Andrew Kaplan Transcription from CARES and Community Care: A What Now Webinar

Find the archive video of the webinar [here](#).

While Andrew can't provide any additional pro bono advice at this time, his email address is ANKaplan@ebglaw.com for anyone that wishes to work with EBG Law in a more formal capacity.

ANDREW KAPLAN: [26:03] Appreciate the opportunity to present to everyone. I know this is a very difficult time. And so, thank you. I'll speak for a few minutes about the PPP program, focussing on the loan forgiveness portion, and then I'll open up the discussion for questions. I'm sure there will be many; I'm happy to field as many as possible. If I don't get to your questions, Laurie, feel free to provide my contact information to any of your members and I'm happy to give people some time either this evening or tomorrow to answer any specific inquiries that we don't get to today. So thank you. [26:53]

The PPP Program under the CARES Act, in concept, was a phenomenal idea. The SBA and the US Treasury was going to give low interest, forgivable loans to small businesses with fewer than 500 employees, non-profit entities, sole proprietors, and independent contractors, and provided that money was used for payroll costs or other covered expenses, the money was all going to be forgiven and not paid back. The federal government was going to guarantee those loans to small lenders. So, conceptually, it was free money for small businesses. Unfortunately, in an expedited process to get the bill drafted [27:38] and adopted by the president, it was signed into law on March 27th. There were a number of… I'll call it "holes" in the legislation, poor drafting, and difficult propositions that made applying for the loan, eligibility, and processing loans after the fact difficult.

The original loan was funded at $349 billion. That was subscribed and fully funded within approximately two weeks after the law was signed into existence. I just received an email about three minutes ago that the US Senate has just approved a $320 billion subsequent funding to re-establish the PPP Program with $320 billion in fresh loans. It's supposed to be voted on this afternoon at 4:20 by the Senate and then moved over, hopefully by tomorrow or Thursday, to the House, and then signed into law by the president, ideally by the end of the week. So, that will address some concerns about the program being oversubscribed within the first two weeks, and, hopefully, open up more loans to people that weren't able to get their applications in within the first two weeks.

Generally speaking, the loan amount for a borrower is based on two and a half times your monthly payroll costs looking back one year. You come up with your one month annual payroll, you multiply that by two and a half times, and that's the amount of money that you're eligible to borrow. There is a cap of $10 million dollars per loan. That's the process for determining how much you can borrow. One of the - ideally, one of the things that was supposed to speed this process through, but that's complicated the matter up to this point: none of the loans come through the SBA. The goal was to delegate 100% of the authority for eligibility and processing these loans to local lenders who are deemed SBA-approved. That made things actually more difficult with the process. Unfortunately, each one of these lenders had to come up with their own internal underwriting processes and their own internal approval processes that comply with the PPP. That made it more difficult, unfortunately. Each separate lender had to come up with their own set of policy procedures, and it made it extremely difficult. Some large banks, like Wells Fargo and Citibank, opened up things via a webportal, and those webportals subsequently crashed. Within a day or two, most lenders were up and running, and the process was open for application. Like, I said before, that $349 billion was applied, subscribed to, and filled within two and a half weeks.

[30:47]All of the loans have identical terms. They're two year loans, based at 1%. No payments are due for the first 6 months after you receive the money. Payments begin at month 7 and are uniformly amortized [31:05] from month 7 to month 24. No collateral is required and no personal guarantees are required from any owners or any entities that are borrowing the money. Now, the most attractive feature for most borrowers is the loan forgiveness feature. Borrowers are all eligible to have to full amount of the principal and the interest forgiven. Any amount of the forgiven debt is not recognized as income for tax purposes.

[31:41] Now, the rules relative to forgiveness. There's one general rule that applies to everybody - unfortunately, we're still waiting on additional clarification from the SBA about this one general rule. This is the overarching rule for all loans: Borrowers have to use - it's a requirement - have to use at least 75% of the loan amount for payroll costs. "Payroll costs" is defined under the act; it includes payroll, commissions, wages, certain insurance premiums, retirement benefits, separation or severance payments, and a few other items. I'm happy to provide a complete list for everybody. The rule is 75% has to be used for payroll costs. One of the big problems with the statute [is] it doesn't say what happens to a borrower if you don't use 75%. Everybody is waiting for the SBA and the Treasury Department to issue guidance. Ideally, once this new $320 billion tranche is funded, the SBA can then focus their attention on clarifying that issue. The contacts that I've spoken with at the SBA lead me to believe (although it's off- it's not formal advice, it's just a recommendation) they're leading me to believe that if you don't hit 75, that they are trying to adopt a standard of only a portion of the forgiveness is lost. So, in other words, if you spend 70% on the loan forgiveness, you'd only lose 5% of the forgiveness. But that hasn't been adopted. That's speculative. That's informal follow-up that I've received from some SBA contacts. So, that's one area that I'm advising contacts who have either trade groups or lobbying contacts in Washington - there has to be concerted effort to push the SBA for more clarity on what happens if you don't hit that 75% threshold. The legislative intent here is to provide forgiveness. Most people believe it would be patently unfair, if a borrower does not hit 75%, to lose all of the forgiveness. That's not the intent of the statute. There'll be some penalty, but ideally it's only pro rata. So if you spend 70%, you only lose a 5% forgiveness.

The other two issues relative to loan forgiveness. There are two - I call them "buckets." Two buckets that govern forgiveness. If, during your 8 week loan period, after you get the money, if you reduce your full-time equivalent headcount, this is Bucket 1, The Full-Time Equivalent Headcount. If you reduce the number of your employees, there's a potential that you would lose a portion of your loan forgiveness based on the percentage of people that you reduce after you received the loan. The reduction is based on a fraction (and I'm going to give it to you now, and I'm happy to email it over), but your forgivable amount is multiplied by a fraction. The numerator, or the top half of your fraction, is the average number of full-time equivalents per month during the 8 week period after loan origination, divided by full-time equivalents per month between two time periods - it's really up to the borrower. It's either between February 15th, 2019 to June 30, 2019 or the time period of January 1, 2020 to February 29, 2020. So, those are your options for your denominator. The borrower chooses the denominator; it's not up to the lender. So, you take that fraction, you multiply it by loan amount, and that will give you the amount that you lost in forgiveness IF...IF you reduced your full-time equivalents during the 8 weeks after the loan.

[35:43] Now, I've received a lot of questions on this component. The statute is silent on what happens after the 8 week period. So, if employers keep people employed for the full 8 week period after you get your loan proceeds, and you reduce headcount in week 9 or week 10, based on the language in the statute, there's no reduction in forgiveness. So, I'm advising clients to the extent that you can keep your full-time headcount at that level during the 8 weeks, do not furlough or terminate any employees. Pay them all with the loan proceeds. You will not lose reduction of the loan forgiveness based on the headcount after the 8 weeks.

Sorry, Laurie, go ahead.

[36:34]
LB: I don't want to interrupt you if you had more territory to cover, but we have a question, and I have several other questions that are related.

AK: Sure, sure.

LB: Theatres hire actors and other folks who are seasonal and their work is, of course... the productions were closed. Does it make sense to bring actors back? And these figures, if you're looking back at the periods that you have to compare against, all these actors and other full-time equivalents were in place, and now they're not. So, in order to have your loan forgiven, you need to bring them back, but there's no work right now. What are you telling people?

AK: First of all, let me add that for seasonal employees, there's a third option for your denominator. For seasonal employees, you can also opt to use as your denominator the time period from February 15th, 2020 through June 30th, 2020. So you have that time period for your denominator for seasonal employees. What I'm telling people if they utilize those seasonal employees in the determination of their base loan amount, it's in their best interest to try and bring them back and employ them doing Something. I know actors are trained to act, and if the theatres are not open, you're not - an actor doesn't have anything to do. The code is not completely clear. Some of my clients who have found themselves not having enough work and essentially borrowing too much money, they've repaid a portion of the funds back the day after they borrow it. They're trying to put themselves in a best case scenario to argue for compliance with that 75%. And, without clarity in the law, I've told clients to employ their workers doing whatever they can - office work, clerical work, something. And if they can't find some work, I'm telling them to try to repay as much of that money on Day 1 because you are permitted to pay back principal without premium or penalty.

LB: What if you reduced your headcount - actually, I'm sorry, there was a question before that - Can payroll costs include independent artists such as directors and designers who receive 1099s? There's conflicting information out there.

AK: Okay, the way the statute was originally drafted, the original answer was yes, but that has changed. Employers cannot pay 1099 contractors and other self-employed individuals with their PPP loans. The rationale behind that is independent contractors, sole proprietorships, and self-employed individuals are eligible to apply for their own loan.

LB: Oh their own loans

AK: Their own loans.

LB: Their own loan. And if you are self-employed, you have your own business, essentially, you're incorporated, right? You can go for your own loan for the business expenses *and* unemployment insurance for your personal expenses, is that right?

AK: I believe it is, but you can't double dip. Hold on. You can't use a PPP loan if you're self-employed to pay your own salary and then also get unemployment. That's a no-no. That's double dipping, and you're gonna run into some problems.

LB: But you can pay your rent with the loan

AK: Yes, but keep in mind the primary rule under the PPP, you have to use 75% for payroll costs. The rent is in the 25%.

LB: We're behind time, but I do want to get in a few more of these questions. What if you reduced headcount previous to the 8 week period?

AK: If you reduced it previously, that isn't going to- that isn't going to affect your numerator for the purposes of the reduction. You can cut people before you get your money, and it's going to affect the denominator, but it's not going to affect it as much as if you took the money and then reduced your headcount. And one other thing that I want to add. There is a safe harbor provision in the PPP. If you have reduced your headcount between the months of February 15, 2020 and April 26th, 2020, you have until the end of June, June 30th, to bring them back. If you bring those people back, there's no reduction in your headcount for the purposes of forgiveness. So, it's a safe harbor -

LB: But you can't bring them back June 29th, though, can you?

AK: No, you can! You can! There's no prerequisite that they be brought back for a predetermined amount of time. You can bring them back on the 29th. That's completely permissible.

LB: Hm. Okay. Another question: For loan use, not forgiveness, 75% has to be used for payroll cost over what period of time? I get that [for] forgiveness it's through 8 weeks, but what about using the loan for, say, a 16 week period on payroll costs?

AK: No. Unfortunately, right now - and this is, by the way, one of the things that the SBA is getting lobbied on - they want the 8 week period for spending the money to be expanded, especially for groups like theatre or seasonal sales, retail, because they're not open yet. So, to only look at 8 weeks, it's too short. You know, they're not open yet, But, the way the act is currently drafted, you have to spend the money down, for forgiveness purposes, in the 8 weeks after you get the loan. If you don't spend it down in the 8 weeks, you've lost the forgiveness. But, you can still hold on to the money and use it at the 1% interest rate. You've just lost the forgiveness component. And, for some people, that's not the end of the world.

[43:08] **LB:** Okay. Can you hire a different person than the original person? I think it's about headcount, not about hiring back the same person. Am I right on that?

AK: You are, absolutely. It's just about the headcount, the number of full-time equivalents. It doesn't have to be - if Jane worked for you, and you fired Jane, you don't have to rehire Jane. You just have to rehire somebody.

LB: Is the 75% based on the loan amount or the forgiven amount?

AK: The loan amount. So, if you borrow a million dollars, you have to spend $750,000 on payroll costs.

LB: Okay, let's see. How does bringing them back on the 29th, does that keep your average FTE's at the same rate?

AK: Laurie, repeat that? I didn't hear you.

LB: How does bringing them back on June 29th - does that keep your average full-time equivalents at the same rate?

AK: Does it keep your full-time equivalents at the same rate? I think rate may - I'm having a tough time with the word "rate." The answer is no, but for the purposes of your reduction of the headcount, you're given - in other words, you have a safe harbor if you hire them or bring them back within that time period, you don't get penalized. So, you could have terminated them for 7

½ weeks, but if you bring them back on June 29th, you're forgiven. In other words, it's a bad choice of words, but you don't get penalized for the fact that they were out of work for that date preceding the June 29th or 30th deadline.

LB: If we layoff or terminate employees at the end of the 8 week loan period, but before June 30th, do we compromise forgiveness?

AK: No. The June 30th- the 8 week period- the June 30 deadline really doesn't have to do with the 8 week period. If you get your loan, let's say, you know, at the beginning of, with this new amount, if you borrow the money, you know, in May or the beginning of June, and your 8 week period runs past that, it doesn't affect it. For forgiveness, they're going to look at your 8 week spend, irrespective of who you hire back by June 30. They look at the 8 week orgination period after the day you got your first fund.

LB: The clock starts when you get your loan.

AK: Yes. The clock for everybody the day you get funded.

LB: Are there any guidelines for how we are to demonstrate how the loan money was used? Will it just be payroll records? I think guidance will be coming, is that right?

AK: Yes. The SBA is supposed to issue something called the Loan Forgiveness Worksheet. It's supposed to be a spreadsheet with supporting documentation that guides not only the borrowers, but the individual lenders, so everyone's looking at the same thing. It hasn't been issued yet. I anticipate once this new $320 million is adopted, the SBA will switch back to clarifying some of the ambiguities, and one of those areas is the forgiveness worksheet.

LB: If folks had their applications into banks but hadn't heard anything yet, and now there's this new pot of money that the Senate is expected to pass today, the House is expected to pass on Thursday, the president will sign by Friday. They've already put their application in but they hadn't heard anything, what do you advise them to do now?

AK: My recommendation is that you call and/or email your loan representative to make sure that your application is complete, and that you're directly in the queue for this new money. And that you don't have to resubmit. The most crucial factor is to confirm that your application is complete.

LB: There are a lot of very specific questions about "if I did this-" or "if I bring them back-" or whatever. I feel like we need to move on with our webinar. And,folks , I'm going to connect you with Andrew, if that's okay. I feel like we need to push forward. Go ahead.

[48:11] **AK:** There's one more area. We focused on the reduction of headcount. There's one more bucket that you can lose forgiveness. If you reduce people's compensation during the 8 week period under $100,000 - if your reduction in salary is more than 25%, anything over 25% of their salary reduces forgiveness as well. So, you're really looking at two main buckets for losing forgiveness: reduction in headcount, on the one hand, and reduction on salaries, at the other. And then you have the third, the 75% rule that we're still waiting on some clarity for. So there are 3 main buckets of loan forgiveness problems that a borrower can walk into. With that, Laurie, thank you for your time, and I'm happy to give people - if they want to email me, I'm happy to give people some assistance or set up some individual calls after the fact.

LB: Thank you VERY much. This is so valuable, and there are so many ongoing questions. We will come back to get answers to the outstanding questions, and there will be more information coming from the SBA, so TCG will send information out to the field when the SBA guidance is disseminated. [49:35]

After the webinar, Andrew Kaplan generously answered additional questions from the field.

TCG Webinar Follow-Up Questions:

1. Can payroll costs include independent artists such as directors and designers who will receive 1099's? There is conflicting information out there.

A: Payroll costs do not include parties that receive 1099s. A business may only count money paid to employees whose principal place of residence is in the United States. Independent Contractors have the ability to apply for a PPP loan on their own.

2. What if you reduced headcount previous to the 8-week period?

A: A reduction in headcount prior to the covered 8-week period does not effect your eligibility for a PPP loan. However, such a reduction may affect the loan forgiveness amount. Pursuant to the CARES Act, the amount of a PPP loan eligible to be forgiven will be reduced by multiplying the amount to be forgiven by the quotient obtained by dividing the average number of full-time equivalent employees per month during the 8 week covered period by the average number of full-time equivalent employees during either (at the choice of the borrower) (i) February 15, 2019 to June 30, 2019, or (ii) January 1, 2020 to February 29, 2020. A reduction prior to the 8-week period could lower the denominator in the formula detailed herein.

Note that there is provision in the CARES Act that also states that if you bring back up the number of full time equivalent employees or end the salary reductions by June 30th, 2020, then the amount of forgiveness will not be affected. However, this provision is poorly drafted. The government will be issuing formal guidance with respect to interpretation of this provision.

3. When does the 8-week measurement period start?

A: The 8-week covered period commences on the date the loan is funded. Please note that a lender is required to disburse the loan no later than 10 calendar days following the date of the loan approval.

4. For loan use (not forgiveness) requirement - 75% has to be used for payroll costs over what period of time? I get that forgiveness is thru 8 weeks, but what about using the loan for a say 16-week period on payroll costs?

A: The 2 year term of the PPP loan.

5. My theater used the 2.5 monthly personnel cost formula to calculate our loan amount. I expect that our loan amount will slightly exceed our qualified expenses because of staff changes that predated COVID-19. What does this mean for loan forgiveness vs repayment?

A: Based on the hypothetical in question #5, it appears that the loan amount will exceed the amount of the forgiveness total. As such, the balance will paid based on a 2 year term at 1%. The borrower will not have to make any payments for the 6 months following the date of the disbursement of the loan, However, interest will continue to accrue on the PPP loan during the 6 month deferment.

6. Can you hire a different person than the original person? Can I hire a playwright instead of an actor? Can I hire a different actor? Does the salary have to be exactly the same salary?

A: Yes, an employer can hire different people at different salary levels. The measure as to forgiveness relates to average number of full time equivalents – not specific employees. Please see question #2 above.

7. Is the 75% based on the loan amount or the forgiven amount?

A: The 75% threshold is based on the original loan amount.

8. Want to make sure he gets to talk about the second bucket in forgiveness requirements because we started questions before he got there, I think.

A: A decrease in employee salaries may also effect the loan forgiveness. Specifically, the loan forgiveness will also be reduced by an amount equal to any reduction during the 8 week covered period in total salary or wages of an employee making less than $100,000 per year that is in excess of 25% of the total salary of said employee during the most recent quarter.

Note that there is provision in the CARES Act that also states that if you bring back up the number of full time equivalent employees or end the salary reductions by June 30th, 2020, then the amount of forgiveness will not be affected. However, this provision is

poorly drafted. The government will be issuing formal guidance with respect to interpretation of this provision.

9. How does bringing them back on the 29th - does that keep your average FTE's at the same rate?

A: The safe harbor provision provides that if an employer brings back up the number of full time equivalent employees or end the salary reductions by June 30th, 2020, then the amount of forgiveness will not be affected. However, this provision is poorly drafted. The government will be issuing formal guidance with respect to interpretation of this provision.

10. Do you have to retain your FTE's on average over the 8 weeks or just have them on contract as of 6/30?

A: In order to qualify for the safe harbor the employees need to be working by June 30, 2020 – not simply under contract to come back at a later date. As detailed in question 9 above, this provision is poorly drafted. The government will be issuing formal guidance with respect to interpretation of this provision.

11. If we lay-off or terminate employees at the end of our eight-week loan period, but before June 30, do we compromise forgiveness?

A: Terminating any employees prior to the end of the 8-week covered period will reduce your loan forgiveness amount. The safe harbor provision provides that if an employer brings back up the number of full time equivalent employees or end the salary reductions by June 30th, 2020, then the amount of forgiveness will not be affected. However, this provision is poorly drafted. The government will be issuing formal guidance with respect to interpretation of this provision.

12. Are there any guidelines for how we are to demonstrate how the loan $ was used? Will it just be payroll records and general accounting?

A: **The government will be issuing formal guidance with respect to forgiveness. I expect that the formal guidance will include examples of documentation that lenders should use in confirming forgiveness amounts and covered expenses.**

13. We have an application filed with our local bank but have not heard from them in a bit. I know that the senate may be passing a bill later today to add more money. Wondering if there are any helpful tips on getting our application through?

A: The Paycheck Protection Program and Health Care Enhancement Act was signed into law by President Trump on April 24, 2020 (the "Act"). Among its key provisions, the Act authorizes: (i) $310 billion in additional funding for the CARES Act's Paycheck Protection Program; (ii) more money for disaster loans and grants; (iii) further financial aid for

certain health care providers; and (iv) funding for various federal and state/local COVID-19 testing programs.

The money will still be loaned on a first-come, first-served basis, and many ambiguities existing under the current law and regulations remain, including those regarding application of the forgiveness provisions of Section 1106 of the CARES Act.

Small businesses should immediately contact their lenders to insurance that applications are complete and submitted in a timely manner.

14. What if our application was accepted by bank on the first day eligible and we are still in the queue? What should we do next?

A: Contact your lender immediately.

15. If I return principle immediately will it reduce the forgiveness number they do the numbers on? If I lowered from 900K to 600K. Will they base forgiveness on 600K? I didn't understand that.

A: The loan forgiveness amounts are based on the original amount of the loan. Please note, however, that the PPP loans do not prohibit prepayment of the loan. To the extent that your loan amount will exceed the amount of forgiveness, I recommend prepaying the excess immediately to effectively reduce the loan amount.

16. If I borrow $100,000 and only have $90,000 in qualified expenses, can the full $100,000 be forgiven or only the qualified $90,000?

A: The loan forgiveness amounts are based on the original amount of the loan. Please note, however, that the PPP loans do not prohibit prepayment of the loan. To the extent that your loan amount will exceed the amount of forgiveness, I recommend prepaying the excess immediately to effectively reduce the loan amount.

17. Are you able to pay out vacation during this time for full time employees in a lump sum to, in effect, pay out your vacation accrual during this time? Would that be forgivable wages in the 8-week period?

A: Prepaying vacation time which accrues outside of the 8-week covered period does not comply with the intent of the PPP loan/CARES Act. Payroll costs only include those covered items that accrue during the 8-week covered period.

18. Can vacation time be used for the loan?

A: Yes, vacation time is included in the definition of "payroll costs".

19. Would you please share the various formulas for calculating PPP numbers that you mentioned during the Webinar?

A: <u>Retention of Employees</u>: Please note that the amount of loan forgiveness will be reduced if the average number of full-time equivalent employees per month decreases during the 8 week covered period. The amount forgiven will be reduced by multiplying the amount to be forgiven by the quotient obtained by dividing the average number of full-time equivalent employees per month during the 8 week covered period by the average number of full-time equivalent employees during either (at the choice of the borrower) (i) February 15, 2019 to June 30, 2019, or (ii) January 1, 2020 to February 29, 2020.

<u>Decrease in Employee Salaries</u>: The loan forgiveness will also be reduced by an amount equal to any reduction during the 8 week covered period in total salary or wages of an employee making less than $100,000 per year that is in excess of 25% of the total salary of said employee during the most recent quarter.

Note that there is provision in the CARES Act that also states that if you bring back up the number of full time equivalent employees or end the salary reductions by June 30th, 2020, then the amount of forgiveness will not be affected. However, this provision is poorly drafted. The government will be issuing formal guidance with respect to interpretation of this provision.

20. I inadvertently included FICA/Medicare payments as payroll costs in the calculation of the loan. I understand now these costs should have been excluded. No one at Chase or the SBA caught it even though it was clearly documented. I'm sure that everyone was busy and not able to check every number. This is about $140k of the $2.3 million that we got. Should we fess up and pay that money back asap?

A: Under the CARES Act, payroll costs are calculated on a gross basis without regard to (i.e., not including subtractions or additions based on) federal taxes imposed or withheld, such as the employee's and employer's share of Federal Insurance Contributions Act (FICA) and income taxes required to be withheld from employees. As a result, payroll costs are not reduced by taxes imposed on an employee and required to be withheld by the employer, but payroll costs do not include the employer's share of payroll tax. For example, an employee who earned $4,000 per month in gross wages, from which $500 in federal taxes was withheld, would count as $4,000 in payroll costs. The employee would receive $3,500, and $500 would be paid to the federal government. However, the employer-side federal payroll taxes imposed on the $4,000 in wages are excluded from payroll costs under the statute.

To the extent that any inapplicable costs are included in your loan, I suggest paying those back to the lender immediately upon receipt of your loan funds.

21. Andrew - you suggested that I should look more carefully at our obligations for payroll costs over the next 8 weeks compared to the loan amount. I've been working under the impression that whatever the forgivable potion of the loan ends up being, 75% must be spent on qualified payroll costs and no more than 25% can be spent on other costs like mortgage interest and utilities. I was assuming that the loan amount was irrelevant to the forgivable amount. I was assuming that any amount that was not forgiven would simply be an inexpensive loan for 2 years with no payments due for 6 months. You suggested that the amount that could be forgiven could be reduced if we do not spend 75% of the loan amount on payroll costs over the 8 week period. You suggested that if we don't think we will spend 75% of the loan value on qualified payroll costs over the 8 week period, we should consider paying down the loan as soon as possible to an amount that would ensure that we do indeed spend 75% of the "net" loan value. Should we do this right away?

A: The CARES Act provides that at least 75% of the loan proceeds shall be used for payroll costs. As mentioned during the presentation, the CARES Act is silent as to what happens in the event that a borrower fails to satisfy the 75% threshold. The government should be issuing formal guidance with respect to interpretation of this provision.

Please note, however, that the PPP loans do not prohibit prepayment of the loan. To the extent that your loan amount will exceed the amount of forgiveness, I recommend prepaying the excess immediately to effectively reduce the loan amount.

22. What is the significance of June 30, as it seems to be beyond timeframe of the loan?

A: June 30, 2020 is the expiration date for loan under the PPP Program.

In addition, June 30, 2020 is the expiration of the safe harbor provision as to bringing back up the number of full time equivalent employees or end the salary reductions.

23. This language regarding a permissible 25% reduction in payroll has been interpreted in different ways. 25% per individual employee? Or 25% in total payroll of combined employees?

A: The loan forgiveness reduction as to salaries relates to individual employees – not total payroll. Please note that the loan forgiveness amount will be reduced by an amount equal to any reduction during the 8 week covered period in total salary or wages of an employee making less than $100,000 per year that is in excess of 25% of the total salary of said employee during the most recent quarter.

24. Please clarify when a lender must make a decision as to loan forgiveness. Is forgiveness the decision of the lender or the SBA?

A: Borrowers should apply with their lenders for forgiveness following expiration of the 8-week covered period. Lenders are required to make a decision on forgiveness within 60 days following submission of information from the borrower.

The individual lenders make decisions on forgiveness – not the SBA. The SBA will hold individual lenders harmless to the extent that they rely on borrower documents and attestations.