



KYR Moving Forward

April 10, 2020

As of 4/16/20, funding for the PPP Loan program and EIDL program was exhausted. While some lenders may continue to accept applications for the PPP program, they will not be processed until Congress appropriates more funding for the program. The SBA is no longer accepting new applications for EIDL. If you applied for the program before the application period closed, the SBA is processing those applications on a first-come, first-served basis. NAR is advocating for Congress to quickly act to appropriate more funding for the programs.

Q: If you begin drawing unemployment benefits and then collect a commission check, for example \$6,000, I believe the rules require you to report that as income. How does that affect any unemployment benefits received to the date of that commission check and future benefits of any further unemployment compensation? Do past amounts have to be repaid and future benefits are cancelled?

A: If you are receiving unemployment benefits, income received in the form of commission or other payment has to be reported weekly to your state labor or employment agency. Any income reported should not impact prior benefits, and the benefits do not have to be repaid. Income reported may impact future benefits as calculated by your state agency.

Q: When an Independent Contractor applies, their Broker receives a form to complete that is not conducive to Independent Contractors. Can the Broker write on the bottom of the form that the individual is and IC and that they are not contesting the form? Is this acceptable?

A: Generally, under the Pandemic Unemployment Assistance (PUA) program Brokers are not required to verify employment for independent contractors. If this does occur, then it is likely that the Broker should check with the state unemployment office on how to respond and should inform the state that the individual is an independent contractor. The state unemployment office is the best resource to obtain guidance on this.

Q: If you have not paid unemployment tax can you receive unemployment?

A: Yes, individuals who have not paid prior unemployment tax would be eligible to receive benefits under the Pandemic Unemployment Assistance (PUA) program. This is not a traditional unemployment insurance benefits program, and so benefits are available for individuals who have not paid unemployment taxes.

Q: Is our unemployment based on 2019 1099s?

A: Under the Pandemic Unemployment Assistance (PUA) program, unemployment compensation benefits for independent contractors are based upon an individual's most recent tax return. For independent contractors, it would be based upon 2019 1099s. States look at an individual's net income for self-employment services provided to assist them in determining the weekly benefit amount of unemployment that an individual would be entitled to.

Q: Can an individual agent file for unemployment?

A: Individuals, including self-employed and independent contractors who are fully or partially unemployed as a direct result of the COVID-19 public health emergency are eligible for pandemic unemployment assistance.

Q: As a stand-alone agent with no employees, what are my options for assistance?

A: Independent contractors are eligible for pandemic unemployment assistance (PUA). Additionally, independent contractors can apply for SBA loans through the Paycheck Protection Program (PPP) and Economic Injury Disaster Loan (EIDL) program. Each program has its own set of requirements and criteria, and your unique situation will determine which program, or combination, is the best fit.

Q: If we apply for unemployment, do we use our own LLC or the actual Brokerage that we have worked under?

A: An independent contractor applying for pandemic unemployment assistance should apply as an individual. The type of business entity that an individual operates his or her business under does not matter for purposes of unemployment. An individual who operates his or her business through an LLC or other corporation would still be eligible to apply and receive unemployment.

As an independent contractor, an individual should not list a brokerage that he or she has worked under as an employer for purposes of unemployment compensation.

Q: How long from last closing before you can apply?

A: Each state labor or employment agency participating in the pandemic unemployment assistance (PUA) program will have its own system for applying, verifying, and accepting unemployment compensation claims with varied eligibility details.

Q: How about agents working part time - but market is very slow and so income is diminished. Especially a few months out since funnels are not filling NOW?

A: Individuals, including self-employed and independent contractors who are fully or partially unemployed as a direct result of the COVID-19 public health emergency are eligible for pandemic unemployment assistance.

Q: Can I file for unemployment benefits as a real estate agent? I have been staying at home and not been active due to not wanting to be in public.

A: The PUA program is a temporary program that provides assistance to individuals, including self-employed and independent contractors, who are fully or partially unemployed as a direct result of the COVID-19 public health emergency.

Q: My Broker received my Unemployment Claim. She was unsure what to do with the paperwork. How should my Broker handle my claim?

A: Generally, brokers are not required to verify employment for independent contractors. However, brokers are asked to verify employment for employees only. Brokers should check with the state unemployment office to understand how best to respond, and where possible, brokers should explain that independent contractors are not their employees.

Q: When a 1099 is issued that implies a self-employed person, the Broker is not considered an employer but only a conduit for the licensees licensed functions, correct?

A: If you're an independent contractor or self-employed, generally your broker should not be listed as your employer for purposes of unemployment benefits. It is best to check with the state unemployment office to determine how to properly apply and complete required unemployment applications to receive benefits.

Q: Our agents are asking if they can file for unemployment and still have open listings. Would they file and then just report income if or when they close?

A: Yes, individuals, including self-employed and independent contractors who are fully or partially unemployed as a direct result of the COVID-19 public health emergency are eligible for pandemic unemployment assistance. It is best to check with the state unemployment office to determine how to properly apply and complete required unemployment applications to receive benefits.

Q: What exactly do they need to use as verification of their job or employer name? Just their most recent 1099? What about if they don't have a 1099 if they just started in 2020?

A: If you're an independent contractor then the state unemployment office will verify your income using your most recent tax return and will likely ask that you provide documentation regarding income from all self-employment services that you've provided. If you just started working as an independent contractor in 2020, you may be eligible for some unemployment benefits but at this time it is not clear what additional documentation you may need to provide. Additionally, it is unclear whether the state unemployment office will ask you to provide information of former employers to make a determination regarding your eligibility to receive unemployment benefits.

Q: In applying, does "employer" mean "broker." Or as independent contractor, do we simply put our name? And, related to this, is "date of employment" the date we started selling real estate? The date we were licensed? Or the date our current broker started holding our license? As you know, it is not infrequent for agents to change brokers, and, for example, although I have been selling real estate since 2000, I have been with my current broker since January 2019.

A: If you are an independent contractor, then you should not list a broker as your employer. It is best to check with the state unemployment office to determine how to properly apply and complete required unemployment applications to receive benefits.

Q: Have you started advocating/lobbying for delay or reduction of estimated tax payments?

A: Aside from the previously extended April 15 estimated tax payment deadline, a recent IRS notice also extends relief to estimated tax payments due on June 15, 2020. This means that any individual or corporation that has a quarterly estimated tax payment due on or after April 1, 2020, and before July 15, 2020, can wait until July 15 to make that penalty-free payment.

Q: I heard that included in the CARES package is a replacement for 2 1/2 months of commissions for 1099 workers rather than utilizing unemployment. Is this correct?

A: Independent contractors can get an amount equal to an 8-week portion of their average 2019 net earnings (based off IRS Form 1040 Schedule C and 1099-MISC) forgiven via the CARES Act SBA 7(a) Paycheck Protection Program. Independent contractors (and employees of small businesses who are getting paid by PPP loans) can still apply for PUA, but they may not qualify during that 8-week period the loan covers.

Q: Can you elaborate on "No in person showings?"

A: NAR strongly urges members to use virtual showings and to limit in-person activity in all other respects to the greatest extent possible, even where real estate is deemed an “essential service.” Adherence to applicable state and local executive orders is a minimum requirement, and in some instances, may even preclude open houses, in-person showings and limit the number of individuals permitted at a showing. Regardless, REALTORS have the special responsibility and mandate to take all necessary health and safety precautions, and should lead by example by conducting their services in a responsible manner, which includes leveraging virtual technology solutions and avoiding in-person contact to the greatest extent possible in order to prevent the continued spread of COVID-19 in their communities.

Q: Vincent just said no in person showings and that's the first time I have heard that. I believe there are still in person showings with agents taking precautions. So are agents not supposed to be showing in Kentucky?

A: NAR strongly urges members to use virtual showings and to limit in-person activity in all other respects to the greatest extent possible, even where real estate is deemed an “essential service.” Adherence to applicable state and local executive orders is a minimum requirement, and in some instances, may even preclude open houses, in-person showings and limit the number of individuals permitted at a showing.

Q: Most Realtors are not set up as an LLC, S-Corp, etc., and do not have business checking accounts. Many banks are saying that those Realtors do not qualify for the PPP as a result. Is there a solution on the horizon?

A: Due to the high demand for PPP loans, many banks are choosing to limit applications to existing customers – or, further, to customers with business accounts – in order to ease the administrative burden of processing applications from new clients. This is not a feature of the law or the guidance from the SBA/Treasury, but the banks are given the freedom to make that determination. The Administration is working with the Federal Reserve to try to make the loan program more attractive to banks so they open their application process up to new clients, and we hope that with new funding these restrictions will be eased.

Q: Are we going to hear about unemployment specifically for realtor associates? Is someone going to explain this process specifically? Obviously, we are theoretically still working but extremely slow.

A: Individuals, including self-employed and independent contractors who are fully or partially unemployed as a direct result of the COVID-19 public health emergency are eligible for pandemic unemployment assistance. Under the Pandemic Unemployment Assistance (PUA) program, unemployment compensation benefits for independent contractors are based upon an individual’s most recent tax return. For independent contractors, it would be based upon 2019 1099s.

Unemployment benefits are administered by the state. States look at an individual’s net income for self-employment services provided to assist them in determining the weekly benefit amount of unemployment that an individual would be entitled to. It is best to check with your state unemployment office regarding your application.

Q: Are we needing to list our brokerage as an employer if applying for unemployment Insurance? Also, many of the questions do not apply to 1099 Realtors but cannot complete application without filling in the information. How should we be handling this?

A: Many states are working to develop new forms and systems to begin to accept applications from independent contractors. It is best to check with your state unemployment office regarding how you should specifically answer questions. Generally, if you're an independent contractor, you should not list your brokerage as your employer.

Q: I was told that Agents that are independent contractors could only apply for PPP if they filed taxes as a sole proprietor or were an LLC. Also, they had to have business checking accounts. Please advise!

A: In order for an independent contractor to apply for a PPP, they must use their 2019 Form 1040 Schedule C. 2018 will not be accepted. Due to the high demand for PPP loans, many banks are choosing to limit applications to existing customers – or, further, to customers with business accounts – in order to ease the administrative burden of processing applications from new clients. This is not a feature of the law or the guidance from the SBA/Treasury, but the banks are given the freedom to make that determination.

Q: How do we find a SBA loan lender? Do you have to have a SBA lender or can you get the loan without a lender?

A: SBA 7(a) PPP Loans are disbursed by SBA-approved lenders. Due to the circumstances of the COVID-19 crisis, the Administration has given the Treasury and the SBA the ability to grant temporary “SBA-lender status” to lenders that do not currently participate in the program, in order to process and disburse more loans in a short period of time. The SBA does not itself issue the loans, but guarantees them to the lender.

You can call your bank or search on SBA.gov to find SBA-approved lenders in your area. In addition, you can reach out to a Small Business Development Center or a Women’s Business Center and they will provide free assistance and guide you to lenders.

Q: Can the PPP be used for Realtor office fees, dues, insurance, etc., or is it only to be used for the four categories mentioned?

A: The PPP loans can be used for payroll costs, rents, mortgage interest, and utilities.

Q: Can you get a Disaster Relief loan in Kentucky?

A: The SBA EIDL program is designed to assist those experiencing economic injury due to a disaster. These loans are available in every state.

Q: Under EIDL, if you are an independent contractor agent, can you use the \$10,000 EIDL grant funds to pay yourself based on last year's 1099 income similar to what you mentioned with PPP?

A: EIDLs are intended to cover working capital costs, which includes payroll, rent, mortgage, and debts incurred prior to Feb. 15, 2020. However, due to high demand the advance grants are now based on number of employees - \$1,000/employee, capped at \$10,000 – so if you are an independent contractor you will only be eligible for \$1,000 in those funds.

Q: If the licensee has rental property with income does that make them ineligible for unemployment benefits

A: No, a licensee who receives income from a rental property is not necessarily ineligible to receive unemployment benefits. The state may require the individual report income earned or otherwise received and the individual’s unemployment benefit amount may be offset by that other income amount.

Q: I've been trying to apply for unemployment but can't get through. With that said, will you get backpay for the weeks prior when you are finally able to submit a claim?

A: Yes, you can receive backpay benefits for weeks of unemployment that you have been unable or unavailable to work due to the COVID-19 public health emergency. You'll be able to receive benefits for weeks you've been unemployed from January 27, 2020 - December 31, 2020 as a result of the pandemic.

Q: If I am receiving unemployment from my actual employer would I be eligible for other benefits since I did not file unemployment as a 1099?

A: If you're receiving traditional unemployment benefits, then you would not be eligible for the pandemic unemployment assistance program. However, if you're receiving traditional unemployment benefits, then you would be eligible under the CARES Act to receive an additional \$600 per month until July 31, 2020. The additional \$600 is federal funding that has been provided by the federal government to supplement unemployment benefits already being received by individuals.

Q: When is kcc.ky.gov going to get past "The server you are trying to access is either busy or experiencing difficulties? Please close the Web browser, open a new browser window, and try logging in again." this is the standard for the past week.

A: Many states are working to develop new forms and systems to begin to accept applications from independent contractors. It is best to continue checking with your state unemployment office regarding your application.

Q: How long do we have to apply?

A: The Pandemic Unemployment Assistance (PUA) program provides up to 39 weeks of benefits. However, individuals should begin applying for benefits as soon as your state permits independent contractors to apply under this program. It is best to check with the state unemployment office to find out if you're able to apply through the state for these benefits now. Many states are still working to implement the PUA program, including creating new forms and systems for this program.

Q: Who do we call or contact if we are denied for unemployment benefits?

A: Unemployment benefits are administered by the state. It is best to check with your state unemployment office regarding your application.