Fiscal Sponsors: The COVID Conversations – Call #8 – May 26, 2020

Speaker: How's everyone doing after the long weekend? Where you out in the beach, social distancing? Is there a difference between social distancing and this is actually a serious question, like the distance between two people? I'm not sure what the authorities are talking about in terms of social distancing. Does it literally mean like each individual has to be a certain distance from each other or I just don't get it. I don't understand why are we calling it social distancing instead of something else where it's like space between individuals? I don't know. That might sound weird, but the idea of like socially distancing as opposed to just like making sure you have your personal space. I don't know. I'm tripping

Speaker: This is Eric. Nice to see you in person. Hi Andrew. Okay. I've, I've embraced the alternative term distance socializing instead, which feels more comfortable for me because it's like you're still socializing, but you're doing it from a safe distance, which is really what it's about. So then the thing is you need to distance yourself socially. Right. Which is not healthy for any of us.

Speaker: Yeah. I guess that's exactly like the nuance I'm trying to get at here. It doesn't seem quite the right term. Yeah.

Speaker: I have a public health background so I think the notion is good, but I agree that the language isn't good.

Speaker: Yeah. And the six feet seems quite arbitrary. I think in Europe they're saying a meter, it seems like the focus on the six feet is the wrong thing to be focused on and seems more like trying to be focused on common sense and an understanding of like how transmission works and whatever you need to do to keep yourself safe given that track is what you should be doing rather than this arbitrary six feet thing. But maybe that's a public health messaging issue.

Speaker: There have been some good examples of communication strategies that are more salient in different communities around the world. And my favorite somewhere in central or South America, I don't remember exactly where, where it was showing how far apart people should be using a widely shared socially relevant point of contact for people to understand what the appropriate distance was. And so it was a graphic that had two people side by side and in between them was the silhouette of the body of a taper, which is a long snouted pig-looking anteater creature that obviously everybody in the country knew how big it was supposed to be. So the image was supposed to be one taper length apart. And I thought that was just a really good example of a salient way to tap into what your community knows and what they're familiar with.

Speaker: Sure. Everyone should be one labradoodle away in San Francisco. Exactly. All right, well I think, well I think we'll go ahead and get started. Looks like mostly we're here. Thanks again for stopping by this Tuesday morning, season one, episode eight of the COVID Conversations. I'm hoping you are all well and that you got some rest over this long weekend. I like the idiot that I am forgot to block off my calendar. So I had a full day of calls yesterday, which was like any other day. Right now I'm in the perpetual no plans zone, so it was fine. But I'm glad to be here with you today. anyone have anything burning they need to say to the group before we get started?

No, everyone's good. All right. So we're just going to jump in here. We're going to do our poll. We're going to show you some of the aggregated poll results. It doesn't really show any big surprises there. And then as the announcement said, we have Eric here from Adler & Colvin, one of the principals at Adler & Colvin, and to share with us some thoughts that he's been having and some knowledge that he has perhaps around forgiveness and other PPP related stuff. We'll do breakout groups if we need to. Then we'll do wrap-up and closing. I know that Andrew has been working on a survey. People are looking to be able to refer potential projects to each other. And this we hope will be a tool to get us started with that. Andrew, without further ado, you want to hit us with the polls?

[POLLS CONDUCTED]

Speaker: Okay. A little bit more. People have received their money and lots of questions. Lots of people have questions. Two thirds of us have questions about loan forgiveness. So far core staff at fiscal sponsors, it seems relatively on top and most people are seeing no change in inquiries, which I guess is a good thing. So, all right Oh yeah, we did have another question here we forgot to add, which was about, we were wondering if anyone, and maybe you just go to your reactions a button on the bottom of your screen and put up a hand if this applies to you. Have any of you heard of funders asking for money back? Whole lot of head wagging which is a good thing. And I'm not seeing any hands. Okay. So no one has yet experienced that. I think Eric's going to speak a little bit to that in a moment. So that's, that's pretty interesting. A little data point for us. Andrew, do you want to share the, the trends?

Speaker: Yes. Let me do that. Here is the first, and this is a couple of different questions. So the blue line is your PPP application was approved. Second line, the orange line is how many organizations received their funds. The gray line is "not clear on the details." And the yellow line is percent not laying off core staff.

And then the other one was about change in new project inquiries and if there had been more, fewer or no change. Looks like we had a bump early a couple weeks ago and then it died down a little bit. but obviously as we said last time, every week we have different people, so this is more of a snapshot in time and just some interesting information rather than some scientifically backed data.

Speaker: Cool. Any questions, comments, observations on that data and so on?

No, it seems pretty much what we would expect. Basically. Now, you were getting money. Most of us have gotten the money and have been experiencing the pain of dealing with that money. And in that effort we've invited Eric Gorovitz, a principal at Adler Colvin to share with us today. Most of you are aware of 6 Ways of Doing it Right? I believe it's still called that. Even though I think there are more than six ways that have been worked out these days most of you have heard Gregory Colvin's name. So one of the real venerable practices assisting fiscal sponsors and the nonprofit sector in general. And we're very happy to have Eric here today. Eric, take it away.

Speaker: Thanks very much to Oliver and Andrew. I really appreciate the opportunity to say hello to all of you. I last interacted with a large group of fiscal sponsors at all at once at the national network conference a couple of years ago and when it was in Chicago, and really enjoyed that. And as Oliver mentioned, we do a quite a lot of fiscal sponsorship work, having someone in our firm literally write the book on the topic. And so we understand pretty well the issues that you face then other (nonprofits), and we are always happy to hear from you. And it's one of the reasons I was eager to participate in this because it's a chance for us to learn more about your experiences on the ground, which of course are very important to us.

So it's very important for us to understand so we can advise capably and fully the Coronavirus pandemic has created problems for fiscal sponsors that in some cases are not well understood by the folks that you interact with, your project personnel or your funders. And we actually haven't seen a lot of questions from fiscal sponsors at least not questions that differ substantively from what we've been hearing across the sector. But I think that there may be more of that coming up as a result of the repayment and forgiveness phase. Now that we're in that phase so I'm just going to run through a few issues that I've advised on recently -- things that have come up that have been issues not to do with fiscal sponsorship particularly, but to do with the implementation of the program.

And as you're probably already well aware -- feel free to shake your head or not if you agree. I can see many of you at once on the screen. The SBAs rollout of the whole program has been a mess. Lots of nodding good. Glad to see that. There have been 10 or more interim final rules that have been issued. One from treasury and nine or 10 from the SBA, there actually may be more now. There were a couple last week. There are 48 FAQs that have trickled out over time, some of which contradict prior FAQs, some of which address issues the window for resolving of which has already closed. And so the SBA has been saying, well yeah, what you did before was wrong, but we're only telling you that now.

So we're going to give you a pass if you did it the way you did it before, cause that's what we told you was right before. But now we're telling you what's wrong. and because of that, there's an awful lot of confusion. There's a lot of money at stake. The math has been tricky for some folks, especially if they're people working abroad or part-timers. The two things that have come up for me most frequently and that I think are really fraught across the sector have to do with the certification that you had to make when you applied about necessity, and the ways in which you have to account for the use of funds in the application for forgiveness. And before I get into the details that I've come across around that, I want to just set the stage a little bit with a little background about the program.

And, and forgive me if you feel this is a repeat, but my understanding is that when you heard from Erin, she didn't address this in quite this way. So I'm, I'm hoping that this is new material, but I'm only going to talk about this for a couple of minutes. Many people, especially people in the nonprofit sector, I think tend to think of the PPP program, that paycheck protection program as having been a “nonprofit-y” effort. Of course it really isn't. It’s a business protection effort that was grafted onto a longstanding preexisting loan program for businesses that was explicitly by its terms not available to nonprofits. So what the Congress did when it passed the CARES act was it created this new program within the existing SBA loan program was called the 7A program, which allowed small businesses with 500 or fewer employees that didn't have access to credit -- They couldn't get in the capital markets, they weren't publicly traded, that weren't selling stock. They may have had a hard time providing enough collateral to get loans at market rates from banks. And so they just didn't have access to capital in usual ways that businesses gain access to capital. And so this loan program was set up to help them at times where they had need. And it wasn't about payroll, it wasn't about anything in particular. It was from general business operations. And they could get these low interest loans from the SBA to help them through difficult times or to help them expand or invest when other avenues were not available to them. So Congress was thinking there's an administration that knows how to admit how to handle these kinds of programs. And when the pandemic kit there was a tremendous widespread and real fear that small businesses were going to start laying off large numbers of people because they were very concerned about what their business was going to look like over the next six or eight weeks that everybody thought it was going to take to get through the pandemic.

That, in eight weeks everything will be back to normal. But during this period there was a lot of panic, a lot of concern, a lot of uncertainty that was going to result in people laying off workers or not paying their mortgage or their rent or not paying their basic bills. So the idea of this program was to say, everybody, hold on, don't do that. You don't have to lay people off, we're going to tide you over. We're going to keep you confident that you're going to be okay. And then by the time this thing is over in eight weeks, there'll be through this problem. So what the program really was doing was underwriting, it was an insurance policy telling businesses to feel comfortable. You don't have to lay people off because it's not going to cost you.

You're not going to run out of money. We're going to give you money so you feel okay. That covers your costs over the next eight weeks. And so the commitment that you have to make or that you had to make was to not lay people off. And then in the forgiveness application, which I'll come back to in a couple of minutes, the proof you have to provide is that you maintained the FTEs through June 30 and that you had payroll in an amount that coincides with the amount that you borrowed a payroll and, and to a lesser extent, other costs. And the reason, I think it's to a lesser extent, the other costs, I think the reason for the 75-25 rule is that the biggest fear was payroll. That was the thing they were most concerned about. People not paying, or people being worried about being able to pay.

But then there was also a concern among landlords and landlords and utilities providers that they weren't going to get paid either. So they got added into the program as well. So I think that understanding of the program is important because it really affects the validity of the certification at the beginning and the way funds should be treated upon application for forgiveness. This program does not look like what the nonprofit sector is used to seeing. And it uses a very different lexicon. This was not money given to you to be used for a particular purpose. It was money given to you to ensure that you maintain operations. And at the time that everybody applied, there wasn't very widespread, rational fear that you were not going to be able to maintain operations going out however long you had to go out.

A lot of organizations were canceling fundraisers. Their donors were redirecting their interests to more immediate needs. And employers as a group, whether they were nonprofit and for-profit, were just scared about whether they were going to be able to make it through the end of the year. So what do you do if you're worried that you have to stretch you cut costs now – let people go and it's not tied to program versus operational admin, it's just numbers of bodies on the payroll. So the first thing is there was a lot of concern about what happens if we certified. And then it turned out that the certification that you had to make was that current economic uncertainty made this money necessary to support the ongoing operations. That was the language. Every one of those words is really vague and none of them was defined in the statute or the guidance from the SBA.

So it was really unclear to people how much, what that actually meant. What if you had an endowment? If you have an endowment, can you tap that money? Fiscal sponsors have a lot of money in a lot of programs. What does that mean? If you're relatively solvent, what does that mean for your ability to make that certification? Maybe you have a lot of money that flows through, but very little for your operational support. It's common for a lot of fiscal sponsors. What, what does that mean? Are you going to be able to pay your staff? Are your programs going to shut down or is their funding going to dry up? If you're cash flow dependent, you don't know what's going to happen. So when you made that certification to apply, almost everybody was making that certification with a reasonable fear that there might be some trouble coming down the road.

I don't know that the LA Lakers can say that or Shake Shack or some of the more abusive participants in this program. But I think virtually every nonprofit organization, even big ones could say that there are a couple of exceptions, but, but I think for nonprofit organizations, that certification was fair. recently the SBA actually said if you borrowed less than $2 million, we're going to presume you needed the money and we're not going to ask you to defend it if you actually acted in good faith. And there's some reason to think that it doesn't, it's not a free pass. And if you acted in bad faith and there's some reason to think that you acted in bad faith, we're not giving you a pass. But if you were below 2 million, we're going to presume it was reasonable for you to have that worry because you probably needed the money.

I don't know how many fiscal sponsors, how many of you all have your, your gross below 2 million. But a lot of folks don't understand that. That's not real money for most of you. That is, you can't tap a lot of that cause it's all going into programs. So there was a second layer of this, which was for organizations that might not fit that $2 million Safe Harbor, but that really were trying to be really thought at the time that they were doing what the program that they were within the bounds of program, but later figured out, well maybe we shouldn't have taken this money cause we actually have a ton of liquid assets that we can draw on as long as they repaid the loan. By May 18th, first it was May 7th and it was extended to the 14th. It was then extended, I think on May 19th to May 18th, which wasn't really helpful. But by making those extensions that what the SBA said was if you repay by them a certain date, we're going to presume it was reasonable. We're not going to look at the facts. If you borrowed money and then you gave it back quickly, we're not going to worry about it. So some organizations have already taken advantage of that and now that that window has closed.

But this question of reasonableness really focuses on how the SBA thinks about this program. The underlying program, which is about businesses not about nonprofits. So they don't understand endowments. They don't understand charitable trust. They don't understand that not all money actually is fungible in the nonprofit sector in the way it is in the for profit sector. It doesn't matter to a company that sells widgets, how much money they got from selling widget A versus widget B. It's all just money. It goes into the pool and they can spend it however they want. You're not in that situation and you have very different constraints on your use of the money and the SBA doesn't have access to any of that language. Now that we're in the forgiveness application phase though I think the question that I'm getting most is how to deal with the accounting that you have to provide on the forgiveness application and what implications does that have potentially for funders? And the reason for this, as I'm aware of at least two circumstances where a funder makes a grant and there's line items in the grant and the line items include things like personnel and funders are saying, if you tell the SBA you used PPP money to pay personnel costs, you have to pay us grant money back because we earmarked money for personnel costs. But if you use the other money, then you didn't use our money for what it was supposed to be used for. That alarmed me quite a lot first because it's screwy and mean and in this circumstance it doesn't make any sense. it's also wrong in my view, it's just substantively wrong. And I think it's wrong because the SBA is not asking you how did you use the PPP money? The SBA is saying is the amount – I want to read the certification. That's what you have to say on the loan application. The dollar amount for which forgiveness is requested was used for eligible costs. Not this money. It's not like when you go to a funder and the funder says, here's a bunch of money we want to report in a year and we want you to tell us how you used our funds. The SBA is not asking that. The SBA is saying, did you spend enough on payroll? The purpose of the program, like I said at the beginning, was to keep people spending on payroll. What the government got when it gave you money is you didn't lay people off. That's what it was getting. It wasn't getting you pay these people this money. That's what funders are usually thinking. You pay your research person this amount of money to do this research. The SBAs lexicon, it's very different.

They're using a different dictionary. They have a different mindset about how this money works because they work in a different sector all the time. They're totally unfamiliar with nonprofits. So this is backed up by the documentation they ask for. They ask for payroll records, which are third party if you have a third party payroll provider. Like one of the Paychex services the SBA wants their records to show how much money you spent on payroll during the eight week period that the loan was coverage for. And why when I say coverage, I mean it was to make sure you kept people on payroll during those eight weeks. So they want to see that you made payroll payments and if you're trying to get forgiveness for some money that was spent on the other permissible expenditures (mortgage interest, rent utilities), that you have, bank statements that show that you spent on those things, they're not asking you to demonstrate that you spent this money on those things.

And I think that's a really important distinction. It catches people up in a number of ways. But the place where I think it catches people up the most is in this, what I think is a horrific idea that funders are going to ask for money back now. There may be terms in certain grant agreements, particularly government funding, which I think most fiscal sponsors steer away from because of all of the strings. But if you have government funding, there are much tighter provisions in the grant provisions in the award letters, in the contracts that in some cases might actually constitute double-dipping if there are other sources of funds. But I think it's unusual they would have to be some very clear language about it. On the upside, my read of the SBAs public discussions and presentations about the theories of things that has come out is that they've actually been pretty flexible and reasonable in how they've approached this stuff.

They have not been signaling taking a very hard line. They've been adaptable. They've focused on reasonableness. And what happens if it turns out that the SBA thinks you shouldn't have borrowed money is they'll tell you to give it back and so you always down the road we'll have the opportunity to do that. It is true that in certain ways this was an application for a federal loan and there are statutory penalties for lying on an application for a federal loan, which applies to any federal loan and there are criminal penalties. So some people are very concerned about that. There is no evidence that the SBA is looking to go after anybody. And I think there's even less evidence that there will be when there starts to be some evidence. I think what we'll see is they are not looking to go after nonprofits unless there is evidence of real wrongdoing.

So my sense is that the SBA is actually going to be a reasonable partner and it is my hope and my sense is all this plays out moving forward. And it is also my hope that any funders that are sufficiently misguided, that they start thinking that they're entitled to money back should soften pretty quickly upon for having the purpose of the program explained. In the end. You have to look at their grant agreement and see what it says. But I don't think they should take a very firm line. I mean the whole idea here was to keep people employed and you all a huge part of the employment base of the country and no organization should be punished by a funder for having kept people on payroll as that money was designed to go. So I think I'll stop there. I've been talking longer than I intended and see if anybody has any questions.

Speaker: I'm guessing not, but I don't think anyone has yet to tackle the forgiveness form because you're likely not at the end of your eight weeks yet. Is that right? Yeah, not yet. Okay.

Speaker: So some of these questions may still be looming for you when you get into the details of the form. And so I'm hoping it's helpful to think of it in that way that you're, you are not having to document expenditure by expenditure the use of this money. You're instead having to document what they told you were supposed to do, which is keep people on payroll and the amount that you borrowed corresponds with having largely been with money you spent mostly on payroll.

Speaker: I wonder if anyone else is facing model A projects with employees who are saying that they don't want the money. We've had a number come back to us saying they don't want it. And of course, we may have to repay money. I don't know yet. But I'm wondering what your experience with this has been and if that is messed up your calculations at all.

Speaker: I don't quite understand the question. And so I'd love to hear just a little more about what it is that you're,

Speaker: So fiscal sponsorship practices like us looked at our payroll, we applied for a certain amount of money based on our payroll as we were supposed to. And we went out and got this money for our projects and now we're saying to our projects, we have this money and there are any number of model A projects who were saying, we don't want you to apply that to our employees.

Speaker: Why are they saying that?

Speaker: For a variety of reasons. One is because they understand that this is a loan. it is not yet a grant until it is forgiven. They don't feel comfortable with that risk. Two, that's probably coupled with the fact that they feel like they have enough money in reserve at the moment. We've also heard from model A projects with money in reserve that they feel it's not entirely ethical for them to take that money, that it should go to people who demonstrate a higher need than they do. So it's based on any number of factors that one could push back and say, take the money. Just take the money. But we're not forcing people to take the money.

Speaker: We've had a couple, but it's due to this government supplying salaries thing where, where the government funding has said we will continue to pay your salaries. And so then we had applied for all our partners on payroll, but now some of them are actually being covered under other grants.

Speaker: So I want to let anyone else jump in. I do have some thoughts about this question where you described as a fascinating situation.

Speaker: Susan, I think your question here: can you clarify, was it loan amounts under 2 million need is assumed or organizations with gross income under 2 million? I think it was loan amounts under 2 million

Speaker: It was loan amounts.

Speaker: Okay. Anke this is creating difficulty, especially for payroll. No, no kidding. Yes. Especially when your payroll doesn't line up with the eight weeks. And there are unique situations with each project, with employees. It, this has been one of the great time sucks of probably most of our careers.

Speaker: Yeah, I'll just add to that. Originally we had heard that we could account for expenses on a cash basis and now the most recent guidance indicates that we should be accounting for expenses on an accrued basis. So our staff has been keeping records based on the cash expenses and now has to undo that. And it's just been frustrating. And we also understand that Congress is thinking about changing some of the terms of this loan so that businesses could maybe use more of it to pay for other expenses. So we're just in limbo I think at the moment, waiting to get more guidance from the SBA.

Speaker: Yeah. So everybody's in limbo and this has been a moving target all over the place with those kinds of changes. And I think in part the shift to accrual was to address the fact that when, if a payment is made outside the eight-week period for work done in the eight week period, it seems like it ought to be covered. And I think that's actually the right outcome., But the change, on the fly from one to the other created a lot of uncertainty. But I think the idea was not to cause anybody to lose out on what they got the money for. So I think it was designed to be more broadly protective. I don't know if it actually has that effect. It may not. But I think that was the intent and I think the SBA is probably not going to be aggressive about it. That degree of granularity about the calculation. But I don't know for sure.

The model A question is fascinating to me because I think it reflects a second layer of this misunderstanding of what the money is for. Model A projects are not getting any money. No project is getting any money. No staff are being paid with any money that's coming in from this loan. That's not what's happening. What's happening is you as the employer of everybody didn't lay anybody off.

And so you get the money when it's forgiven. You just have unrestricted funds. Now. It may be that those were spent if the projects didn't have the money, but it's essentially the forgiveness is just an unrestricted grant. This doesn't happen in the for profit world, but in the nonprofit sector we have to figure out what that money represents. And I think it's a mistake for project personnel to say we don't want any of that money. It's not there. That's not a question that's up to them. You as the fiscal sponsor or the employer of record of everybody and you have to decide whether you're laying people off or not

And because this loan was for you as the employer and when you demonstrate you didn't lay people off, it's that money is appropriate. It is also a mistake to presume that if a project forgoes, even if they could, whatever that means in this context, this money or if because they didn't want the money, you didn't borrow the money from the SBA, maybe you as a sponsor decided on its own grounds for its own reason, it did not want to borrow money. There was no guarantee that that money goes to somebody needy. That's not what it was for. It is not a nonprofit charitable program. This is this a program designed for businesses.

So it's a misconception that letting go of this money is necessarily benefiting people in need. It may be going to for-profit businesses that are sucking money out of a system and not helping anybody. It can go to Walmart. Now is it supposed to be helping Walmart's low-end employees? Maybe. But again, it's not earmarked for that. So it doesn't have to be. So I think that's a false assumption that if that as a moral matter, if we forego the money, we're helping others more needy than we are. I don't think that's how it works. And I think everybody who borrowed money for this and made that certification in good faith did exactly the money was for already. And when the loan is forgiven you have an asset in the form of cash and that's not allocated to any program and you have a liability in the form of an account payable. And when that account goes away you have unrestricted funds.

Speaker: I think this is a really important nuance that you're bringing to the table here because I think I can speak for the group. It’s not how we think, we think programs, we think revenue to programs, it's the whole system in which we operate and it's where all of our minds went when we were trying to understand this stuff. And many of us including Social Good Fund have passed on that certification issue thing to our projects, right? Having projects tell us we need this money. But what you're suggesting here is that, and that I'm finally getting it, cause we had this conversation the other day and I'm really getting it now as long as your payroll is the same, essentially it's a grant and you've spent it right. And that it doesn't have to be accounted for in the way that we are used to. Like, it's as if saying we're holding ourselves to a way higher standard than even the SBA or the lenders themselves are at this point.

Speaker: That's exactly true. It's as if an individual donor said, you guys are awesome. Here's a million bucks. That's what it is. I think individual donor might say, I'm going to give you a million bucks and I want you to not lay anybody off during a hard economic time. That's my only condition. It's unrestricted money. You spend it however you want. You meet the condition by behaving a certain way, not spending the money a certain way. Right. That's what the government's doing here. And so projects didn't get a dime. No project got a dime out of this money. Employer's got money in the same way that it wouldn't be appropriate for, suppose there was a small mom and shop, mom and pop restaurant chain. It has a few stores and the owners say, we need this money so we don't lay off, because we're at risk of not having anybody come into the store and buy our food. So they get the money, they keep everybody on and one of the employees in one of the stores, says we don't want you to pay us from that. Other people are needier than we are.

That restaurant owner just has had revenue. Well they have and the employees of one store don't have any ability to say, pay us from this revenue, not that revenue. And your model A projects are in exactly the same position. Yeah. I mean this is a common, I think in your case - model. A fiscal sponsors have this functional, I mean it's a legal reality imposed on a functional fiction, right? The legal reality is you all own everything. You control everything, you make all the decisions, everything that happens is you, the fiction is that's not the case, right? The fiction is that operationally, that the model A folks feel ownership of the project and that is your business model is giving them that sense of ownership of the project. So I understand you have to honor that. The same comes up with donor advised fund sponsors where they have all these assets that they actually have legal control over and they could spend donor advised fund money whatever they want cause they control it, but it would destroy their ability to continue operating because no one else would come to them. And as a model A fiscal sponsor, if you raid program funds, you can, subject to charitable trust restrictions without others don't have, but you could raise funds and do something different with it, but it would destroy your business model so you don't do it. But the reality is you have the authority. And one of the consequences of that, I think is this notion that you're not allocating, there's nothing that says you have to take this PPP money and allocate it prorata across your projects and there's nothing that says you have done that or you haven't done that.

You just didn't lay people off. That's it. So you've got the money and that's the societal benefit that, that money was dedicated to was you not laying people off, whether it's your own program people or the model a staff who if you felt like you needed to, you could have fired them or put them on furlough or I understand that practically what you would want to do, but legally that's the fundamental basis of a viable fiscal sponsorship that has integrity is that you have that power and the government loaned you money to prevent you from using it. And it doesn't matter that you didn't intend to use it.

Speaker: Reactions? Anyone? Questions?

Speaker: I'm worried I'm going to get run out of town on a rail, but yeah.

Speaker: Pam go ahead.

Speaker: Thank you Eric. I love that term. Functional fiction. Absolutely, but I do have an honor pact with my clients and I honor there day to day management of their department. Right. And anybody who's wanting a department, if your boss comes in and ramrods over you and tells you no, you can't lay that person off. We have a bigger vision that your opinion's not counted in. And everything that's always been true in the functional fiction of our relationship, I'm now trashing because I have I've decided you can't lay that person off. It just, I'm not going to do that

Speaker: I want to be, I want to be really clear. I'm not advocating that anybody take that position

Speaker: But you kind of did. So I want you to clarify it because basically you said they have no decision making power in this, that the decider, as the employer, you get to choose whether or not they can lay anybody off. So that those real, that really was the message I heard. And so I'm just, I want to attend to the cultural fiction that is the foundation for my business model.

Speaker: Yep. So, so let me clarify that because and I really appreciate you so clearly articulating what you heard and I understand why it sounded like that. And yeah, so that's the lawyerly answer to how this works is, the fiscal sponsor has to have the legal authority. What I'm reacting to is the idea of - I think you can tell every project that says we don't want that money. I think you can tell them all ‘fine. It, the money isn't going to their project.’ But that's not what's happening with the money. I think when they say that they miss understand how the program works and what it's for because all they do, because all of the language comes from outside the nonprofit sector.

Speaker: Yeah. I hear that. That line of argument, but I would say maybe they misunderstand it. Maybe they don't. Because we leave them alone day to day. Yes. We're responsible for what they do every day. But I trust my department managers. I choose to live a life where I trust my department managers. And so if they want to lay somebody off, I'm not going to go in there and overrule them. But I guess what you may have said is then fine. Don't give it to that group. Give it to a different group. If you're saying, okay, we won't give you, we won't give you the money, we'll give some another group the money.

Speaker: Well, the way this works is, in order to get the full forgiveness, you're supposed to maintain your FTEs through June 30th. Right. And you're just supposed to demonstrate that the dollar amount for which forgiveness is requested, was spent on payroll at 75%, up to 25% on the other things. It could be a hundred percent on payroll. So a lot depends on how much you borrowed. And if nobody laid anybody off, that's all great. Nobody should be telling anyone to lay anybody off if nobody. If nobody got laid off, it's all great. And if they want to say, well, we weren't going to lay them off anyway. If what they're trying to tell you is don't include the portion of payroll that's attributable to our program in your application for forgiveness, that is a much bigger problem because that puts you at risk of having to repay loan amounts when you have complied with the loan obligations.

And I'm not sure the board can actually do that. I mean, that's a fiduciary duty problem for the sponsor's board. You own it. That's one of the legal realities is the board has to decide. Can it forego money that it's legally entitled to because one program said that's what we want you to do. We want you to lose money because we don't want you to count us. And I don't think that's an appropriate position to put the sponsor in. And I think that if it comes down to, it's almost like having a corporate, I nobody likes this language, but having a corporate…

Speaker: A capitalistic view, which is states that if you leave any money on the table, you're doing the wrong thing, right?

Speaker: No, it's not that. It's the board's fiduciary duty. So the question is, I mean, the board might be able to justify. And of course for nonprofits it's not based on return. it's based on all kinds of things. And the board may be able to justify saying, we borrowed this money, we meet all the standards, but we're going to pray, we're going to tell the SBA that we failed to meet the standards because we think it's better to preserve our relationships with our projects. a board could make that determination. I would have a hard time advising them to do that, but a board might make that determination. That's the only circumstance I can see where you end up in conflict is if is if they're insisting that you misrepresent the facts to the SBA in order to assuage their misunderstanding of the facts. And I think that's a bad idea.

Speaker: Understood. Thank you.

Speaker: Susan's question here. is it to maintain FTE through June 30th or through the end of the loan period? I thought it was the end of the loan period.

Speaker: Yeah, I think that's right. I think it's through the end of the eight week period. I have to look back at what the actual program says.

Speaker: I wonder how big of a problem this current conversation really is for people. Like we've had projects pushed back on the money, but we don't think at this point that it's going to be a big problem for us. And if what Eric is talking about here bears out, we think we'll still be on the right side of the regulation. So in a sense it could be, this unrestricted, just grant money after that as, as hard as it is to wrap your head around that idea. I do think that these projects were somewhat probably put off by our emphasis on the idea that it was a loan until it's forgiven and it makes people nervous. And really just all, all of the uncertainty surrounding this has made decision-making, almost impossible to make a good strategic decision.

It seems like it's evolving so quickly. I mean, what's going to happen if unemployment benefits are extended through the end of the calendar year, for example, which is something that's being kicked around like, and how will that impact things and for people who are earning more money on unemployment if those benefits are going to continue, perhaps it's a disincentive to get reemployed or who, who knows. It seems quite messy at the moment. And people's relationships with their projects are at stake here. And I think that's why we do walk this very fine line with our projects of giving them agency and not feeling like they're in a very parental relationship. It does get to the core of your practice and pushes against your values and your methodology. We're seeing it too, we're snipping every sentence of every communication going out to the best we can to maintain the feeling that we want with our projects and that we think gets the most out of our projects in terms of an equity, a really high functioning partnership.

Speaker: So I know we're about to run out of time, but I just want to make the reiterate that this is a business program primarily and the SBA is a business regulator and the Safe Harbor for the 2 million below was a little bit, in a sense, a little bit patronizing in the nonprofit sector. Because it's a saying, if you're only borrowing 2 million for payroll over an eight week period, you're not worth our time. And but that's helpful because it signals that we are not going to be targets in this whole sector is not going to be targets in the end because they're looking at organizations that were borrowing, tens of millions of dollars over an eight week period. So it's a very different market from what we're used to and we're just not going to rise to the level of getting very much attention. They don't have the resources to pursue these highly granular questions for what they consider to be little amounts of money. And they basically sent 2 million is just, it's trivial. It's not worth our time. So even 10 million is going to be small by their standards. And so I just think the nonprofit sector is largely going to get a pass in terms of a high degree of scrutiny, which doesn't mean -- you exercise good faith, you do the best you can to honestly answer the questions and take a position you can defend. There is also scrutiny among the public. There will be at some point, enterprising investigative journalists that figure out everybody who got every dollar and they're going to look in communities and nonprofit journalists are going to do it too. And they're going to look at who got money and how much money did they already have and how does that look? And so you have to think about the PR side too. And I don't think that's trivial. But in the end, there's not going to be much legal jeopardy for anybody in the nonprofit sector because the whole system is not designed to do that.

Speaker: We have run out of time in the next week. Andrew, hopefully we'll be releasing a survey for folks so that we can get, collect a little bit of info.

Speaker: There was a link in the last email. I'll put one in the next one too. We've had about 10 people so far. And so we'll figure out a way to share that out with just the group that shares their information.

Speaker: Okay. And on behalf of the folks who participated in this Tuesday morning conversation, Eric, thank you so much. Really interesting food for thought and we invite you back at any time. If your thinking on this evolves, we'd love to hear it. We're all nitty gritty doers here who want to get it right. Act in good faith, provide our partner projects with the support, guidance and encouragement that we can in an incredibly difficult time. So all of this I think is really helpful. Thanks everyone for showing up once again, we'll see you next Tuesday for episode nine. As always, please do reach out to Andrew or myself with suggestions for topics. If you would like to lead a conversation here, we would love to have you do that. Reach out to me. We'll discuss what that is and when it makes sense to do it. So thank you very much. Have a wonderful week of everyone. Enjoy the weather and stay safe. Thanks very much. Thank you, Eric. Thanks everybody.