicate that PPP can be used for paying covid-incentivized bonuses. But it also does not say it can not be used for this purpose. Keeping timely records documenting the nature and purpose of these bonuses and their direct link to maintaining an essential business during the Covid pandemic is important as it might wind up being considered an acceptable use of PPP as further guidance is issued. While not directly on point, the below FAQ is instructive. While a housing allowance is not mentioned in the Cares Act, if it is part of a businesses payroll costs it is included. Documentation is important, if this is a cost that has been included in 2019 and is still being included in 2020 then you should be ok. The further you stray from the actual Cares Act and the IFR and the Guidance the more risk a business takes in terms of forgiveness. Likewise, if the business has documents from 2019 establishing pay roll costs and there is consistency through the PPP process you are in pretty good shape – the more you deviate from what is documented in the past the more risk a business takes in terms of forgiveness.

FAQ 32. Question: Does the cost of a housing stipend or allowance provided to an employee as part of compensation count toward payroll costs?

Answer: Yes. Payroll costs includes all cash compensation paid to employees, subject to the $100,000 annual compensation per employee limitation.

Q: Is it the case that if you hire extra people to get through the 8 week period they have to be employees? You can’t hire a 1099 person?

Currently, expenses associated with hiring 1099 employees are not considered PPP eligible. 1099 Contractors are eligible to apply for PPP on their own.

Q: Is it clear that one doesn’t need to verify efforts to obtain credit elsewhere in order to be eligible for the PPP, including the forgivable component?

The typical SBA credit elsewhere requirement is suspended for the PPP program. Small businesses do not have to show that they have been declined for credit/loan by a lender to become eligible for PPP. However, recent guidance has indicated that businesses must make sure that its operations have not only been impacted by COVID-19 but also that the loan is necessary. Business must take into account their current business activity and their ability to access other sources of liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business.

Q: The PPP Cares Act says a company must have same payroll wages and number of employees as the period between Jan 1 and Feb 29. But there is an exception that says you have to hire back all your employees by June 30, which is past the 8 weeks for those that got the first round of funding and was known at the time the rules were written. Now there is information that says you have to have a weekly match of wages and number of employees. Can you clarify?

This question ultimately relates to forgiveness. We are all awaiting for more detailed guidance on forgiveness and hopefully this is one of the questions that is answered.

Q: Q: The PPP rules state that you can use 25% to pay rent / mortgage and utilities and you can pay ahead. Now there is information out that you can only pay 1 month ahead. What is the reality? I am not aware of the 1 month forward guidance. What I do know is that the actual amount of forgiveness will depend, in part, on the total amount of payroll costs, payments of interest on mortgage obligations incurred before February 15, 2020, rent payments on leases dated before February 15, 2020, and utility payments under service agreements dated before February 15, 2020, over the eight-week period following the date of the loan.

Q: Q: There have been conflicting reports that the EIDL initial ‘Grant’ (aka EIDL advance of up to $10,000), would be somehow impacting the funds from a PPP loan.  Can we assume these are separate and distinct and companies that have already seen funds from both programs do not have to do anything but continue on? Yes - $10k grant is separate. Continue on.

Q: The EIDL Advance funds have run out and no new applications are being taken.  Is there a separate program or funding for the additional limits that the longer term loan portion was supposed to cover?  The program was supposed to be open until December 2020. The EIDL program received additional funding through Cares Act 2 and we are now seeing loans closed and disbursements being made in New England. On Monday, the EIDL opened up again to allow farm/agricultural businesses to apply (they were made eligible under Cares Act 2)

Q: Does the total number of employees and wages have to match week to week?

No - this is not a requirement

Q: Can the total number of employees and wages be the same by the end of the 8 weeks?

Yes.

Q: Does a 32 hour work week count as full time?

Further guidance is expected on this question. We do know now that for purposes of loan eligibility, the CARES Act defines the term employee to include “individuals employed on a full-time, part-time, or other basis.” A borrower must therefore calculate the total number of employees, including part-time employees, when determining their employee headcount for purposes of the eligibility threshold. For example, if a borrower has 200 full-time employees and 50 part-time employees each working 10 hours per week, the borrower has a total of 250 employees.

Importantly, by contrast, for purposes of loan forgiveness, the CARES Act uses the standard of “fulltime equivalent employees” to determine the extent to which the loan forgiveness amount will be reduced in the event of workforce reductions.

Q: Explain the rehiring exemption please – specifically regarding whether the number of employees have to be the same by June 30 even if the 8 week period is over prior to that date.

This is an area where we are expecting further guidance also. We do know that In new guidance, it was announced that the Agency intends to issue an interim final rule excluding laid-off employees whom the borrower offered to rehire (for the same salary/wages and same number of hours) from the CARES Act’s loan forgiveness reduction calculation. The interim final rule will specify that, to qualify for this exception, the borrower must have made a good faith, written offer of rehire, and the employee’s rejection of that offer must be documented by the borrower. Employees and employers should be aware that employees who reject offers of re-employment may forfeit eligibility for continued unemployment compensation.

Q: What restrictions do credit unions have for administering PPP or other federal assistance programs for smaller manufacturers?

PPP dollars can be disbursed from any federally-insured financial institution. Additionally, as community-focused institutions with specific fields of membership, credit unions often exercise flexibility in helping their members address workplace financial challenges. However, not all credit unions participate in commercial lending

Q: How are things proceeding differently under PPP.2 versus PPP.1 from the banking community’s perspective?

Administering the PPP program is evolving along a continuum as more guidance is issued and more experience is gained in processing applications. There is not a major distinction between the first and second PPP authorizations.

Businesses should keep in mind that to the extent their PPP expenditures are subsequently deemed not to be forgiven as a grant, those expenses will be administered as a loan with 1% interest for a period of 18 months, with no prepayment penalties.

Businesses should be keeping detailed records of all their PPP expenses over the coming weeks as such documentation will ultimately be sought by the lending institution through which the funds were accessed.

Q: We’ve heard the IRS ruling that forgiven portion of the PPP loan will be treated as normal taxable income and that was not what Congress intended.  Might this change with Congressional action or is it a done deal? (See IRS guidance 2020-32)

At this time, the IRS intends to treat PPP funding as taxable income. Doing is consistent with current IRS practice. However, the Treasury Department is reviewing the policy and it is possible Congress could pass legislation to address this apparent inconsistency with the intent of the CARES Act. Businesses should not currently anticipate such a change.

Additionally, states have the opportunity to pass legislation to treat income differently than federal law for purposes of state tax liability. However, Connecticut generally follows the federal rules with respect to taxable income. Making such a change in Connecticut may be unlikely this year given rapidly expanding revenue shortfall projections and what will likely be a highly streamlined legislative special session this summer.

Q: Liability has become a hot topic. Businesses and schools and others are making a strong case that they will be hesitant to reopen unless there is some kind of safe harbor around a set of procedures.

At the federal level, negotiations continue with the democrats prioritizing the need for CARES 3.0 to include more state and local aid, while the republicans are focused on liability protections for businesses. There almost certainly will be a third round of CARES funding ultimately approved by Congress, which likely means there will be elements of both party’s priorities incorporated into the legislation. Congressman Himes recognizes the problem and is anxious to learn more about strategy options for providing small businesses with some liability protection when they reopen.

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FAQ 43. In new guidance, Treasury has indicated that the safe harbor of May 7th (for PPP recipients to return funds if they can not show the funds are necessary) has been extended to May 14th. At a NAGGL conference today SBA reps indicated that they will be providing further guidance on this prior to May 14th.