Regulations Follow-Up – Small Business Stimulus through the CARES Act

CRA Webinar 4/13/2020

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SBA Introduction

- Congress has passed the CARES Act, and the Paycheck Protection Program was implemented seven days later.
- This has been a fast and fluid process; we are still receiving additional guidance on the practical nature of these programs.
- We know that many of you may have had challenges finding a lender that will work with you and take your application. There has been a significant learning curve for many of these lenders, especially if they were not working with the SBA previously. Many lenders had to learn to use our system with very little time which has contributed to the backlog. We have now created a new lender gateway to streamline that process for lenders, and are hoping to see progress in this backlog as a result.
- We have also begun setting up call centers to assist the lender community so they can get the help they need processing these loans and eliminate some of this volume. I feel confident in saying that we are seeing a reduction in backlog, and this process will continue to get better over time.
- In the absence of firm guidance from the federal government, we are also seeing a lot of misinformation from well-intended people who are trying to interpret the statute and regulations. If you are seeing guidance that does not come directly from the Department of Treasury or the SBA, please take it with a grain of salt as it may not be entirely correct.
- We know that there are still some outstanding questions as it pertains to definitions and eligibility requirements. We are working diligently around the clock to provide the guidance that small businesses and lenders need to process the loan.
- We will do everything in our power to answer your questions, but if we don’t know the answer due to a lack of guidance, we will have to update people later.
- Despite some of the challenges, this program is already working. But it is a work in progress, and we will continue to work on fixing some of the problems that have presented themselves.

Messner Reeves Introduction

- This a fluid scenario, and we are still waiting for final guidance.
- What we do know: people are getting money out of this and they are submitting their applications.
- Now that we have started seeing these loans processed and dispersed, we have some time to get our documents in order so that we can be prepared to go into the forgiveness period. Keep
your documents in one place, and stay on top of things if you want to pursue 100% loan forgiveness, as you will need those documents later on.

- We have been focusing on the EIDL loans as well; there is an overwhelming interest in these loans, and SBA has been inundated with applications. Everyone is drinking out of a firehose at this point, so we may see some lengthy processing times.
- We want to make sure that we are combating misinformation; this is happening really quickly and we are here to help.

Q&A

What would you tell someone who has applied but hasn’t heard back from their lender?

There has been an incredible interest in the program, so we are seeing an incredible volume of applications to the lenders. Every lender is going to process and disperse funds differently, so we encourage you to open a dialogue with these lenders to understand what timelines they are looking at. The experience will look different depending on whether you are using a big lender or a smaller community-based lender. But across the board, they are all dealing with an overwhelming volume.

Can you verify that operators need to be at full staff levels by the end of their 8-week period?

The 8-week period starts the day that your funds have been dispersed by the lender.

If restaurants are closed to dining, what advice can you give them if they can’t open and there is nothing for their staff to do? Even if restaurants are able to receive PPP funding, there are individuals and former staff who are saying that it would be better for them to stay on unemployment than to return to work on the PPP payroll.

That’s a difficult question and one that we understand and are fielding a lot of questions on, especially from your industry. The challenge is that the language for loan forgiveness is final. I understand your concerns and feel they are very valid. Congress may make changes to this, but absent a statutory change, the 8-week loan period will need to be observed and staff levels and wages need to be maintained.

Is there a way to check on the status of my EIDL loan application?

As of now, no. The EIDL loans have been traditionally used to respond to specific communities that have seen disaster circumstances. But now businesses nationwide can use the program, and we are overwhelmed. There is no status check at this time, but we are working to implement that function. We are actively looking at ways to streamline the process and are actively working on processing these loans.

How long should people wait to receive their EIDL loan?

We don’t know at this point. We are actively working on the applications, but it will take some time.
We are hearing that EIDL loans are capped at $15,000? Is that true?

We don’t know. What we do know is that SBS is working hard to find avenues for funding to fulfill the original terms of the loan, but we don’t know if that is going to change. We would like to try to honor the intent of the legislation.

How is loan forgiveness going to work? Is it just going to be determined on the 75/25 loan expenses and FTE after 8-weeks?

The date in which the lender disperses the loan marks the beginning of the 8 weeks. The loan forgiveness will be determined by proportional retention of FTE and pay. The amount forgiven will be reduced proportionally by any reduction in employees retained compared to the prior year and reduced by the reduction in pay of any employee beyond 25 percent of their prior year compensation. And last but not least, 75% of the loan must be used on payroll in order to receive the full loan forgiveness, so that leaves the remaining 25% which can be used for mortgage, rent, utility payments. It’s important to note, additional guidance on loan forgiveness is forthcoming.

What dates are you using for the 8-week forgiveness period?

The Treasury has clarified that the 8-week period begins the day the first disbursement of the funds comes from the lender, so the day it appears in your bank account.

How are tips calculated in the payroll costs?

We are still working out the details to understand what you need to show/document to prove what those tips are. We are hearing that you can average reported tips. If the tips are unreported and there is no way to document them, the local banks and lenders will need to find ways to document and prove them.

Does my 8-week period have to end by June 30? What if they get their loan on May 15?

The June 30 date really applies to the time in which this program will be accepting applications, so any loan administered in that period would qualify. In theory, you could get a loan approved on June 20 and still use your loan, however, there is no guidance on how to use these loans after June 30 so you would be moving into uncharted territory. We do not recommend that you wait that long.

Assuming that restaurant closures are extended, do you know if the program will be extended and receive additional federal funding? Are you hearing about a potential end-date later than June 30?

We have heard that there is interest in another round of funds to the program, but nothing has been passed. There seems to be congressional interest in extending the program, but we don’t know any specifics yet.

If I take the full amount of PPP, what is the maximum loan term offered?

The loan term is 2 years with interest rates of 1%.
What if I don’t spend the money in 8-weeks? Can I keep it at the 1% interest rates and use it for payroll after the 8-weeks?

If you have an outstanding balance that will be amortized over the period of the two year loan term. date.

Restaurants are unclear when they will be able to re-open. If you are approved for PPP can you ask for your first disbursement to be delayed so you can use the funds in the future?

No. The lender must make the first disbursement of the loan no later than ten calendar days from the date of loan approval.

Which taxes can I include in my payroll calculation?

Payment of state/local taxes assessed on the compensation of employees. Employer taxes are excluded from the formula.

We have been approved for PPP, do funds have to be spent in the 8-week window, or can the applicant choose its window?

The 8-week period begins the day the funds are deposited into your account, regardless of whether it is a partial or full deposit. Owners cannot choose to push their disbursement out.

Is it full-time employees or full-time equivalent?

For forgiveness, you will be judged based on full-time equivalent employees. Full-time is 30 hours/week.

How long do employees have to be working within those 8 weeks? What will we have to prove to show our payroll?

Reductions in employment or wages shall not reduce the amount of loan forgiveness IF by June 30, 2020 the borrower eliminates the reduction in employees or reduction in wages. Documentation verifying the number of full-time equivalent employees on payroll as well as the dollar amounts of payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities for the eight week period following this loan will be provided to the lender. v. Loan forgiveness will be provided for the sum of documented payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities. As explained above, not more than 25 percent of the forgiven amount may be for non-payroll costs.

Are there benchmarks that need to be met within the 8 weeks?

No, you just have 8-weeks to send your PPP loan amount. Anything that carries over after that 8-weeks would not be forgivable.

Can restaurants make one lump payment on June 29? Or if I get my loan tomorrow can I issue lump payments to employees that day and end the problem there?
No guidance currently prohibits this. So long as you have comparable FTE, you spent 75% on payroll, employees are making at least 75% in wages as they did previously, and you did this by June 30 (or the end of your 8-week window, whichever comes first) you would be eligible for forgiveness.

**Does it have to be the same employees?**

No, you can hire anyone.

**Is it just FTE or payroll amount?**

For forgiveness, it is both the number of employees and their salaries/wages.

**Have EIDL $10,000 loan advances been going out?**

The thought process was to provide immediate relief within 3-days. But there has been a high volume of applicants and interest so we are still working our way through the applications.

**If a restaurant is so slow for business at the end of their 8-week period and they need to furlough their staff again, will that impact their forgiveness?**

It will not impact their PPP loan forgiveness so long as they spent their funds in accordance with the program.

**Both PPP and the unemployment work share program are intended to prevent lay-offs. Can PPP funds be used to pay work-share wages because they are reduced?**

I don’t believe so because those wages would not have been included in your PPP calculation. In theory, work share wages should have been reduced already. But we have not seen any guidance or direction for combining both those programs, we will have to look into the issue.

**Do you see the PPP forgiveness changed to be more flexible for seasonal businesses?**

There is a separate formula that seasonal businesses can use to receive their PPP loan. We know that seasonal employers are looking for more flexibility, but we have not seen anything in the interim rules. The federal government is aware of the problem though, so we may receive final guidance later on the issue, possibly in a phase 4 federal relief bill.

**Is the money going to run out? We have heard conflicting reports.**

At this time, SBA has experienced a lapse in appropriations and we are unable to process anymore PPP loans until congress appropriates additional funding.

**If an owner received a W-2 of any amount, may that owner participate as an employee under the PPP? Are they able to use those funds to pay owner compensations?**

If the wages are reported as income on a W-2 they can be included in the payroll calculations. Any draws that are not run through the IRS should not be included.
Can a business apply for both PPP and EIDL loans? How can they structure their loan applications?

You can apply for both so long as you do not use them for the same purpose. PPP is focused on payroll expenses, so you may want to use EIDL loans for other payments.

We are paying our employees from our PPP loan, how do we stop their unemployment payments?

You would do it the same way you would if you were to re-hire employees. You should have them fill out new employment documents and notify the state of new hires. Then the state should remove them from unemployment benefits.

Can we use loan money after the 8 weeks?

Yes, but it won’t be forgiven

If my 8-week period ends before June 30, and I used my funds in the appropriate and forgivable manner, would I be forgiven for what I used within those 8 weeks, or for everything I used up to June 30?

The June 30 date refers to the time that you can apply for PPP. If your 8-week window ends before June 30, then you would be forgiven for what happened within that time, not for anything you use after. It’s important to note, you will not have to make any payments for six months following the date of disbursement of the loan.

If you have a balance, or there is a portion that is not forgiven, can you use that loan balance for any purpose?

Without any guidance on the issue, we would recommend that you continue to use the funds for approved purposes even after the 8-week window has ended. If you deviate and start using your funds for unauthorized purposes, the federal government may hold you liable for charges such as fraud.

Can I pay late rent within my 8-week period? In essence, can I pay back-rent during my 8-weeks?

Maybe. The language in the statue says “rent” and it’s not necessarily limited to just rent due within those 8 weeks. But take that with a grain of salt, as we do not have guidance on that issue.

If we use the 30 hours/week as the full-time equivalent and I have an employee at 40 hours/week, is that still one full-time employee, or more than a full-time employee?

Our understanding is that if an employee was historically working 40 hours/week, then that would be their comparable level for forgiveness, and they would remain 1 FTE. The full-time equivalent will come into more consideration when you’re looking at part-time employees.

How do you suggest we pay a tipped employee similar compensation that they would usually earn working for tips? Should we average their pay?
It’s our understanding that you would average those tips over time. Documentation is going to be key. It is going to be complicated, and it may take some time to get the documentation in place for forgiveness. If you included average tips within your calculation, that’s how much you would payout to employees.

**Can we pay current employees hazard pay during the period?**

There is nothing preventing paying employees an elevated wage, provided that no individual employee’s wage falls by >25% and FTEs are maintained. The forgiveness calculation is just compared to historical wages – there is nothing preventing increasing wages.

**Do you know when we are going to get more specifics on the forgiveness period? Some people don’t want to apply without clarity.**

We are trying to issue guidance in a timely fashion, but agencies are still working to finalize rules. There is no specific timeline, this is a day-to-day process. However, the statute is fairly clear on what will be expected for loan forgiveness, so you should not allow the lack of guidance to dissuade you from applying.

**If by the end of the 8 weeks we have 90% of staff back, how will that be forgiven?**

If you have 90% FTE by the end of your 8-week period, 90% of your loan would be forgiven and there would be a 10% delta that would not be forgiven; provided that your loan forgiveness is not further reduced by a reduction in wages.

**Are funds available for restaurants that have not been in business for a full year?**

Yes, but your business would have had to be in place on or before February 15, 2020.

**If my employees are not willing to come back, can I hire new people?**

Yes, forgiveness is not contingent on the same individuals, it is based on the average from the year prior.

**Are EIDL loans forgiven?**

The EIDL loan advances are forgiven, the rest of the loan is not.

**Are grants considered income?**

Assuming you’re speaking for tax purposes, it depends on the grant, the nature of the language, and the use of the grant. You will need to speak to your account or a tax professional to understand with regards to your grant. In a lot of cases, they are not counted as income, but sometimes they are.

**Should I round up or down when determining FTE?**

Practically speaking, you round up because you can’t have 1/3 of a person. But there is such a thing as having half an FTE.
If I’m not getting any type of response from my lender, can I apply with a different bank? Should I just check-in? What would you recommend because these funds are so urgent?

From a legal perspective, you should not submit another application to a lender. You may need to call your lender to understand timelines and get a better idea of where your application is. Banks are saying that they will try to respond to you within 3 days confirming that they received your application. If you are receiving no information, then you may want to get on the phone with your lender. We have seen some clients apply, wait the 72-hours, and then reach out and follow-up.

What if I have applied with more than one lender?

You cannot submit multiple loan applications to different lenders. You should try to withdraw your applications as quickly as possible so you only have one pending application.

If we are not a strictly seasonal business, but we have seasonality in our business, is there going to be special recommendations for us?

Most banks will require all of 2019 to report the monthly payroll costs. So in this case, it will be based on your averages over 2019. To be considered a seasonal business, businesses need to meet a certain set of criteria. So if you are not defined as a seasonal business, you will want to look at average payroll over 2019.