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Sorting Through the Continued Confusion around SBA Loans

Tuesday, April 28, 2020

Presenters



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MCM CPAs & Advisors

- **What We Do:**
 - MCM is a large regional CPA and advisory firm employing more than 350, including more than 160 CPAs. We serve both privately and publicly held businesses, non-profit organizations, small businesses and individuals
- **Mission:** We exist to help both our clients and team succeed.

Core Values



People Matter – We genuinely care about our people, personally and professionally, and ensure relevance in their work.



Leaders Inspire – We inspire each other to sustain our vision and advance our mission as a firm.



Excellence Rules – We are committed to superb client service, high quality expertise and significant client relationships.



TECHNOLOGY SOLUTIONS



CAPITAL MARKETS GROUP



HR SOLUTIONS



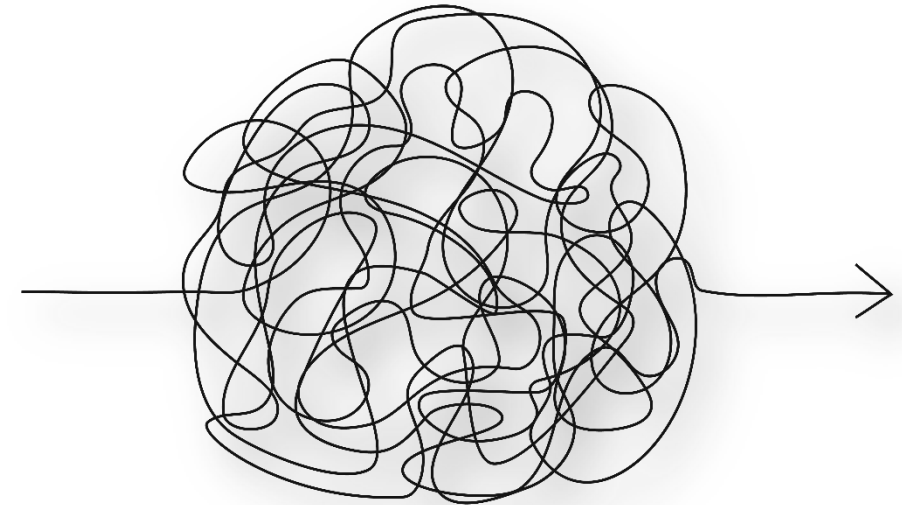
PrimeGlobal



MCM Perspectives

Progress – Yes but Myriad of Issues

- Lack of Guidance on Many Important Issues and Calculations
- SBA and Treasury are “interpreting” the CARES Act due to its lack of specificity
- Sometimes guidance is provided after we needed it
- Banks are taking different approaches based on their opinions and their operational constraints



Political Environment & Practical Applications

PPP Loans are Becoming a Political Hot Potato

- Started out as a benefit to keep businesses operating and “retain employees” but now seen to benefit businesses that have access to other capital
- Continued mandatory business shut-downs are making loan forgiveness difficult if not impossible for some affected businesses
- AICPA has been involved to clarify some issues
 - Treatment of Partners
 - Definition of FTE’s
 - Start date for eight week period
- Various trade associations are very involved in seeking clarification



Guidance Related to “Necessity Certification”

- FAQ issued on April 24 speaks in terms of necessity and cites the certification that “current economic uncertainty makes this loan necessary to support the ongoing operations of the Applicant” as the critical factors in determining an Applicant’s eligibility and good faith.
- Before submitting this Necessity Certification in good faith the Applicants will need to assess their “other sources of liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business.”
- Public Companies are called out specifically that they will have difficulty in making this certification in good faith.
- FAQ does not address other venture back companies or otherwise capitalized companies and their ability to make this certification.
- FAQ does not contain quantitative metrics and is largely open to interpretation



Actions as a Result of this new FAQ

- Document your process and decision-making in obtaining the loan
- Retain materials provided to your Board or Operational Team including a full summary of the Board or Team's deliberations
- Retain a cash flow analysis prepared at the time of the deliberation that supported your decision including updates over the next few months of actual results
- Document the considerations you made when obtaining the loan as to how your operations would differ with and without the source of funding obtained and the risk inherent in these alternatives



Thoughts Around Specific Industries and Related Issues

Impacted Industries – Not For Profits

- Diverse experiences
 - Some able to work from home
 - Some essential services
 - Some shut down
- Overwhelming guidelines for PPP and EIDL
- Use of employee retention credits



Impacted Industries – Hospitality

- Businesses shut down or with limited payroll
- Unknown as to when they can reopen
- Uncertain how quick business will return
- Concerned about using the funds for general operating costs



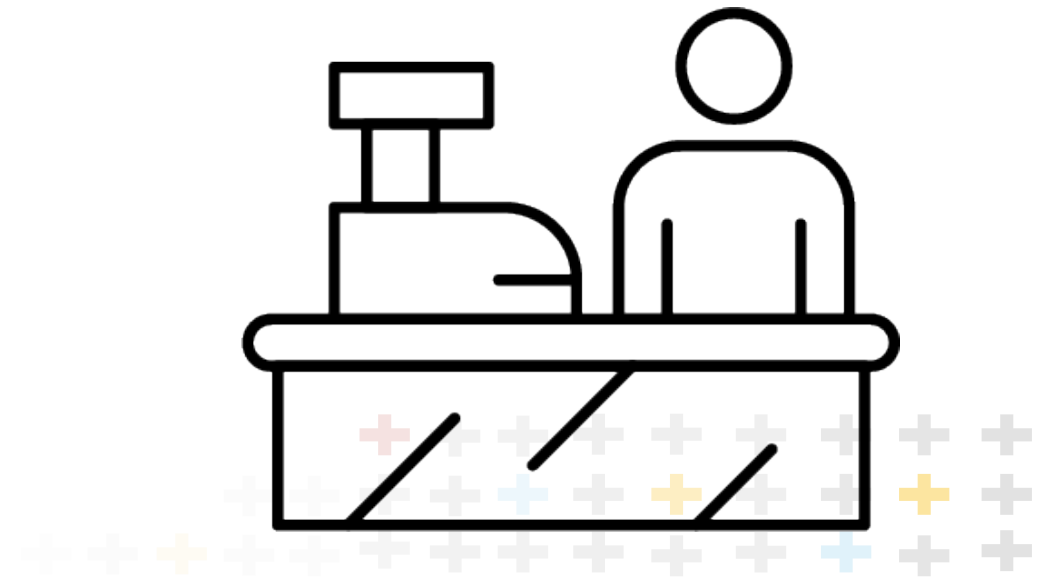
Impacted Industries - Healthcare

- Many have been closed or very limited patient volume
- Employees either furloughed or on reduced hours with some having filed for unemployment
- Concerns for reopening and safety – ramp-up scheduled to start April 27 (yesterday) but with significant requirements for safety
- Mandatory need for PPE and urgency in obtaining



Impacted Industries - Retail

- Re-opening dates delayed well into eight week period
- Unemployment benefits higher than normal wages
- Consumer buying habits may be significantly changed



Impacted Industries – Other Commercial Businesses

- **Manufacturing**

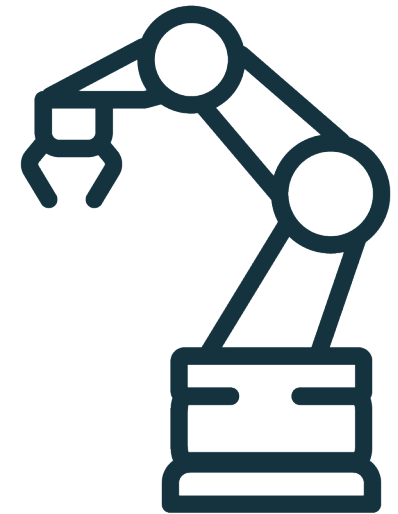
- Unemployment is sometimes more attractive to employees; large number of employees makes calculations complicated
- union nuances for benefits under collective bargaining agreements

- **Construction**

- Union issues sometimes apply; interplay of PPP with other payroll tax credits and effect on job costing; FTE interplay with measurement, dates, and overtime

- **Real Estate**

- Multiple entities with payroll commonly in a management company; limited payroll expenses



SBA EIDL Program

Small Business Administration
Economic Injury Disaster Loan Program

EIDL Program Update - what we are hearing

- Delays from the beginning
- Emergency Advance
- Changes in limits
- Experiences
- Additional funding \$60 Billion



SBA 7A Program

Small Business Administration 7A

“Paycheck Protection Loans”

updated with Guidance thru April 27, 2020

Hot Issues – Use of Funds

- Incurred and paid
- 8 week period
- 75% of eligible costs for payroll and related
- Definitions of mortgage interest, rent, utilities and other interest



Hot Issues – Forgiveness Calculations

- FTE – at least 4 time periods in forgiveness and another 3 different dates in the mitigation calculation
- Calculation related to 25% non-payroll related
 - Actual payroll cost 75% of proceeds or no forgiveness
 - End result 75%/25%
 - Percentage reduction based on reduced payroll cost
 - Proportionate reduction



What is included in Payroll Costs?

- Wages, commissions, salary, or similar compensation to an employee or active self-employed partner (not in excess of \$100,000 annualized)
- Payment of a cash tip or equivalent,
- Payment for vacation, parental, family, medical or sick leave,
- Allowance for dismissal or separation,
- Payment for group health care benefits, including premiums,
- Payment of any retirement benefits, and
- Payment of state or local tax assessed on the compensation of employees.



Forgiveness Reductions.

- **By what amount can the forgiveness be potentially reduced?**
 - There is a provision that reduces the amount that may be forgiven if the employer:
 - Reduces its workforce during the 8-week covered period when compared to other prescribed periods in either 2019 or 2020,
 - Reduces the salary or wages paid to an employee who had earned less than \$100,000 in annualized salary by more than 25% during the covered period.
 - These two different reductions can be avoided, however, if the employer rehires or increases the employee's pay within an allotted time period.



How is Schedule-C owner treated differently?



- 2019 Schedule C Income is treated as base for determining amounts paid during eight week period beginning on date loan is funded.
- Plus the following amounts for employees paid during eight week period:
 - Wages, commissions, salary, or similar compensation to an employee,
 - Payment of a cash tip or equivalent,
 - Payment for vacation, parental, family, medical or sick leave,
 - Allowance for dismissal or separation,
 - Payment for group health care benefits, including premiums,
 - Payment of any retirement benefits, and
 - Payment of state or local tax assessed on the compensation of employees.



Hot Issues – FTE Calculations

- Common Paymaster Rules related to Inclusion and Filing Responsibility – guidance has been issued
- Treatment of Temporary Employees under a Third Party Contract Arrangement – not includable in costs or FTE counts
- Treatment of terminated employees under the PPP Loans reduction of pay provision and how to mitigate it
- Treatment of employees where a payroll credit is being claimed
- Treatment of employees on unemployment and/or furloughed where benefits are still being paid



FTE Calculations – Lots of dates

- Baseline dates for FTE's:
Feb 15, 2019 – June 30, 2019
or
Jan 1, 2020 – Feb 29, 2020
- 8 week period begins on loan origination date
- Businesses that weren't operating Feb 15 – June 30, 2019, use Jan – Feb, 2020.
- Seasonal businesses can use 12 week period beginning Feb 15, 2019 or elect March 1, 2019- June 30, 2019.
or NEW any consecutive 12-week period between May 1, 2019 and September 15, 2019



Hot Issues – Mitigation of Forgiveness Reductions

- Understanding the dates

Feb 15, 2020 – April 27, 2020

Feb 15, 2020



- You still must spend the money on payroll related costs
- Mitigation for FTE's and payroll reduction are two different calculations
- June 30 date seems to be seminal date rather than end of eight week period



Hot Issues – Documentation and Tracking

- How much documentation will be required – like preparing for an audit?
 - Lease agreement, cancelled checks, payroll reports
- Will the SBA audit and how intensive will it be?
- Will businesses be required to document every disbursement?
- Should separate bank account be used? Be careful of automatic sweeping of funds to an existing Line of Credit.
- If funds are not spent during eight week period, will following months' disbursements matter or be important for “use of funds” purposes?

Hot Issues – Tax Treatment

- Forgiveness Taxability
- Will corresponding expenses be limited in deductibility?
- Will states and localities follow federal law?

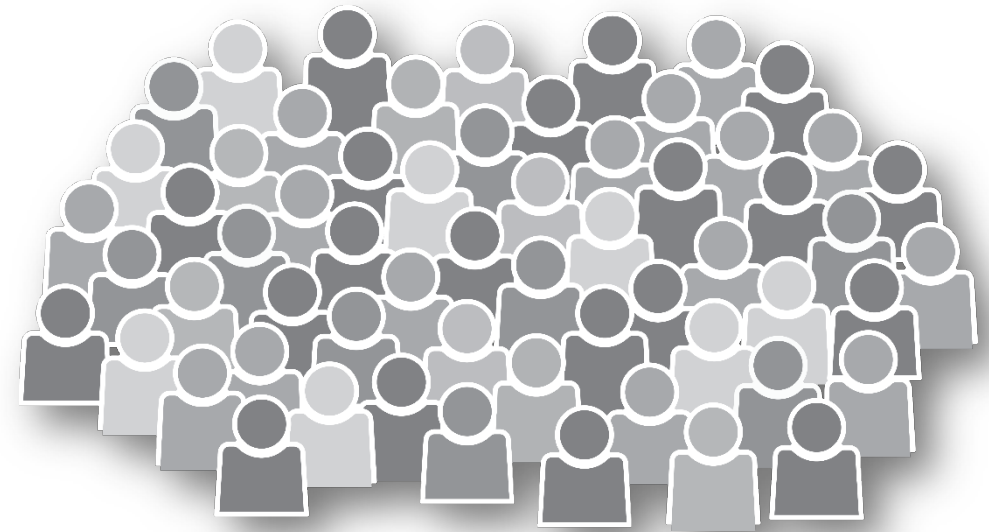


What if your business has more than 500 employees?

What if more than 500 employees?

FIRST OF ALL – CONFIRM YOUR SBA EMPLOYMENT LIMITATION

- Main Street Program – by Federal Reserve
 - Up to 10,000 employees or up to \$2.5 billion in 2019 annual revenues
 - “True Loan” – not forgiven, not SBA guaranteed
 - Apply through financial institution
 - Original announced structure *
 - 4 year loans – Floating rate at SOFR + (2.50% - 4.00%)
 - Amortization of Principal and Interest deferred 1 year
 - New Loans – unsecured
 - Expanded loans – may be secured
 - Minimum Loan Size: \$1 million
 - Maximum Loan Size
 - New Loan: total debt = 4 x EBIDTA up to \$25 million
 - Expanded Loan: total debt = 6 x EBIDTA up to \$150 million.
 - Upsized loan limited to 30% of existing debt



Main Street – Key Attestations

- Cannot use proceeds of loan to repay other loans
- Cannot prepay other loans except mandatory payments until Main Street loans paid in full
- Borrower requires financing due to exigent circumstances presented by COVID-19
- Lender attests that it will not cancel or reduce existing lines of credit to the borrower
- Borrower attests it will not seek to cancel or reduce any outstanding lines with any lender
- Borrower follows compensation, stock repurchase and distribution restrictions under section 4003(c)(3)(A)(ii) of CARES Act



MCM's Recommendations

Considerations:

- Law and calculations are complex
- We KNOW that rules and calculations have and will change before the forgiveness calculations are made
- Various inter-relationships between provisions of the laws only recently passed
- Myriad options for employment decisions that should not be taken lightly
- Application process, 8 week period and the forgiveness request should be coordinated
- Hurried drafting of bills STILL leaves many items subject to professional judgement



Professional Guidance: Here and Now

- MCM's professionals are prepared to take the time necessary right now to address your specific situation
- Proforma is necessary to look at “what-if” scenarios for your business or organization
- Multi-disciplined professionals are necessary to address confusing overlap of financing, tax and employment related issues

Contact your MCM contact person for a call or meeting (virtual preferred of course) to answer your questions or to assist in the process.



Thank You
for your time!



MCM COVID-19 Resource Center

Contact your MCM Relationship Person