

CARES ACT SERIES: ANSWERED QUESTIONS by Dan Muller, Attorney. Ventura, Hershey & Muller, LLP.

Payment Protection Plan Updates

- As of April 10th, 2020, Sole Proprietors can apply for the Payment Protection Plan.
- On April 24th, the SBA issues new guidance which says that LLC members S-Corp shareholders, and partners in partnerships, can include their self-employment income (as reflected on their K1's and individual tax returns) as a payroll costs when applying for a PPP loan for the LLC, S-Corp., or Partnership.
- Businesses that Pay 1099's cannot include them in the application.
- Timing is everything; loan recipients are reporting that they have received loans but that their businesses are shut down so they cannot spend the money on forgivable expenses.
- Wells Fargo has told customers to "look elsewhere" because of the backlog; customers were told "While you remain in queue based upon when you submitted your initial interest, due to high demand we are not able to begin your application at this time."
- Congress is negotiating a bill that will provide \$250 Billion in additional funding.
- Non-bank lenders have been approved to accept applications: PayPal, Quicken, Square.
- All money from the original bill was claimed as of Thursday, April 16, 2020.
- Reports are that there will be \$300 Billion in new funding this week.
- Banks are promising that applications will now be processed more quickly.
- Concerns abound that the second round of funding will go quickly, so apply now if you have not already done so.

Questions and Answers.

Salon Owner

- Q. I own a Salon and I have 12 employees. Should they file unemployment until I get the PPP loan and then stop? Can we do both? How does this work? I know we can't double-dip, but I don't want them to file unemployment if that will affect me getting the loan.
- A. The employees should file for unemployment now if they are unable to work. You can and should still apply for a PPP Loan. Once you receive funds from the Loan, you can use those funds to pay your employees for the next 8 weeks. The PPP Loan funds are most useful in the time period when you are able/allowed to start operating again because the loan provides you with resources to pay your employees for the work that they do. This question highlights how timing is everything. In a perfect world, your employee would be on unemployment up until you are able to operate your business again. At that point, they return to work and you pay them with PPP Loan funds. Given the delays and uncertainties with both unemployment insurance and the PPP, it may be very difficult to the timing right.
- Q. Filling out PPP application. Can I list car payments for reimbursement? I filled out the Disaster Loan Assistance and listed my warehouse rent. Do I also put this on the PPP Form?
- A. No. The PPP loan amounts are based upon your average monthly payroll costs. If you have employees, that means the average amount you paid them each month in 2019. If you are self-employed, the measuring stick is your average monthly self-employment earnings. Your car and rent payments are not part of the formula. To be clear, if you are self-employed, once you borrow the money, you can use it to pay yourself. Once you have "paid yourself" the income you have lost, you can use that income to pay your rent and make your car payment.
- Q. I am 51% co-owner of an s-Corp salon and my partner 49%. We were both w-2 employees (and only employees) of our salon 7/1/2017-09/30/2019. As of 10/1/2019 we are both now booth rent 1099 as well as 6 other stylists in our salon. No more employees. Can we apply for PPP Loan to pay for rent and utilities?
- A. Probably not. Although you could use the payroll costs form 1/1/2019 to 9/2019 and average them over 12 months to borrow the money, if you then spend the money on utilities and rent, it won't be forgivable because you won't have any payroll costs. You and your partner should apply individually as self-employed workers. Your renter can do the same.
- Q. Is there a way to get the economic stimulus if you just started your business at the beginning of this year?

- A. If your business did not operate in 2019, you can still apply for a PPP Loan. The measuring stick for your borrowing amount will be average monthly payroll costs in January and February 2020. If you are self-employed, the measuring stick will be self-employment earnings in January and February 2020. Also, as a self-employed person, you can apply for unemployment benefits even if you did not earn income in 2019.
- Q. Can you still use the 25% for rent even if you aren't open to use the PPP portion?
- A. The interim rule says that "not more than 25 percent of the loan forgiveness amount may be attributable to non-payroll costs." I read this as meaning that your forgiveness ratio need to be \$3 of payroll cost for every \$1 dollar of non-payroll cost. If you are not seeking any forgiveness for payroll costs, then you will not be eligible for rent or utility forgiveness.
- Q. I have a small business; a suite with three chairs, for myself and one employee (we are both W-2 employees of my S-Corp). I applied for the PPP first thing in the morning on the day it launched. Along with a billion others, I am sure. Today, I heard from my bank that all SBA funds have been allocated and that they have already notified those who were funded (not me, unfortunately). They said they are keeping the applications in queue, so at least I feel good that I'm "in line" for another round of funding. But then I saw on the news that huge companies like restaurant chains, have received the majority of that money. How can that be? How can the money for SMALL Business loans go to huge companies?
- A. I share your frustrations and know many of my clients do as well! I did see where Shake Shack quickly saw the PR disaster, they had created for themselves and are now declining their loan. As mentioned, there does appear to momentum for more funding and hopefully those already "in the queue" will be funded in the second round.
- Q. I set up my company 20 years ago as an LLC and take a draw weekly (43% commission of what I produce behind the chair) as my paycheck in check form. I applied for PPP and added my pay in the equation, 1099's and w-2's but was contacted by my bank and advised I could only count w2's, but not my pay or 1099's. What is my alternative as a small business owner who takes a draw and my company depends on my contribution of (90% of our company's sales in service's)? Not sure how this can work for me! Need clarification on how to help my business and remain open as well as how I get relief on personal income since I'm not bringing in money to gain my commission!
- A. Some banks are allowing LLC owners paid by draw from the LLC's to include the draw amounts in the calculation of payroll costs. It sounds like yours is not and you probably do not have the time it would take to change their mind. By the time you do that, the second round of money will be gone. I recommend applying as an individual and including your self-employment income (e.g. your draws) on that application. If your bank will not accept applications, consider one of the non-bank alternatives.

- Q. I received my PPP. I'm starting payroll again even though we aren't open. If we are allowed to open in two weeks and a stylist comes back to work for 1 week, but then decides they aren't comfortable working because of fear of getting sick. Do I have to keep paying them until my 8 weeks of funding runs out? Or have they quit their job and I no longer have them on my payroll?
- A. Forgiveness reductions are based upon FTE not pure headcount. If you increase everyone else's hours slightly, you should be able to maintain the same FTE for the 8-week period. Another option is to not spend the money you would have spent on the departed employee. So long as your 75/25 ratio is sufficient enough to maximize your utility and rent forgiveness, the slight forgiveness reductions from the slight FTE education should not have much impact.
- Q. I had 16 stylist – one is not coming back so I need to hire another stylist in order to have the same number of employees (per the PPP forgiveness). If I hire someone, when do I start paying them? For example: If we are not open, but I've been paying my other staff through the PPP, when would I start to pay my new stylist?
- A. If a stylist decides to quit, you are not obligated to keep paying him or her with PPP funds (or, for that matter, any other funds). The stylist's departure will mean a reduction in headcount (but maybe not FTE if others pick up his/her hours) and /or it may mean a reduction in payroll costs during the 8-week period. This could reduce forgivable payroll costs. You should be aware of that and plan accordingly (e.g. plan to return the unused portion of the loan or use it for something else and pay it off per your promissory note).
- Q. I only have one business account, no personal accounts so all my deposits go in one pot and my pay just comes out of that. I am not on "payroll." I just use the money as needed, so it is sort of business and personal combined (basically I don't take any set amount weekly). How will that be justified as forgiven toward my pay?
- A. Since you do not have payroll, your borrowing amount will be determined by Schedule C of your tax return which shows the revenue earned from your business. Once borrowed, you can then "pay" the money to yourself and it will be forgiven as a payroll cost. Remember that the \$100,000 annual income cap applies. You can also spend the money on rent and utilities.
- Q. I own a salon and rent out the stations, I'd like to help my renters, but I need to help myself first. What should I do?
- A. You should apply for a PPP loan for your business. If you pay yourself via W-2, then apply for the loan and use your W-2 amount to determine the average monthly payroll costs. If you just pay yourself with proceeds from the business, then apply for a PPP loan as a self-employed person and use Schedule C from your tax return to establish your borrowing amount. Your renters are in business for themselves and they can apply for their own PPP loans as self-employed individuals.

- Q. Can we get PPP and still collect PUA if we make sure to report the income on the PUA claim form? What income documentation is needed for those applying to PPP who are "new businesses", who do not have 2019 income?
- A. Yes, but not at the same time. You can apply for PUA and receive that during any period when you cannot perform work. If you apply for and receive a PPP loan, then you are not eligible for PUA benefits while you are receiving the proceeds of the PPP loan. If you were not in business in 2019, you can apply based on the average monthly payroll costs incurred between January 1, 2020 and February 29, 2020.
- Q. My understanding now is the EIDL grants are based on number of employees, so I would be looking at receiving \$4000 instead of \$10,000. If I get this deposited in my account, can it be used for any expense and would that \$4,000 be forgivable if I did not get any additional SBA loan money? Also, if I decided to apply for a PPP loan, would I have to give back the SBA advance?
- A. Yes, the EIDL grant is not a loan and does not need to be paid back. If, in addition to the grant, you also receive an EIDL loan, the loan portion will need to be re-paid. If you also receive a PPP loan, you do not need to return the EIDL grant but it may reduce the forgiveness amount because you cannot receive both a full EIDL grant and full PPP forgiveness.
- Q. I am a salon owner whose revenue comes from my own work as a stylist and booth rentals. What resources are available to me since I do not have a payroll expense? Do I consider my adjusted gross income on my tax return my own payroll?
- A. You can apply for a PPP loan as a self-employed person. You can also apply for unemployment if you are unable to work. Your PPP eligibility will be focused on the money you earn from self-employment. This is typically reported on 1099's, K-1's, etc. I believe Schedule C of a 1040 calculates self-employment income for sole proprietorships, so that would be the place to start on your tax return. If you operate as an LLC or other corporate entity, your self-employment income is reported elsewhere in your tax return.
- Q. We have 15 individuals on our payroll. About 2 of us make more than the state's highest unemployment weekly amount plus \$600 federal weekly stimulus. My fear is that most employees who are furloughed won't return to work until that \$600/week is dried up on 6/30/20. And if the \$600 payment is extended beyond June, then returning to work to get paid less than the weekly unemployment dollars plus the \$600 will not be an impetus to return to work. It will be difficult to manage the forgiveness of the PPP loan when 75% will NOT be spent on payroll eight weeks from loan origination. As a business owner I am inclined to spend the money on rent and utilities and minimal payroll, but it won't be enough for forgiveness.

Therefore, knowing that from the start, I'm tempted to take the 1% loan with no forgiveness and pay down credit card debt and accounts payable. I imagine others are thinking likewise.

- A. (1) If you have work for the employees, they are supposed to return to work rather than continuing to collect unemployment.
(2) The 75% rules say that 75% of the borrowed funds must be spent on payroll in order to be forgiven. The balance of 25% can be spent on rent and utilities.
(3) The premise of the question is correct: if a borrower is unable to spend 75% of the borrowed amount on payroll during the 8 week period, it should either spend the elsewhere with the understanding that it will not be forgiven or choose not to spend the money and pay it back to the bank.
- Q. My salon got approved for the PPP loan. I expressed my excitement to my employees, and they all said they are making more money on unemployment and I could just give the loan back. I have not received any income and I am still liable for my rent and all of my utilities during this, so the PPP loan is a huge plus for me. I want to use it and not lose it. How does it work if I have a set hire date for a month from now, allowing them to collect the higher unemployment for a month but then also hiring them back in a month and possibly allowing for a higher compensation? Or do I have to hire them back immediately and pay for the whole 8 weeks for the loan to be forgiven? Does it work the same if they are on payroll for 4 weeks at a higher rate vs 8 weeks at a lower rate?
- A. The PPP forgiveness rules do not vary based on time. In other words, you can spend the money in the second 4-week period and it will still be forgivable. HOWEVER, there are headcount rules. Forgiveness is reduced if your headcount is reduced. Also, bear in mind that only 25% of the overall loan is eligible for forgiveness on rent and utilities. This becomes a complicated question that will require some case-specific analysis to determine how much forgiveness you will get. Keep in mind that, technically, the employees cannot refuse your offer for work and keep the unemployment benefits.
- Q. I am a salon owner my business is registered as an LLC I am the only member. I have 7 independent stylists renting stations in my salon. Will we all be able to collect unemployment insurance, so far we have all been disqualified after applying. Also, only 1 bank in our state is giving the small business loans and only to their customers now they say there's no more money. What about the rest of us the very small salon owners? I don't have any employees and no payroll, but I still have to pay my lease, utilities, how can I get assistance?
- A. How do unemployment benefit payments in each state differ from PPP benefits? Do they overlap or cancel out one another as we move forward next week, next month, etc. depending on how long we must stay closed?

- Q. If you are not able to work, you are eligible for unemployment. Unemployment is combined federal / state program. That means the federal government provides funding and issues rules but the states each administer their programs individually, hence the variances. If you obtain a PPP loan and are paying yourself from the proceeds of a loan, you cannot collect unemployment during that time period.
- A. All of you should be eligible for unemployment benefits if you are unable to work and earn money. If your initial applications were rejected, it is likely because your state (like most, if not all, states) was not yet ready to receive applications from self-employed people. I would encourage you to review the website of your state's unemployment administrator to determine how to apply as a self-employed worker. In California, for example, they are not accepting such applications until April 28th. You should look to apply for a PPP from some of the non-bank vendors who have been approved to participate in the program. For example, PayPal, Quicken, and Intuit all have (or all developing) PPP Programs. Finally, I'd call my member of Congress and/or Senators and ask for help finding a lender that will work with you. This is a longshot but worth a try.
- Q. How are unemployment benefits affected if we rehire staff using PPP funds? In order to get the PPP loan forgiven, we plan to try to hire back our staff at wages / hours comparable to prior to closure. Most of our staff were part time and were earning less than \$600 a week. I understand the CARES act provides a \$600 bonus payment on top of the usual unemployment calculation. Is there a way for staff to still claim the bonus and be rehired? How can businesses in our situation meet the guidelines for forgiveness if staff decline to be rehired (for no-show jobs since we are closed for the foreseeable future?)
- Q. Is there a way for people who are behind in filing taxes to still receive government aid? If so, how?
- A. I do not believe that unemployment is dependent on an individual having filed his or her tax returns, so you should be able to apply for and receive unemployment insurance benefits. The PPP Loan, similarly, does not have a requirement that you be current on your taxes and, to my knowledge, lenders are not seeking tax returns as part of the application process. And failure to file tax returns will likely affect stimulus payments because those funds are paid to the bank account / address on your tax return.
- A. If you rehire staff using PPP loan proceeds, then the staff will cease to be unemployed and will not be eligible for unemployment from that point forward. It is possible that staff are getting more from unemployment than they would be receiving if they remained employed. As a technical matter, out-of-work employees cannot turn down a *bona fide* offer of employment to remain on unemployment. If staff decline to be rehired, you can either (a) hire other employees in their place or (b) not use the PPP funds (e.g. pay them back) if you do not have enough forgivable expenses to spend them on.

- Q. In applying for the PPP loan, for the compensation of the owners, we included self-employment earnings for 2019 from Box 14 from our K-1s (our business is an LLC). When disbursing funds for our own compensation, must we use the same calculation, or is there another method to determine and pay principals' compensation?
- A. This is a grey area. The CARES Act and the SBA's Interim Final Rule do not make it clear whether K-1 distributions to the owners of an LLC (or partners of a partnership) can be included in the calculation of payroll costs. At least some banks have allowed borrowers to include K-1 distributions in the borrowing amounts and the SBA has approved those loans. Presumably, the SBA will also approve forgiveness for the use of the borrowed funds to make distributions to owners/partners. I recommend calculating the K-1 payments made with PPP funds the same way you calculated the borrowing amounts. Keep in mind the \$100,000 cap which means K-1 payments made with loan proceeds cannot be more than approx. \$8,333 per month. That said, I'm not aware of official guidance on this point.
- Q. If you have employees and you currently still have them on payroll, is the loan to cover them through this time while they can't work, to keep them with income coming instead of them having to apply for unemployment or is it to keep them on payroll and they have to work for the hours applied for on loan? And when we return keep paying them with the loan money?
- A. A PPP loan is for future expenses. The time period is the 8 weeks after the loan is funded. As written, the program assumes the employees have jobs to do and the loan proceeds allow the employer to keep the employees employed and paid. If a business is approved for a loan but still cannot operate (because of a shelter in place order), the employer can choose to pay the employees while they are at home (and can give them things to do at home, if possible). The employer, however, cannot use the funds to pay for future work (e.g., work performed after the 8-week period). An employer will not be able to make employees work extra hours in the future and claim that those hours were paid for with PPP funds during a time when no work could be performed.
- Q. Are Guaranteed payments to a partner (of an LLC) considered "payroll" or wages?
- A. The law itself does not address the question one way or another and the Interim Final Rule is likewise silent. Anecdotally, I can report that banks have allowed applicants to include guaranteed payments in their calculation of payroll costs and the SBA has approved those loans. That is the good news. There is, of course, a question of whether the SBA will issue regulations regarding the forgiveness of loans which exclude guaranteed payments made with loan proceeds. I recommend that clients who borrow on the basis guaranteed payment prepare themselves for the possibility that funds use for that purpose will not be forgivable.
- Q. If I sign my PPP loan application, am I the obligated to take the money that day or can it be deferred to the day I choose? The loan says you need to keep the current employee headcount — does it have to be the same employees or could I hire/fire and keep the number the same?

Salon is closed— if I get my PPP loan and the 8-week clock is ticking - if I pay my employees— can that be considered a 'draw' for when we reopen?

A. You cannot defer the money. The banks are supposed to fund within 10 days of SBA approval. Nothing in the law or the regulations say that it must be the same employees. Under both federal and state employment laws, employees must be paid when they are performing work. You cannot pay them in advance now and then require them to work for free down the road.

Q. Regarding Unemployment. Will state taxes increase for employers when employees apply and receive unemployment? Do we have to rehire them? If we do, do we start from scratch like nothing happened? What would be the process? Do we have to file payroll tax forms again?

A. Good questions with uncertain answers. Here are my best guesses

Unemployment taxes / premiums increase with increased "experience." This means that, typically, the more former employees that you have receiving benefits the higher your premiums. Hard to say for sure what will happen after this massive shock to the system. Typically, you are not required to re-hire employees who have been terminated for lack of work. If you promised the employees that you would re-hire, they might be able to enforce such promises. That said, if an employee was employed "at will" and a business terminated the employee for lack of work, the employee does not have an automatic right to be re-hired when the business re-opens. If you "furloughed" the employees and did not terminate them in your payroll system, you will likely be able to simply start reporting their hours/salaries to your payroll company and things will pick up where they left off. If the employee was formally terminated from the payroll, then you will need to re-activate the employees. This may require new forms.

Q. I have been paying my tax return since 2004. January 20, I was approved in my application for residence in the USA. I am waiting for my green card, social security number. Can I apply for stimulus packet?

A. If you were legally authorized to work in the U.S. when you earned income and are eligible now, then you can collect PUA benefits. The California EDD puts it this way: "If you are not a citizen of the United States, you cannot be paid PUA benefits *unless you were legally permitted to work in the United States at the time such services were performed. In addition, you must be authorized to work for any week of PUA benefits claimed to be eligible for payments.*" The PPP does not require that applicants be residents. It does require that payroll costs be for employees performing work in the united states.

Q. During shut down of non-essential businesses; and store closures; how will selling products or other sales (such as style wigs, gift certificates, etc.) effect unemployment benefits or PPP or

SBA loans if we record these sales? These sales constitute such a small % of our sales. Should we delay recording, carryover until we reopen? Will this come back to haunt me?

- A. If your "service" business is shutdown but you are still selling products or gift certificates, you may be considered "employed" for unemployment purposes and may be eligible for reduced benefits or no benefits based on how much money you earn from selling products. If the amount earned is small, then you may still qualify as unemployed / underemployed and will receive benefits. If you are earning money you should report it accurately when asked. If you make misrepresentations or leave out information when applying for unemployment or for a PPP loan you can be penalized, fined, and even prosecuted. If the amount you are earning is small and it is getting in the way of earning unemployment, then I would recommend delaying the work until you return to full operations. That fact that you are currently earning income does not affect your ability to apply for or receive a PPP loan.

Independent Stylist

- Q. What if you are an independent contractor with other independent contractors, in a salon that you own? Can you collect unemployment for your business behind the chair as an independent contractor and unemployment for a salon owner whose business is closed?
- A. You can do the following:
- (1) Apply for unemployment benefits as an Independent Contractor (IC).
 - (2) Apply for a PPP loan as a sole proprietor / IC; or
 - (3) Apply for a PPP loan for your business of renting chairs (if, however, you have no W-2 employees, this would not make sense because the loan amounts are determined by "payroll costs")
- Q. I only have one business account, no personal accounts so all my deposits go in one pot and my pay just comes out of that. I am not on "payroll." I just use the money as needed, so it is sort of business and personal combined (basically I don't take any set amount weekly). How will that be justified as forgiven toward my pay?
- A. Since you do not have payroll, your borrowing amount will be determined by Schedule C of your tax return which shows the revenue earned from your business. Once borrowed, you can then "pay" the money to yourself and it will be forgiven as a payroll cost. Remember that the \$100,000 annual income cap applies. You can also spend the money of rent and utilities.
- Q. Filling out PPP application. Can I list car payments for reimbursement? I filled out the Disaster Loan Assistance and listed my warehouse rent. Do I also put this on the PPP Form?
- A. No. The PPP loan amounts are based upon your average monthly payroll costs. If you have employees, that means the average amount you paid them each month in 2019. If you are self-employed, the measuring stick is your average monthly self-employment earnings. Your car and rent payments are not part of the formula. To be clear, if you are self-employed, once you borrow the money, you can use it to pay yourself. Once you have "paid yourself" the income you have lost, you can use that income to pay your rent and make your car payment.
- Q. Is there a way to get the economic stimulus if you just started your business at the beginning of this year?
- A. If your business did not operate in 2019, you can still apply for a PPP Loan. The measuring stick for your borrowing amount will be average monthly payroll costs in January and February 2020. If you are self-employed, the measuring stick will be self-employment earnings in

January and February 2020. Also, as a self-employed person, you can apply for unemployment benefits even if you did not earn income in 2019.

- Q. I'm a sole proprietor and own a skincare and nails business. What proof will be needed that the funds went to payroll? Does products or supplies purchases count as part of the money being forgiven?
- A. If you have employees on payroll who receive W-2's, you will need a payroll summary from your payroll company, your 940 and 941's forms which report employee payroll to the federal government for Federal Unemployment Tax purposes, and any proof of health insurance payments. At the time you apply for forgiveness, similar records will be used to show that you spent the money on payroll. Make sure you spend it during the 8-week period after you receive the funds. If you have no employees, then Schedule C of your tax return showing your business income can be used for the borrowing amount. You can then apply for forgiveness of the amounts you pay to yourself. Products and supplies are not forgivable expenses.
- Q. As a sole proprietor, self-employed hairstylist with no employees I understand I am eligible for the paycheck protection program and unemployment through cares (the federal package). However, even though I'm eligible for both programs, is the idea that you would only collect money from one or the other?
- A. You can receive benefits from both, just not at the same time. You can apply for unemployment for any time period when you cannot work and are not being paid. You can apply for a PPP loan to cover your payroll costs, rent, and utilities when are you are working. The trick is the timing. If your PPP borrowing amount is more than you would get from unemployment, then you should apply for the PPP right now and become "employed" as soon as the loan arrives. Ideally, you'd wait to get a PPP loan until you can operate again but you should not wait to apply because, assuming Congress provides more funding this week, the money will likely run out again soon.
- Q. As a sole owner/employee of my LLC (booth rental 2 days a week in NYC), how can I receive governmental aid?
- A. If your LLC pays you with W-2 wages (unlikely), you can apply for a PPP Loan for your LLC based on the average monthly wages you earned. If your LLC distributes the income to you as self-employment earnings, you can apply for a PPP loan as a self-employed individual. You can also apply for unemployment. You cannot take unemployment at the same time as you use the proceeds of a PPP Loan, but you can start with unemployment now and then stop it when/if a PPP Loan comes through.
- Q. I set up my company 20 years ago as an LLC and take a draw weekly (43% commission of what I produce behind the chair) as my paycheck in check form. I applied for PPP and added my

pay in the equation, 1099's and w-2's but was contacted by my bank and advised I could only count w2's, but not my pay or 1099's. What is my alternative as a small business owner who takes a draw and my company depends on my contribution of (90% of our company's sales in service's)? Not sure how this can work for me! Need clarification on how to help my business and remain open as well as how I get relief on personal income since I'm not bringing in money to gain my commission!

- A. Some banks are allowing LLC owners paid by draw from the LLC's to include the draw amounts in the calculation of payroll costs. It sounds like yours is not and you probably do not have the time it would take to change their mind. By the time you do that, the second round of money will be gone. I recommend applying as an individual and including your self-employment income (e.g. your draws) on that application. If your bank will not accept applications, consider one of the non-bank alternatives.
- Q. Now as a booth renter at my salon, can I apply for PPP loan to pay for rent? What else would we be able to pay other than rent and utilities? Credit card debt? Previous loans?
- A. Yes. You can apply based on your self-employment earnings and the use the money to pay yourself and pay for your rent. You can pay "wages" to yourself up to the cap of \$100,000 annualize, e.g., \$8,333.34 per month in wages. You can also pay rent and utilities (e.g., power, water, telephone, internet). You cannot pay your credits cards directly. You need to pay "yourself" first and then use those payments to take care of personal obligations.
- Q. I'm a small sole proprietor suite hair stylist - no employees. I've been in business barely 2 months then COVID occurred. Also, I was in school for a year and had no employment from previous year. My question is if you have no proof of income from previous year and you are very young in business what can they use to calculate for you the low interest loan?
- A. You can apply for a PPP loan based on income earned in January and February 2020. You can also apply for unemployment under the PUA. Although the PUA formulas are not yet clear, it appears that California will offer employees in this situation a benefit of approximately, \$165 per week + \$600 a week per the CARES Act. If you did not have substantial income in January/February, the PUA is probably the better approach for you.
- Q. I own my own salon and it is an LLC. I am the only person working. Does that make me an employee, independent contractor, business owner, or self-employed? What is the difference between those titles and which ones apply to what program? What programs do you recommend getting the most out of? If I make and sell face masks, drop ship skin care products, or sell anything during this quarantine period, does that mean I will not qualify for unemployment?
- A. If your LLC pays you through payroll (e.g, on a W-2), then you are an employee and the business should apply for the loan and the payroll costs would be the wages the business pays

to you (plus health insurance, etc.). If you are not on payroll (more likely), then you can either apply as a business and use your K-1 distributions as payroll costs or apply as an individual and use the "self-employment" income reported on your tax return to show your payroll costs. The right program for you depends on how much money you make and how much of a loan you can qualify to borrow. If you make \$100,000 a year and pay for health insurance, you can borrow approximately \$25,000 from the PPP. You can then pay yourself approximately \$17,000 of that over the next 8 weeks and it will be eligible for forgiveness. You can spend the rest on rent and utilities and that will be forgiven as well. Those amounts are greater than typical unemployment benefits so that is the better way to go, especially if you can operate during the eight-week period and bring in additional revenue. If you earned substantially less than \$100,000 a year, then unemployment benefits may provide better benefits. If you are working and earning money, you may not be eligible for unemployment because you are working. If the amount you are earning is sufficiently low as to be lower than your benefit eligibility, you may still qualify for some benefits.

Q. Can sole proprietors apply for both PPP and EIDL?

A. Yes, sole proprietors can apply for both programs. The PPP program is likely the more attractive option because, in the theory, it is faster and because loans are forgivable.

Q. When I was filling out my loan application form, it asked for my payroll amount times 2.5 plus the EIDL, what is the EIDL amount? Is that \$1,000 per employee? As a sole proprietor, am I considered an employee as well?

A. EIDL stands for Economic Injury Disaster Loan which is a separate loan program administered by the SBA. You can get both loans, but they are to be used for different purposes. If you have a pre-existing EIDL loan and received a grant of up to \$10,000, the grant will affect the forgiveness amount available under the PPP. If you have not received an EIDL loan, then you put "\$0" for that question.

Q. I have questions about the EIDL program. I have not been doing hair for a month now and cannot work for at least another month due to non-essential business closures until April. However, I have been working part time doing a work-from-home online job to get by. It doesn't cover my full financial needs right now. So, I know I can't qualify for unemployment benefits. Can I still qualify for the EIDL grant?

A. The Economic Injury Disaster Loan program is distinct from the PPP. It is a separate SBA program that offers traditional loans that must be paid back. The CARES Act, however, added a \$10,000 grant provision (funded to \$10 Billion) that allows applicants to get a grant at the time of application. The CARES Act suggests that the grant need not be paid back but, to my knowledge, the SBA has not yet confirmed that grants are to be forgiven. The fact that you have some income should not affect your ability to get an EIDL Loan. Note, however, that

since EIDL loans are not 100% guaranteed by the US Government, the lending standards are more stringent than is the case with PPP loans.

- Q. I live in Minnesota and have applied for unemployment. Can I also receive the EIDL loan?
- A. You can apply for both. The EIDL loans are not meant to replace unemployment benefits. If you are self-employed, you can apply for unemployment benefits while you are also seeking an EIDL loan to allow your business to operate once it is able to do so. If your business is currently operating and you are working, then you cannot get unemployment benefits because you are currently employed.
- Q. I'm trying to figure out how to apply for the unemployment for self-employed? I have 2 jobs, one where I get a w-2 and the other where I'm self-employed. My employer decided to continue to pay me while we are not working. So, I only want to apply for my self-employment...
- A. Your ability to obtain unemployment insurance for your self-employment will depend on how much money you make from your W-2 job. If you make enough that you are not considered unemployed, then you will not get benefits. If the loss of your self-employment income is such that you qualify for benefits, you can apply. The key is to truthfully report all of your income to your state unemployment office and they will let you know what you are eligible to receive. Regardless of the outcome on unemployment, I recommend that you apply for a PPP loan to replace your self-employment income.
- Q. Can we get PPP and still collect PUA if we make sure to report the income on the PUA claim form? What income documentation is needed for those applying to PPP who are "new businesses", who do not have 2019 income?
- A. Yes, but not at the same time. You can apply for PUA and receive that during any period when you cannot perform work. If you apply for and receive a PPP loan, then you are not eligible for PUA benefits while you are receiving the proceeds of the PPP loan. If you were not in business in 2019, you can apply based on the average monthly payroll costs incurred between January 1, 2020 and February 29, 2020.
- Q. I am an independent contractor who applied for (March 19) and was denied (on April 5) unemployment insurance. While I've already applied to EIDL, DIEC (Disability Insurance Elective Coverage), and PPP, is there anything else I can submit to EDD to receive unemployment? Please advise?
- A. Try again on April 28th. The CARES Act, which extends unemployment to self-employed works, did not pass until March 25th, after your original application. This means EDD likely made its decisions regarding claim under the old rules.

- Q. I applied on 4/6 for CA UI but I got a letter back 4/18 that they listed me as an employee with no income for years rather than a sole proprietor. I received no \$ award but also sent me a form to fill out the jobs I am interviewing for this week. What? If I fill it out, I would then continue to receive 0\$? I thought the msg was we can apply as an independent hairstylist and receive benefits... What do I do now? I applied on 4/5 for EIDL/PPP but have not heard back yet. Someone said they are accepting applications on the 28th. Do I have to re-apply??
- A. The CARES Act allowed the self-employed and independent contractors to receive unemployment benefits for the first time. The EDD says it will be ready to accept applications from the self-employed starting April 28th. You should apply again at that time. I'm not sure why they would send you a form proving you are looking for work when you are not getting benefits. Likely a glitch in the system that is totally overwhelmed.
- Q. Is there a way for people who are behind in filing taxes to still receive government aid? If so, how?
- A. I do not believe that unemployment is dependent on an individual having filed his or her tax returns, so you should be able to apply for and receive unemployment insurance benefits. The PPP Loan, similarly, does not have a requirement that you be current on your taxes and, to my knowledge, lenders are not seeking tax returns as part of the application process. And failure to file tax returns will likely affect stimulus payments because those funds are paid to the bank account / address on your tax return.
- Q. How do unemployment benefit payments in each state differ from PPP benefits? Do they overlap or cancel out one another as we move forward next week, next month, etc. depending on how long we must stay closed?
- A. If you are not able to work, you are eligible for unemployment. Unemployment is combined federal / state program. That means the federal government provides funding and issues rules but the states each administer their programs individually, hence the variances. If you obtain a PPP loan and are paying yourself from the proceeds of a loan, you cannot collect unemployment during that time period.
- Q. During shut down of non-essential businesses; and store closures; how will selling products or other sales (such as style wigs, gift certificates, etc.) effect unemployment benefits or PPP or SBA loans if we record these sales? These sales constitute such a small % of our sales. Should we delay recording, carryover until we reopen? Will this come back to haunt me?
- A. If your "service" business is shutdown but you are still selling products or gift certificates, you may be considered "employed" for unemployment purposes and may be eligible for reduced benefits or no benefits based on how much money you earn from selling products. If the amount earned is small, then you may still qualify as unemployed / underemployed and will

receive benefits. If you are earning money you should report it accurately when asked. If you make misrepresentations or leave out information when applying for unemployment or for a PPP loan you can be penalized, fined, and even prosecuted. If the amount you are earning is small and it is getting in the way of earning unemployment, then I would recommend delaying the work until you return to full operations. That fact that you are currently earning income does not affect your ability to apply for or receive a PPP loan.

- Q. I have been paying my tax return since 2004. January 20, I was approved in my application for residence in the USA. I am waiting for my green card, social security number. Can I apply for stimulus packet?
- A. If you were legally authorized to work in the U.S. when you earned income and are eligible now, then you can collect PUA benefits. The California EDD puts it this way: "If you are not a citizen of the United States, you cannot be paid PUA benefits *unless you were legally permitted to work in the United States at the time such services were performed. In addition, you must be authorized to work for any week of PUA benefits claimed to be eligible for payments.*" The PPP does not require that applicants be residents. It does require that payroll costs be for employees performing work in the united states.
- Q. I have a salon suite I'm renting, and the landlord is still charging full rent. Is there something that can be done about this when it is in my lease agreement about Condemnation/Abatement?
- A. This will depend on the actual contract language and the law of contracts in your state. If your landlord has locked the facility and denied you access, then arguably he is in breach because he is not delivering what is promised in the lease. Also, many jurisdictions have issued prohibitions on evictions, which may apply to your tenancy and would prevent him from evicting you (but not necessarily relieve you from paying rent eventually).