IMPORTANT: FOR IMMEDIATE ATTENTION

PPP FORGIVENESS: A PRELIMINARY ADVISORY

Date: May 8, 2020

To: Congregational/UUA-Related Leaders
Fr: Rev. Richard Nugent, Director, UUA Church Staff Finances
Re: PPP Loans and Forgiveness Criteria

HAS YOUR CONGREGATION/ORGANIZATION SECURED A PAYCHECK PROTECTION PROGRAM (PPP) LOAN OR DECIDED NOT TO APPLY? If so, the UUA Office of Church Staff Finances is tracking the experiences of congregations and other UUA-related organizations under both Small Business Administration programs. Please let us know by completing a short survey at: https://www.surveymonkey.com/r/UUexperiencesPPP.

Overview: The Paycheck Protection Program (PPP) is designed to enable small businesses and nonprofits, including nonprofit congregations, to continue paying salary and benefits to staff during this period of serious economic uncertainty arising from COVID-19. Congress appropriated $649 billion for this program. **UU congregations and UUA-related organizations have already received millions of dollars through the PPP program**. These funds are providing a lifeline to UU congregations as they weather the COVID-19-related economic emergency. **This memo provides information to PPP Loan recipients on the steps necessary to ensure eventual forgiveness of all or most of the loan.** The Small Business Administration (SBA) has yet to issue definitive instructions, but enough details are available to provide initial guidance to PPP loan recipients. The SBA has issued five Interim Final Rules and 44 Frequently Asked Questions (FAQ) during the past month.

In recent weeks, the UUA Office of Church Staff Finances has provided information on the Paycheck Protection Program, the SBA Economic Injury Disaster Loan/Grant program, and other federal programs designed to help employers mitigate the economic effects of COVID-19. These additional programs include the federally-mandated **paid sick leave and family leave act provisions and the employee retention tax credit.** Information about these programs can be found on the UUA website at: https://www.uua.org/leadership/library/federal-policies-pandemic.

Paycheck Protection Program (PPP) Loan Basics: Small businesses and nonprofit organizations, including religious congregations, can borrow 2.5 times their 2019 average monthly payroll. The application process is through SBA-approved banks and other lenders. Payroll costs include salaries, bonuses, clergy housing, employer-paid benefits (health, dental, life, disability, and retirement), and payment-in-lieu of FICA for ministers. At least 75 percent of this loan must be used to retain/rehire staff during the 8 weeks following receipt of the funds, while 25 percent may be used for interest payments, rent, and utilities that meet certain conditions. If the loan proceeds are disbursed as described above, then the SBA has the authority to completely **forgive** the loan. If any portion of the loan is not forgiven (see next section), then the unforgiven amount remains a loan payable over two (2) years. Payments are deferred for the first six months. The interest rate is 1 percent.

PPP Loan Forgiveness Process: As of May 7, 2020, the Small Business Administration (SBA) has not yet issued definitive guidance on the exact criteria, timing, and process of the loan forgiveness provision. That said, there is much already known of the likely process. The basic steps include:

1) **Use of the PPP Loan Funds:**

   a. Congregations and other UU employers agree to use the loan proceeds over the eight (8) week period after actual receipt of the funds. This is known as the "covered period." Loan proceeds are supposed to be disbursed within 10 days of loan approval by the SBA. (Note: While the CARES Act stipulates that the loan proceeds must be used in eight (8) weeks, there is currently speculation that Congress might lengthen this time period).

   b. To the extent possible, assign a separate accounting code to all loan disbursements. Some accounting professionals are suggesting PPP loan recipients might deposit/transfer the proceeds of the loan in a separate bank account. A separate account will ease the process of documenting loan disbursements. Whether this advice makes sense for your organization depends on the amount of your loan and other factors. Congregations might consult with their lender and/or outside bookkeeper/CPA regarding the advisability of opening a separate account.

   c. Congregations using QuickBooks might review the detailed instructions on how to account for PPP income and expenditures offered by the Rev. Karen McArthur through Congregational Finances, LLC. Rev. McArthur, a UCC minister, is consulting with the UUA Church Staff Finances staff on another project. This information can be found at: https://congregationalfinance.com/2020/04/10/sba-ppp-loan-bookkeeping/

   d. Loans are subject to a federal audit and all loans exceeding $2 million can expect to be audited.

   e. PPP loan funds are to be used for:

      i. Retaining or rehiring previously furloughed/terminated staff through June 30, 2020. The SBA's Frequently Asked Questions (FAQ) provides guidance on rehiring staff (Question 40). The FAQ can be obtained at: https://www.sba.gov/document/support--faq-lenders-borrowers.

      ii. Payroll costs including salary (gross wages), ministerial housing, the payment-in-lieu-of-FICA for ministers, employer paid health, life, disability, and dental insurance, and employer paid retirement plan contributions. All paid leave counts as well. Retirement Plan contributions can only be altered to reflect changes in salary.) Professional Expenses appear not to be eligible for forgiveness accounting;

   iii. Interest on mortgages or other debts incurred before 2/15/20, but not for principal payments;

   iv. Rents under a leasing agreement begun before 2/15/20;

   v. Utility costs for services that commenced before 2/15/20

   vi. Prepayment of expenses is not allowed.

   vii. If a payroll date falls beyond the 8-week disbursement period, consider an off-cycle payroll by moving your payroll date up to fall within the window. For instance, payroll is paid on the 1st and 15th of the month. Your 8-week window ends on the 13th of the month. Consider moving your payday from the 15th to the 13Th to capture allowable expenditures during the covered period.

f. Seventy-Five (75) percent of the loan proceeds are to be spent on **payroll costs** as outlined above. It remains unclear whether amounts used for employee salary and benefits below 75 percent will simply be converted to an ongoing loan, or whether the whole amount becomes a loan under the terms of the agreement.

g. What's Excluded under payroll costs:

   i. Cash compensation, including housing, in excess of $100,000 for each **individual** employee. (Note: Amounts paid for employee benefits do not count under this limit, however the payment-in-lieu of-FICA for ministers should be included since this is taxable income to the employee).
   ii. The employer share of FICA (employee share is included in gross wages as outlined above)
   iii. Compensation paid to any employee with a principle residence outside the United States;
   iv. Payments to independent contractors (IRS 1099 individuals) are not eligible since they are not employees.
   v. Qualified sick or family leave wages paid under the Families First Coronavirus Response Act (CARES Act) for which the congregation is seeking reimbursement from the federal government.
   vi. Prepayment of any expenses.

2) **Forgiveness Formula:** Since the purpose of the Paycheck Protection Program is to retain/rehire employees, the criteria that will be used to determine how much of the loan is forgiven depends upon the amount of the loan actually used for payroll. The expected process is:

a. Calculate the **Expected Forgiveness Amount**: A borrower's "Expected Forgiveness Amount" is the amount of the loan that was spent according to the PPP criteria (at least 75 percent for payroll related expenses and no more than 25 percent for mortgage interest, utilities, and rent during the 8-week disbursement period). If loan proceeds were spent only for approved purposes and during the 8-week period, then 100 percent of your loan will be your Expected Forgiveness Amount. If you spent more than 25 percent of the loan proceeds on non-payroll approved expenses, or used loan proceeds for other purposes (e.g. new media board for worship), then those amounts will need to be subtracted from the Expected Forgiveness Amount.

b. After determining your "Expected Forgiveness Amount," you multiply this amount by a quotient obtained by:

c. Dividing the average number of full-time equivalent (FTE) staff employed per month during the covered eight (8) week period by:

d. The average number of full-time equivalent (FTE) employees per month employed by the employer during either:
    i. The period beginning 2/25/19 and ending 6/30/19;
    ii. The period beginning 1/1/20 and ending 2/29/20; or
    iii. Seasonal employers (see special rule)
    iv. Employers may elect whichever period is most advantageous.

e. **Calculate Full-Time Equivalency**: FTEs are calculated based on a 30-hour work week. Each full-time employee is counted once even if the employee works more than 30 hours per week. The average weekly hours of part-time employees are aggregated and divided by 30 and this number is added to the number of full-time employees.

f. Forgivable Amount After Reduction = A x B/(C or D) where
    A. Expected Forgivable Amount
    B. Average FTE during 8-week covered period
    C. Average FTE from 2/15/19 to 6/30/19
    D. Average FTE from 1/1/20 to 2/29/20

Example: First Unitarian employs a full-time minister, religious educator, and administrator; a twenty-hour/week music director; a 10-hour/week custodian, and a 10-hour/week administrative assistant. Their full-time-equivalent (based on a 30-hour work week as defined by the SBA) is 4.3 positions. Total annual payroll and benefits equals $300,000 while the monthly payroll is $25,000. 2.5 times this amount is $62,500 which is the approved PPP loan. During the 8-week disbursement period, the congregation met the requirement to spend at least 75 percent of the loan proceeds on payroll-related expenses. Also, all employees were retained, and no staff changes occurred since January 1, 2020.

Expected Forgivable Amount is $62,500
Average FTE during 8-week covered period is 4.3
Average FTE from 1/1/20 to 2/29/20 is 4.3

Calculation: $62,500 x 4.3/4.3 = $62,500 is the amount that the congregation will request be forgiven.

g. **Submit Your Application for Forgiveness:** Congregations/Other Organizations must submit a timely request for loan forgiveness to their lending institution following the end of their eight (8) week disbursement period. Congregations should reach out to your lender during your 8-week period to discuss their forgiveness process and required documentation. The SBA has 60-days to process the forgiveness request. The SBA has not yet issued a draft forgiveness document or finalized criteria.

3) An employer's Expected Forgiveness Amount will be determined without regard to reductions in the number of FTE or a reduction in the salary of its employees taking place between 2/15/20 and 4/26/20 if such reductions are eliminated by June 30.
   a. The employer must reverse all reductions in its number of FTE by June 30.
   b. The Employer must eliminate all reductions in its employees' compensation by June 30, 2020 to calculate its forgivable amount without regard to such reductions.

4) On May 3, the SBA clarified that if an employer offers to rehire a laid-off employee, but the employee declines the offer, the loan forgiveness amount will not be reduced. The employer must have made a good faith, written offer of rehire, and the employee's rejection of that offer must be documented by the employer. Employees and employers should be aware that employees who reject offers of rehire may forfeit continued unemployment compensation. See the SBA FAQ Question 40.

5) **Forgiveness Application:** Your bank/lender will process the forgiveness application on a form to be published soon after the SBA provides guidance. The lender is obligated to process the forgiveness application within sixty (60) days of its receipt. Be prepared to submit the following documentation with your application:
   a. Documentation verifying the number of FTE staff on payroll and payroll amounts for the 8-week covered period, AND the period from 2/15/19 through 6/30/19, OR 1/1/20 through 2/29/20 (as you have chosen). Payroll includes gross salaries (including federal and state taxes), and ministerial salary and housing.
   b. Employer paid insurance (health, dental, life, and disability) amounts as well as employer retirement contributions.
   c. Assemble payroll tax filings reported to the IRS and State income, payroll, and unemployment insurance filings (if applicable).
   d. Cancelled checks, invoices/bills, payment receipts, account transcripts, or other documents verifying payment of other eligible expenses (e.g. rent, interest payments, utilities, etc.)
   e. Certification from an authorized individual that (a) the documentation presented is true and correct, and (b) the amount for which forgiveness is requested was used

to retain employees, make interest payments on a mortgage, make rent payments, or make covered utility payments.

6) **Regarding Liquidity and Economic Need:** In mid-April, a political storm arose from the media coverage of large for-profit companies, including publicly traded companies receiving PPP loans, while many truly small businesses were shut out of the process. Such companies included: the LA Lakers, AutoNation, Shake Shack, Ruth Chris' Steaks, Potbelly, several hotel chains, and Lindblad Expeditions (a cruise line worth $343 million). The list of "large" small businesses receiving PPP Loans was quite extensive - many choosing to return their loans ranging from a few million to almost $100 million each. On April 23, the SBA responded to this controversy by publishing FAQ Number 31:

   a. Question 31 asked: "Do businesses owned by large companies with adequate sources of liquidity to support the business's ongoing operations qualify for a PPP loan?" The answer to Question 31 is: "In addition to reviewing applicable affiliation rules to determine eligibility, **all borrowers** must assess their **economic need** for a PPP loan under the standard established by the CARES Act and the **PPP regulations at the time of the loan application.** Although the CARES Act suspends the ordinary requirement that borrowers must be unable to obtain credit elsewhere (as defined in section 3(h) of the Small Business Act), borrowers still must certify in good faith that their PPP loan request is necessary. Specifically, before submitting a PPP application, all borrowers should review carefully the required certification that "[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant." Borrowers must make this certification in good faith, **taking 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**. For example, it is unlikely that a public company with substantial market value and access to capital markets will be able to make the required certification in good faith, and such a company should be prepared to demonstrate to SBA, upon request, the basis for its certification. Lenders may rely on a borrower's certification regarding the necessity of the loan request. Any borrower that applied for a PPP loan prior to the issuance of this guidance and repays the loan in full by May 14, 2020 (updated from May 7) will be deemed by SBA to have made the required certification in good faith.

   b. In considering these criteria, some congregational leaders have recently questioned whether they still qualify for a PPP Loan. In answering this question, please keep in mind the initial criteria for a PPP loan was based on "economic uncertainty" rather than "economic need" and loan recipients are bound by the rules at the time of application – not rules that are subsequently changed.

   c. Congregations should take into consideration 2019-2020 pledge defaults, 2020-2021 pledge shortfalls, and the loss of income from tenants, rentals, fundraisers, concerts, and unrelated-business income not only this fiscal year, but next. Will preschools re-open and be able to stay open through the fall? What about other rental income? What if in-person fundraisers (concerts, auctions, flea markets, etc.) can't be conducted in the fall? If the stock market remains uneven, or falls dramatically again, will that affect pledges? If real estate, including housing values, fall, will that affect giving including plan giving? Many congregations are not in a position to confidently state that their current liquidity is "sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business."

d. Some congregational leaders have also asked about the role of endowments. For non-profits, there is a real question about whether unrestricted endowments are truly a source of immediate liquidity particularly in a down market. Cash reserves may be, but an endowment invested for long-term appreciation is not necessarily liquid, particularly in a time of economic crisis. How large of an endowment does your congregation possess? Is it enough to support services for an extended period of time (perhaps 2-3 years) if income falls short? At present, no one knows the extent of the first wave of COVID-19, let alone the likely second or third wave in the coming year(s), particularly if the virus mutates. And what will be the effect of reducing your endowment principal? Nonprofits should have between 6 months to 2 years of operating expenses in reserve. How do the reserves of your congregation compare to this standard?

e. What is the worst case if you had to pay interest on the loan? If, for instance, your budget is approximately $300,000 annually, your personnel costs are probably about 70 percent of your budget or $210,000. 2.5 months of payroll and benefits would be approximately $44,000. With the interest rate on the loan only 1 percent, the interest would be approximately $440 annually - a reasonable amount to ensure adequate cash flow during this period of great uncertainty.

f. In Question 39 of the FAQ referenced above, the SBA further clarified that they would be auditing all recipients of PPP loans exceeding $2 million, and others as necessary. I suspect it is quite unlikely that nonprofits and congregations receiving PPP loans under $50,000 to $100,000 have much of a chance to be audited unless there was obvious fraud reported to the SBA by the lender.

g. Finally, as noted above, Question 31 speaks to organizations having access to sufficient liquidity to weather the current economic uncertainty. Large public corporations with access to capital markets can raise liquidity in the market. Such companies are not the audience Congress intended to benefit from the PPP initiative.

7) Some congregational leaders have voiced first amendment or "establishment clause" concerns. This program makes all 501(c)(3) nonprofits eligible for loans. Not to allow funding to religious organizations, who are valid 501(c)(3) organizations, might be construed as a violation of the Establishment Clause since it would be discriminating against faith-based organizations. Besides, UU congregations accept exemption from property taxes, sales taxes, and the tax deductibility of donations. Given the serious

economic consequences of this time, congregations should avail themselves of this loan/grant program. The SBA has provided a Faith-Based Organizations FAQ which also addresses this topic: https://www.sba.gov/sites/default/files/2020-04/SBA%20Faith-Based%20FAQ%20Final.pdf.

8) This memo is not written by an attorney, tax adviser, or CPA so it would be prudent to consult with one if you have questions about whether to keep a PPP Loan. Loan recipients have until May 14 to decline the loan and return the funds. I believe that most congregations can more than adequately justify the economic need for their PPP Loan in this time of uneconomic uncertainty.

Final Word: The UUA Office of Church Staff Finances will update this information once the Small Business Administration issues its Interim Final Rule on Forgiveness. Our updated Memo will be posted on the UUA Federal Policies and Actions webpage which can be found at: https://www.uua.org/leadership/library/federal-policies-pandemic.

For More Information

- Jan Gartner, UUA Compensation and Staffing Practices Manager: JGartner@uua.org
- Rev. Richard Nugent, Director, UUA Office of Church Staff Finances: RNugent@uua.org

Key UUA COVID-19 Resources:

Congregations as Employers During the COVID-19 Pandemic:
https://www.uua.org/leadership/library/employer-pandemic

Federal Policies: https://www.uua.org/leadership/library/federal-policies-pandemic

COVID-19 and Your Congregation: https://www.uua.org/safe/pandemics/covid-19

Donate to the UUA COVID-19 Response Fund:
https://www.uua.org/giving/areassupport/funds/covid-19-response

Our Congregations as Employers page for compensation, benefits, staff support, and more:
https://www.uua.org/leadership/congregations-as-employers

Compensation and Staffing News monthly newsletter signup:
https://www.surveymonkey.com/r/compnewssignup