

Sysco's Exclusive

Info Session #6

NAVIGATING COVID 19
CUSTOMER WEBINAR

May 15, 2020

Reimagine
YOUR RESTAURANT

#foodservicestrong

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We are here for you. Sysco Marketing Services is here to support you during this uncertain time. We can help with tools, tips, and products that Sysco has available for you to continue to maintain your business – including carry-out and delivery menus, social media messaging, and more. Call us at 1-800-380-6348 for assistance.

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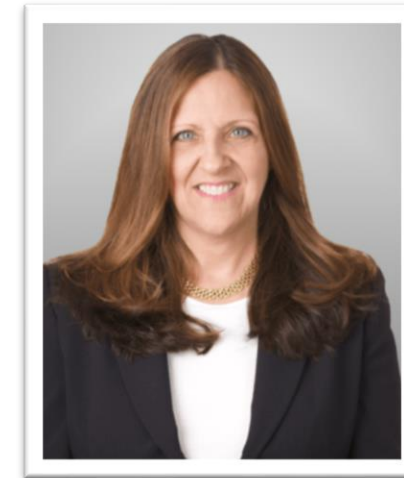
RELIEF FUNDS CUSTOMER WEBINAR



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Agenda

- Insurance Developments
- PPP: Should You Keep The Money
- Marketing Services Concierge

INSURANCE DEVELOPMENTS

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INSURANCE DEVELOPMENTS

- 165+ pending property damage business interruption suits
 - 76 of 166 by restaurateurs
 - 1/3 are putative class actions
 - Early trends and developments
- Claims & Notice of Circumstance
- Premium refunds, credits, reductions & grace periods
 - NJ Bulletin No. 20-22
- Insurer efforts
- Renewals



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SHOULD YOU KEEP THE MONEY

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Should You Keep The Money

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Good Faith Necessity Certification

- Harmonizing two distinct provisions of Section 1102 of the CARES Act, which established PPP as a new form of SBA 7(a) business loan to provide financial assistance to qualified businesses to pay their workforce during the COVID-19 pandemic has been problematic.
- On one hand, Section 1102(a)(2)(I) clearly eliminates the requirement for SBA Business Loans that “a small business concern [be] unable to obtain credit elsewhere” (explained as “the availability of credit from non-Federal sources on reasonable terms and conditions taking into consideration the prevailing rates and terms...for similar purposes and periods of time.”)

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Should You Keep The Money (cont'd)

- On the other hand, Section 1102(a)(2)(G) of the CARES Act requires a PPP loan applicant to in good faith certify that “the uncertainty of the current economic conditions makes necessary the loan request to support the ongoing operations of the [applicant]” (the “Good Faith Necessity Certification”).
- In response to media reports of substantial public companies receiving PPP loans, on April 23, 2020, the SBA issued Frequently Asked Questions (“FAQ”) 31, which instructs that in making the Good Faith Necessity Certification the applicant must take into account its current business activity and its ability to assess “other sources of liquidity sufficient to support its ongoing operations in a manner that is not significantly detrimental to the business.”

Should You Keep The Money (cont'd)

- On April 28, in FAQ 37, the SBA instructed that in making the Good Faith Necessity Certification private companies must also take into account their current business activity and its ability to assess “other sources of liquidity sufficient to support its ongoing operations in a manner that is not significantly detrimental to the business.”
- The SBA also established a “safe harbor” allowing borrowers to repay PPP loan funds obtained based on a misunderstanding or misapplication of the required certification standard, which has now been extended to May 18.
- The U.S. Department of the Treasury and the SBA also issued a press release on April 28 announcing that the SBA will review all loans in excess of \$2 million, in addition to other loans as appropriate, following the lender’s submission of the borrower’s loan forgiveness application.

Should You Keep The Money (cont'd)

- **Rock and a Hard Place:** Without further guidance on this issue many PPP loan recipients did not know whether to keep or return the PPP loan.
- **Bait and Switch:** Borrowers obtained PPP funds in order to retain their employees with the expectation of loan forgiveness. But now they are being pressured to repay the PPP funds with money they must borrow, putting employers in a worse position than if they had furloughed their employees in the first place.

Should You Keep The Money (cont'd)

- On May 13, the SBA issued FAQ 46 and announced that any borrower, together with its affiliates, that received PPP loans with an “original principal amount of less than \$2 million will be deemed to have made the required certification concerning the necessity of the loan in good faith.”
- In addition, for PPP loans in excess of \$2 million, the SBA further clarified in FAQ 46 that it will not pursue administrative enforcement or referrals to other agencies should the SBA determine upon its “audit” post-June 30 that a borrower lacked an adequate basis for its Necessity Certification, if the borrower repays the loan after receiving such notification from the SBA.

Should You Keep The Money (cont'd)

- While this additional last minute guidance is helpful to borrowers who with their affiliates received PPP loans in an aggregate amount less than \$2 million, those who received larger PPP loans continue to be subject to the uncertainty caused by the ever evolving PPP rules and the SBA's failure to provide additional guidance as to how a PPP loan recipient should analyze and evaluate "its ability to access other sources of liquidity sufficient to support its ongoing operations in a manner that is not significantly detrimental to the business."
- These borrowers, should they decide not to return their PPP loans by May 18, must carefully review and document, with assistance from their professional advisers, the conditions and factors they considered and the process employed, to support its Necessity Certification.
- In so demonstrating that its board fully evaluated the material information reasonably available and formed a reasonable basis for the Good Faith Necessity Certification, a borrower should be able to withstand any principled review by the SBA, in the same way that under the "business judgment rule," courts will not second-guess an informed board that exercises its reasonable judgment in its decision making.

Other Developments

- On April 30, 2020, the SBA announced in an Interim Final Rule (“Rule”) that in order to preserve the limited PPP funds available, businesses that are part of a “corporate group” will be limited to no more than \$20 million in PPP funds in the aggregate (the “Cap”).
- Businesses are part of a single corporate group if “they are majority owned, directly or indirectly, by a common parent.”
- The loan applicant is responsible to notify its lender if it applied for or received PPP loans beyond the Cap and to withdraw any pending loan application or approved PPP loan not in compliance with the Cap.
- Failure to do so will be considered using PPP funds for unauthorized purposes and will make the loan ineligible for forgiveness.
- This Rule is in opposition to the guidance in FAQ 24 issued by the SBA on April 26, and this about face may have the greatest impact on limiting loan amounts available to restaurants, hotels and bars (NAICS 72), and franchises for whom the CARES Act provides an affiliation exemption in connection with determining whether a business is eligible for a PPP loan.

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Sysco Marketing Services is here to help you reimagine your business with the steps for a successful

Snap-Back!

As you move forward with reopening or expanding your services, it's important that you strategize your snap-back plan. This includes current safety and social standards, the power of an online and social media presence, and the creativity and resilience of your team!

Our team of associates is available to assist you.

- Understand your local, state, and federal guidelines
- Communicate with your customers
- Streamline your business – smarter, faster, better!
- Rethink your business and expand your services
- Reconfigure your space and implement social distancing measures
- Connect with our service partners to setup a website, online ordering, and delivery services
- Gain access to helpful tools, such as Sysco | Studio

Let's partner to create your menus and marketing.

- Limited menus for dine-in, carryout, and delivery
- Pop Up Shop menus and marketing
- Banners and signage to promote your safety and sanitation protocol
- Customer promotions and social media messaging



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Concierge Service

Our Concierge Service available to any customer

- Crisis Menus, Pop Up Shop/Marketplace, Social Media, Thank you cards and other restaurant marketing materials to ensure continuity
- Provide guidance on what you could be doing to promote your business
- Provide guidance and facilitate our iCare Partnerships available to our customers
 - Websites to facilitate Online ordering
 - Delivery
 - Gift cards, etc.

For Marketing Services Help:

- **Call:** -1-800-380-6348 or
- **Email:** info@syscomenuservices.com

For more information about how Sysco can support your business please go to Foodie.Sysco.com/Snapback/



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