



BULLETIN #70/2020 MAY 19, 2020

_CORONAVIRUS UPDATE #56

PPP LOAN FORGIVENESS WEBINAR – THURSDAY, MAY 21, 2 P.M.

**COMPLIANCE REMINDER: OFF-SITE TRANSACTIONS AND ELECTRONIC
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[This bulletin supplements our previous bulletins #11 and #16 through #69 on this subject matter. These bulletins are intended to be cumulative so we can avoid repeating the same information.]

PPP Loan Forgiveness Webinar

On Thursday, May 21, at 2:00 p.m. ET, MSADA associate member Albin Randall & Bennett will conduct a webinar to discuss the current forgiveness process for Paycheck Protection Program (PPP) loans. (As with everything else we have experienced with this program, the information is subject to change right up to air time.)

To register in advance for this webinar:

https://zoom.us/webinar/register/WN_t_bA2KByQECMr5Azl3tb2w

After registering, you will receive a confirmation email containing information about joining the webinar.

Reminder on PPP Loan Forgiveness Application

On Friday, May 15, the Small Business Administration and the Treasury Department issued the Paycheck Protection Program [Loan Forgiveness Application](#), along with detailed instructions and worksheets. Forgiveness applications will generally not be filed until after June 30, 2020.

The application and materials are designed to simplify the process and reduce compliance burdens and include:



burdens and include:

- An alternative option for calculating payroll costs using an “alternative payroll covered period” that aligns with a borrower’s regular payroll cycle.
- Flexibility to include eligible payroll and non-payroll expenses *paid or incurred* during a borrower’s eight-week covered forgiveness period.
- Step-by-step instructions on how to perform the calculations required by the CARES Act to confirm eligibility for loan forgiveness.
- Borrower-friendly implementation of the statutory exemptions from loan forgiveness reductions, including a “safe harbor” based on rehiring employees by June 30, 2020.
- Addition of a new exemption from the loan forgiveness reduction for borrowers who have made good-faith, written offers to rehire workers who were declined or who have other former employees who departed under certain conditions.
- A description of the documents that dealers need to submit in support of a forgiveness application.

Three quick notes on PPP loan certification:

- In the SBA/Treasury [PPP FAQs](#), question 46 establishes a new safe harbor for borrowers who received PPP loans of less than \$2 million (and effectively removes the prior May 14, 2020, repayment deadline).
- For loans in excess of \$2 million, borrowers will likely be audited (expected to have basis for a good-faith certification).
- If the SBA deems that a borrower’s certification was not justified, the PPP loan will not be forgiven and must be repaid.

PPP loan forgiveness will vary with the facts and circumstances of each individual loan and borrower. NADA encourages dealers to provide the application and accompanying documents to their legal and accounting advisors for careful review.

Compliance Reminder: Off-Site Transactions and Electronic Deal Documents

Summary: *In Massachusetts, if a vehicle sale or lease transaction is consummated at a location other than the dealership, the customer has a right to unilaterally rescind the contract within three days. Additional notice provisions relating to this right of rescission also apply to the transaction. These rights and requirements are triggered when a customer signs the purchase contract at a location other than the dealership – which includes electronic documents. With dealership showrooms temporarily closed and dealerships engaging in online sales, this bulletin updates information in Bulletin #26 (issued on March 26, 2020) regarding off-site deliveries to ensure that dealers are aware of the additional legal requirements pertaining to e-contracting.*

Discussion: Under MGL Chapter 93, Section 48, if a contract for the sale or lease of goods or services with a value in excess of \$25 and primarily for personal, family, or household purposes is consummated at a location other than the address of the seller or lessor, the contract may be canceled unilaterally by the buyer within three days. Additionally, certain notices must be given to the buyer about this right to cancel.

While “consummate” is not defined in the law, the right of rescission and notice provisions apply to contracts that are signed by a party at a location that is not the business



address, which would include the electronic execution of deal documents by a customer away from the dealership.

As previously discussed in Bulletin #26, when consummating a sale or lease by delivering a vehicle away from the dealership, the notice provisions of Chapter 93, Section 48 must be observed. Under the law, this notice provision is also triggered if one party to the transaction signs a contract at a location that is not the business address. **Consequently, if using electronic documents to consummate a transaction, the right of rescission and notice requirements will be triggered even when the vehicle is delivered at the dealership, if the buyer uses e-sign or another electronic method to consummate (sign) the contract.**

The statute details the language that must be provided to the consumer. Copied below is a version of the necessary disclosure that can be easily edited by the dealer that was prepared by and shared with the permission of MSADA associate member law firm Burn & Levinson.

In addition to providing the language to the consumer on a separate form, the purchase contract must also include a reference to the form so that the consumer cannot claim later that they did not receive the required notice. Your motor vehicle purchase contract must contain the following statement appearing on the front page thereof in immediate proximity to the space reserved for the buyer's signature and in boldface type of a minimum size of ten point font:

You may cancel this agreement if it has been signed by a party thereto at a place other than an address of the seller, which may be his main office or branch thereof, provided you notify the seller in writing at his main office or branch by ordinary mail posted, by telegram sent or by delivery, not later than midnight of the third business day following the signing of this agreement. See the attached notice of cancellation form for an explanation of this right.

One way to avoid the notice provision and three-day right to rescind the contract detailed in Chapter 93, Section 48 would be to have the customer review deal documents electronically but consummate (sign) the deal documents at the dealership while taking delivery of the vehicle. The documents do not have to be signed inside the dealership – curbside, in the lot, or at a table set up at the dealership property would all be fine.

Dealers must take other considerations into account when consummating a deal that triggers the protections of [Chapter 93, Section 48](#). For example, the dealer should wait until the three-day period has passed before assigning the loan, in case the customer exercises their right to rescind the deal. Additionally, the dealer should hold on to any trade-in received in the transaction for the duration of the rescission period. As always, dealers are encouraged to consult with legal counsel when designing or amending their motor vehicle purchase contract forms.

SAMPLE NOTICE

[INSERT DEALERSHIP LOGO]



NOTICE OF CANCELLATION

DATE: _____

You may CANCEL this transaction, without any penalty or obligation, within THREE BUSINESS DAYS from the above date.

If you cancel, any vehicle traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within TEN BUSINESS DAYS following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be cancelled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale, or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your Notice of Cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a signed and dated copy of this Cancellation Notice or any other written notice, or send a telegram, to [INSERT DEALER NAME AND ADDRESS] NO LATER THAN MIDNIGHT OF [INSERT DATE THAT IS 3 DAYS AFTER SALE].

I HEREBY CANCEL THIS TRANSACTION.

Date:

Buyer's Signature:

CDC Consolidates Information for Businesses and Employers

The Centers for Disease Control has consolidated its coronavirus information for businesses in one place. Best practices can be found in its [COVID-19: Businesses & Workplaces page](#). NADA encourages dealers to review CDC's guidance for prevention and support, download helpful posters and use checklists for the workplace environment.

DOL Webinars for Understanding FFCRA

The Department of Labor's Wage and Hour Division is offering webinars this week for employers, employees and local governments to educate them on the Families First Coronavirus Response Act (FFCRA). Webinars will cover eligibility, coverage, qualifying reasons, duration of leave and calculation of pay. Visit [DOL's page](#) for more information



and to register.

Walsh Uncomfortable with State's Office Re-Opening Plan

[Courtesy of *State House News Service*]

With the state's economy beginning to wake up today, Boston Mayor Marty Walsh said he has no plans right now to lift the city's curfew and worries that allowing offices to re-open at a quarter of normal capacity next month might be "too much" to start, drawing one of the brightest lines between the city and state approaches to re-opening.

Walsh stressed the importance of moving cautiously in the capital city into this first phase of jump-starting the economy. The mayor outlined a more deliberate approach to resuming construction activities in Boston, and said the city was working on a plan that could be ready in the next week or two revolving around outdoor dining once restaurants are allowed to re-open.

The mayor spoke outside City Hall today for the first time since Gov. Charlie Baker detailed his four-phase strategy to re-open the Massachusetts economy after two months of being mostly shut down due to fears over the spread of COVID-19.

The mayor said he thought Baker took a "thoughtful approach" to re-opening, but differed with the governor over the re-opening of offices downtown. The governor said offices in Massachusetts can bring 25 percent of their workforce back starting next Monday everywhere except Boston, where activity can resume on June 1.

"I'm personally not comfortable with the 25 percent, to be quite honest with you, and we're looking at it now. I just had a conversation before I came down about what the number would be, but I think 25 percent on the first day would be too much," Walsh said, noting that some large companies like State Street have said they won't re-open offices right away.

The mayor said that Boston is unique in that it is the third most densely populated major city in the country, and roughly doubles in population size every day as people commute in to work. The city's diversity and identity as a hub of tourism, higher education, and health care also creates unique challenges, he said.

"Overall, the data tells us that we're moving in the right direction on new cases, on positive tests and in hospitalization for about three weeks here now, and that is good news. But every day the trend also gives us reason for caution in the terms of how gradual it is, in how necessary our precautions have been and how much potential there is for new outbreaks if we don't keep doing the right thing," Walsh said.

The city of roughly 700,000 people has had 11,958 cases of COVID-19 and 587 deaths attributed to the disease. The most recent report showed a daily uptick of 92 positive cases and 10 deaths. Boston's positive test rate over the past week of 13.9 percent is slightly higher than the state's overall 10.2 percent rolling seven-day average, but it has been trending downward.



The first phase of Baker's re-opening plan began Tuesday with manufacturing, construction, and houses of worship allowed to re-open under strict hygiene, capacity, and social distancing guidelines.

In Boston, Walsh said construction on schools, hospitals, smaller residential projects, and open-air construction will begin this week with contractors required to submit COVID-19 safety plans before returning to work, while all other work allowed by the state won't resume until next Tuesday, after Memorial Day.

The city is also working with employers to develop more specific guidance and support structures to help businesses bring workers safely back to office buildings throughout the city on June 1, but Walsh said he may reduce the initial capacity to lower than 25 percent.

In addition to the risk of viral transmission with more people commuting into Boston for work, Walsh said he worried that the return of 25 percent of the office workforce to the city could overwhelm the city's child care capacity as day care centers remain closed under the governor's order.

As for churches, Walsh said choir singing "should not happen" and house of worship should not feel compelled to reopen if they can't do it safely. The governor's protocols require masks and strict social distancing between households seated in places of worship, but Walsh urged older residents vulnerable to COVID-19 to stay away for now.

"I want to speak directly to seniors today, including my mother and aunt and uncles. I know for many of you your place of worship is the heart of your community, and you're missing it. I want you to hold off," Walsh said.

Baker yesterday described his re-opening plan as a balancing act between protecting public health and the health of the economy, on which families depend to pay their rents and mortgages and buy food. Walsh reinforced that tension on Tuesday, saying he wouldn't do anything to risk the health of Boston residents, but also talking about his concern when he sees long-time city establishments like Stella restaurant in the South End closing for good.

"We have to get it right because I don't think we can afford a second shutdown," Walsh said.

Restaurants won't be allowed to open until the second phase of Baker's plan, which won't be for at least three weeks, depending on the public health trends. But Walsh said City Hall was working on a plan to help restaurants be ready for outdoor dining, if possible, and did not rule out closing down portions of city streets to make space for tables and chairs.

The city's barber shops and hair salons will also begin to re-open on Monday, and though Walsh said he feared those businesses, as well as churches, mosques, and synagogues, could be the most at-risk for outbreaks as they re-open, he did not rule out a trim for himself.



"I certainly would like to get a haircut," Walsh said. "I haven't gotten one in awhile, so the answer to the question is you'll see me Monday."

NADA Dealership Lifeline Webinars Schedule for This Week

NADA's Lifeline Series Webinars designed to help dealers during the re-opening phase:

- **Wednesday, May 20, 1pm-2pm ET:** [*Video Communication: Building Trust in a Virtual Environment*](#). Tim Fortune, NADA 20 Group consultant, and Joe Shaker from TruVideo will discuss how you can use videos to build trust in a virtual environment for service and sales.
- **Thursday, May 21, 1pm-2pm ET:** [*NADA All Dealer Town Hall Meeting*](#). Join a virtual town hall meeting with NADA Chairman Rhett Ricart and NADA President and CEO Peter Welch.
- **Friday, May 22, 1pm-2pm ET:** [*The Best Ideas from NADA 20 Groups, Part 4: In Times of COVID-19 Pandemic*](#). NADA 20 Group consultant Tim Gavin will review best ideas from NADA 20 Groups during these unprecedented times.

Daily Massachusetts COVID-19 Tracker

The state's COVID-19 Dashboard with up-to-the-date data can be found [here](#).