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Preparing for an SBA PPP Audit: Answers to Frequently Asked Questions on the Paycheck Protection Program (PPP) Loan Forgiveness Application

This is part of our “Preparing for an SBA PPP Audit Series,” which is aimed at providing informed and real-time guidance on how to comply with the PPP and prepare for an audit by the SBA. It examines common questions from borrowers relating to the necessity certification, eligibility, calculation of the loan amount, use of the PPP loan proceeds and obtaining loan forgiveness. Each article will provide you with a checklist of what you should consider including in your loan file.

Additional articles:

[*Preparing for an SBA Audit: What are the Risks?*](#)

[*Preparing for an SBA Audit: Eligibility and Loan Amount Compliance Issues*](#)

[*Preparing for an SBA PPP Audit: The Necessity Certification*](#)

For Paycheck Protection Program (PPP) loans disbursed in the weeks after the April 3 launch and nearing the end of their eight-week covered periods, the U.S. Department of Treasury (USDT) and the Small Business Administration (SBA) seem to be focused on dispensing information on the issues related to loan forgiveness. The SBA published the PPP Loan Forgiveness Application and instructions on May 15, 2020 and related Interim Final Rules on May 22, 2020. As with other SBA guidance, the details provided in the application, the instructions, and the Interim Final Rules do not necessarily give way to an easy-to-follow forgiveness calculation. Do not fear. We are answering some of the most common questions on the PPP Loan Forgiveness Application section-by-section. Our answers are based on the application and instructions, the CARES

Act, the Interim Final Rules, and the FAQs published by the SBA as of May 25, 2020. The Interim Final Rule, RIN 3245-AH46, dated May 22, 2020 will be referred to herein as the “Loan Forgiveness Interim Final Rule.”

Introductory Questions (page 3 of the PPP Loan Forgiveness Application)

- **Why are they asking for the number of employees at the time of the loan application and at the time of the forgiveness application?**

The PPP Loan Forgiveness Application says to insert the total number of employees at the time of the borrower’s PPP loan application and at the time the borrower is applying for loan forgiveness. The number of employees does not seem relevant to loan forgiveness since the reduction in loan forgiveness is based on the number of full-time equivalent employees during the 8-week covered period compared to some other time period (February 15, 2019 – June 30, 2019 or January 1 – February 29, 2020 (or for seasonal employers either of the preceding periods or a consecutive twelve-week period between May 1, 2019 and September 15, 2019)). When borrowers submitted their PPP loan applications, there was confusion as to whether borrowers should list the average number of employees used to determine eligibility, the number of full-time-equivalent employees, or the number of employees employed by the applicant at the time of the application. Borrowers will want to be consistent here and follow the calculation method they used when answering the question at the time of the PPP loan application.

- **Why are they asking for the EIDL advance amount and the EIDL application number?**

The SBA will reduce the amount of your PPP loan forgiveness by the amount of any EIDL grant (limited to \$10,000) received. The SBA will deduct EIDL advance amounts from the forgiveness amount remitted to your lender. Additionally, the CARES Act requires any PPP borrower with an EIDL loan originated between January 31, 2020 and April 3, 2020, that was used to pay payroll costs, to refinance

that EIDL loan with the PPP loan. Providing the EIDL application number enables the SBA to verify that any applicants receiving an EIDL grant or loan have fully complied with requirements of the PPP and the CARES Act. You should remember that the SBA already has a record of businesses receiving EIDL grants so being accurate here is important to avoid jeopardizing your PPP loan forgiveness.

- **The application provides for an Alternative Payroll Covered Period. Does this mean borrowers have more time to spend the loan proceeds that can ultimately be forgiven?**

No. The time period for borrowers to use loan proceeds on eligible forgivable expenses is still 8 weeks. The application states that the “Covered Period” is 8 weeks (56 days) beginning on the first date that the borrower received PPP loan proceeds from its lender. The new “Alternative Payroll Covered Period” allows borrowers to line up the 8-week covered period with the start of the first payroll cycle in the 8-week period. Borrowers with a biweekly (or more frequent) payroll schedule may elect to calculate eligible payroll costs using the 8-week period that begins on the first day of their first pay period following the date of initial disbursement of the PPP loan. If borrowers choose to use the Alternative Payroll Covered Period, it applies only to the calculation of payroll costs. It does not apply to the calculation of eligible nonpayroll costs (e.g. rent, mortgage interest, and utilities). The typical 8-week period starting on the date the borrower received PPP loan proceeds still applies to the calculation of eligible nonpayroll costs. As we go through the questions, we will refer to the 8-week Covered Period and the 8-week Alternative Payroll Covered Period, as applicable, as the “covered period” or the “8-week period.”

Additional flexibility concerning the timing of actual payroll dates is discussed in Questions 6 and 7 below.

- **My business received a PPP loan in the amount of \$1 million. The loan my business received plus PPP loans received by affiliate businesses exceed \$2 million. However, my business falls under a waiver to the affiliation rules. Do I need to check the box that the borrower, together with its affiliates, received PPP loans with an**

original principal amount in excess of \$2 million?

No. Because the affiliation rules do not apply and the loan to the borrower is less than \$2 million, the borrower does not need to check this box. This means that the borrower will not be in the group automatically audited by the SBA based on the SBA's recent guidance that it will audit loan forgiveness requests for loans over \$2 million, when combined with loans to the borrower's affiliates.

- **I am checking the box that the borrower, together with its affiliates, received PPP loans with an original principal amount in excess of \$2 million. What does this mean for my business?**

Your file will be audited by the SBA to determine if the borrower was able to make the "necessity" certification^[1] in good faith, if the other certifications were correct, and whether the other program requirements were satisfied, including those involving the forgiveness application. In addition to reading our articles in the "Preparing for an SBA PPP Audit Series," we recommend working with legal counsel to understand the potential risks and how to prepare for an audit.

Forgiveness Amount Calculation (page 3 of the PPP Loan Forgiveness Application)

Payroll Costs

- **I received loan proceeds on April 10, 2020 and used it to pay payroll costs for the 2-week payroll period that ended April 10, 2020. Will these payroll costs be forgiven?**

Yes. Payroll costs paid or incurred during the 8-week period are eligible for forgiveness. While the payroll costs were not incurred during the 8-week period, they were paid so they should be eligible for forgiveness. The Loan Forgiveness Interim Final Rule clearly states that costs paid or incurred are eligible. Payroll costs are considered incurred on the day that the employee's pay is earned. For employees who are not performing work but are still on the borrower's payroll, payroll costs are incurred based on the schedule

established by the borrower (typically, each day that the employee would have performed work). Payroll costs are considered paid on the day that paychecks are distributed, or on the day the borrower originates an ACH credit transaction. Borrowers should count payroll costs that were both paid and incurred only once. We recommend that you focus on making certain you are only identifying 8 weeks of pay for forgiveness since there is now flexibility in terms of when the payroll is actually paid.

- **What about payroll costs that are incurred during the 8-week period but not paid?**

Payroll costs incurred but not paid during the borrower's last pay period of the covered period are eligible for forgiveness if paid on or before the next regular payroll date. For example, if the covered period ends on June 12, 2020 but the payroll date for that week is on June 19, 2020, these payroll costs are eligible for forgiveness. Otherwise, payroll costs must be paid during the covered period. This new flexibility should eliminate the need to have short or special payroll runs in order to bring the "paid" date within the 8-week period.

- **Does the exclusion of employee compensation in excess of an annual salary of \$100,000 apply to all employee benefits?**

No. The exclusion only applies to cash compensation and not to benefits such as employer retirement contributions, health care coverage, or state and local taxes assessed on employee compensation. There does not seem to be a cap on the amount that can be paid by the employer for health benefits or retirement.

- **Do employer contributions to retirement plans need to be paid during the covered period? How does this affect year-end contributions?**

Employer contributions to retirement benefits need to be either incurred or paid during the covered period. There is no definitive guidance as to what constitutes "retirement benefits" for purposes of payroll costs. Employer matching, non-elective, and profit-

sharing contributions made on a per-pay period basis will likely count if an employer continues to make those contributions to a 401(k) plan during the applicable period. Employer match, non-elective, and profit-sharing contributions that are made on a year-end basis but accrued for each pay period may also be includable given the approach of the Forgiveness Application and Loan Forgiveness Interim Final Rule with respect to payroll costs incurred and payroll costs paid. If the terms of the plan permit, it is still advisable to accelerate contributions that would otherwise be made at year-end, or outside of the covered period, for purposes of certainty. Employer contributions to a defined benefit plan are also currently expected to count as payroll costs as they would be retirement payments made “with respect to an employee.”

- **Are payments for sick leave eligible payroll costs?**

Yes. Loan proceeds may cover payroll costs, including employee vacation, parental, family, medical, and sick leave. However, the employer may not use the proceeds to cover qualified sick and family leave wages for which a credit is allowed under the Families First Coronavirus Response Act (Sec. 7001 & 7003).

- **Should borrowers include payments made to an independent contractor or sole proprietor in the calculation of eligible payroll costs?**

Where the borrower makes payments to independent contractors (but the borrower is not themselves the independent contractor), the answer is “No.” Independent contractors have the ability to apply for a PPP loan on their own, so they do not count for purposes of another borrower’s PPP loan forgiveness.

Where the borrower is the independent contractor, or a sole proprietor who is paid as an independent contractor, these individuals would include an amount factored from the net profit reported on their 2019 Schedule C, in lieu of the specific payments they received from their customers, in addition to payroll costs they may have if they also employ other individuals. Applicants should consult our SBA Team and lender with questions on determining this amount as well as any other requirements specific to

independent contractors and sole proprietors.

- **Do bonuses or increases in compensation count as payroll costs?**

Yes. The Loan Forgiveness Interim Final Rule states that an employee's hazard pay and bonuses are eligible for loan forgiveness so long as the employee's total compensation does not exceed \$100,000 on an annualized basis because they constitute a supplement to salary or wages, and are thus a similar form of compensation. However, we anticipate at a minimum there will be a subjective expectation concerning reasonableness or appropriateness of the bonuses or increases in compensation. There seems to be an understanding that with respect to continuing ongoing operations in the current environment, hazard pay and bonuses may be necessary to encourage employees to return to work if they have concerns about contracting the coronavirus or would prefer to receive the amplified unemployment benefits that are currently available.

- **Do payments to sole proprietors, self-employed individuals, or general partners count as payroll costs?**

Yes. Payments to these individuals are permitted uses and can be included in the forgiveness amount as "Compensation to Owners" using PPP Schedule A. Payments to these individuals are identified separately from payroll costs to other employees on PPP Schedule A and should not also be included in the Schedule A Worksheet that is used to list employees. Amounts that are eligible for forgiveness for sole proprietors and self-employed individuals are limited to the 8-week equivalent of the amount reported as net profit on the individual's 2019 Form 1040, Schedule C (subject to the \$100,000 annual limit on compensation). For general partners, it appears that actual payments made may be used up to a maximum of \$15,385 over the course of the 8-week period. Please recall that compensation to owners of an LLC may be included here if the LLC has elected to be taxed as a sole proprietorship or partnership.

PLUS Business Mortgage Interest Payments

- **Do nonpayroll costs have to be both incurred and paid during the covered period?**

Similar to payroll costs, the SBA stated in the Loan Forgiveness Interim Final Rule that eligible nonpayroll costs may be paid during the covered period or incurred during the covered period and paid on or before the next regular billing date, even if the billing date is after the covered period. The example provided in the Loan Forgiveness Interim Final Rule provides a very clear indication of how this methodology may increase the forgiveness amount previously anticipated. Per the Loan Forgiveness Interim Final Rule example:

A borrower's covered period begins on June 1 and ends on July 26. The borrower pays its May and June electricity bill during the covered period and pays its July electricity bill on August 10, which is the next regular billing date. The borrower may seek loan forgiveness for its May and June electricity bills, because they were paid during the covered period. In addition, the borrower may seek loan forgiveness for the portion of its July electricity bill through July 26 (the end of the covered period), because it was incurred during the covered period and paid on the next regular billing date.

The above example results in over 12-weeks of utility costs being forgiven. You must count nonpayroll costs that were both paid and incurred during the covered period only once.

- **My business is a restaurant that leases real estate. I owe interest on debt that is secured by personal property as evidenced by a security agreement. If I pay the interest during the covered period can this interest be included in my calculation of eligible nonpayroll costs?**

To be forgivable, the interest must be paid on a "covered mortgage obligation." A "covered mortgage obligation" is defined in the CARES Act as any indebtedness or debt instrument incurred in the ordinary course of business that (A) is a liability of the borrower; (B) is a mortgage on real or personal property; and (C) was incurred before February 15, 2020. A mortgage filed in the real estate records may encumber both real property and personal property. A mortgage typically does not refer to a security agreement that

secures only personal property. The CARES Act also includes interest on any other debt obligations (other than mortgage indebtedness) as a permissible use of the loan proceeds but excludes this interest from the list of forgivable expenses. For these reasons, it originally seemed unlikely that a mortgage obligation would include debt secured only by personal property.

Line 2 of the PPP Loan Forgiveness Application requests that borrowers “[e]nter the amount of business mortgage interest payments during the Covered Period for any business mortgage obligations on real or personal property.” For purposes of rent payments, the CARES Act does not distinguish between real property or personal property (see Question 19 below) and the language of the PPP Loan Forgiveness Application regarding this category is similar to that of Line 2.

There is also an important distinction raised in the Interim Final Rule originally issued on April 14, 2020 that encourages the inclusion of mortgage debt on personal property. This Interim Final Rule specifically references “the interest on an auto loan for a vehicle you use to perform your business” as an example of a “mortgage interest payment” so long as the borrower claimed (or was entitled to claim) a deduction for the expense on their 2019 Schedule C. While not fitting within the generally accepted description of a mortgage obligation described above, interest on loans on personal property may be included in the forgiveness amount for these types of borrowers based on the language of the Interim Final Rule.

Most commentators are relying on the specific language of the CARES Act and the PPP Loan Forgiveness Application and including interest on debt secured by personal property (without distinguishing the traditional meaning of a “mortgage debt”). Until the SBA indicates otherwise, this seems to be a reasonable position.

- **Will payments of interest on non-mortgage debt be forgiven?**

The SBA’s PPP Loan Forgiveness Application includes only “business mortgage interest payments during the Covered Period” similar to the CARES Act. No other interest payments on debt are included as

forgivable expenses. Accordingly, while the payment of interest on non-mortgage debt is a permissible use of the PPP loan proceeds under the CARES Act, this type of expense will not be forgiven.

- **Will advance payments of interest on mortgage obligations be eligible for forgiveness?**

No. Advance payments of interest on a covered mortgage obligation are not eligible for loan forgiveness because this would be considered a prepayment. Also, the principal on mortgage obligations is not eligible for forgiveness under any circumstances.

- **Do payments of interest on debt to an affiliated party count as an eligible nonpayroll cost?**

While interest is not forgivable if it is interest being paid on non-mortgage debt, the CARES Act and prior SBA guidance make no distinction between paying interest on debt to an affiliate and a non-affiliate. We do advise caution if these credit arrangements are on terms that exceed relevant market terms.

PLUS Business Rent or Lease Payments

- **What type of lease payments are considered to be eligible nonpayroll costs?**

The CARES Act does not distinguish between real estate leases and personal property leases when discussing forgivable expenses. The term “covered rent obligation” under the CARES Act refers to rent obligated under a leasing agreement in force before February 15, 2020. The PPP Loan Forgiveness Application makes it clear that business rent or lease payments for real or personal property during the covered period are eligible so long as the lease agreement was in effect before February 15, 2020. Therefore, rent paid on real estate leases, equipment leases, vehicle leases, and other personal property leases during the covered period will likely be forgiven (so long as not more than 25% of the forgiveness amount was used on nonpayroll costs).

- **Do rent payments to an affiliated party count as an eligible nonpayroll cost?**

The application, the CARES Act, and the SBA guidance make no distinction between paying rent to an affiliate landlord and a non-affiliate landlord as long as the lease was in place prior to February 15, 2020. We do advise caution if these lease arrangements are on terms that exceed relevant market terms.

PLUS Business Utility Payments

- **What are transportation utility costs?**

The CARES Act provides that utility payments for “a service for the distribution of electricity, gas, water, transportation, telephone, or internet access for which service began before February 15, 2020” may be forgiven. The reference to “transportation” seems out of place and there is no guidance for why this was included in the “covered utility payment” definition in the CARES Act. Some commentators are interpreting this to include costs for public transportation, gas, or mileage costs. Still, others question whether it includes freight costs. The SBA has yet to offer any guidance on the meaning of “transportation” and we hope that the SBA will clear up the confusion before companies start submitting forgiveness applications.

Again, there appears to be an important distinction for borrowers who are sole proprietors or self-employed. The Interim Final Rule originally issued on April 14, 2020 specifically references “gas you use driving your business vehicle” as an example of a “business utility payment” so long as the borrower claimed (or was entitled to claim) a deduction for the expense on their 2019 Schedule C. While we indicated in Question 15 that we were awaiting additional guidance from the SBA on a similar inclusion for sole proprietors and self-employed concerning “mortgage debt interest,” the ability to include gas and mileage costs (for non-sole proprietors/self-employed) seems more straightforward given the absence of a specific definition in the CARES Act or a general understanding of “transportation” as a utility payment that must be countered (as compared to the definition and general understanding of what constitutes a “mortgage debt obligation”).

LESS Total Salary/Hourly Wage Reduction

- **How do the Salary/Hourly Wage Reduction Safe Harbor and the FTE Reduction Safe Harbor work when June 30, 2020, the safe harbor date for returning FTE and any salary/wage reduction, is during a borrower's covered period?**

At this point, there is little recognition of the administrative disconnect between the set date of June 30, 2020 and the end of a borrower's 8-week period, which for some borrowers will be after June 30, 2020. There are discussions in Congress and at the SBA about extensions of either or both the 8-week period and the June 30 date just in terms of length. We are hopeful the disconnect will be remedied in any program changes that are ultimately made. Until then, we recommend that borrowers simply use the June 30 date for purposes of returning FTE or eliminating any salary or wage reductions (even with the administrative disconnect).

- **How do I determine the Salary/Hourly Wage Reduction and whether it will apply to reduce the forgiveness amount?**

First, the Loan Forgiveness Interim Final Rule and the PPP Loan Forgiveness Application clarify that this reduction is with respect to the rate of pay and not with respect to a reduction in the total pay an individual employee may receive as a result of reduced hours (the impact of reduced hours is captured in the FTE Reduction Quotient described below). The Loan Forgiveness Interim Final Rule and the application also clarify that the Salary/Hourly Wage Reduction Safe Harbor only relates to the rate of pay as well. Borrowers are not expected to make up the missing pay to the affected employee to take advantage of the safe harbor; it is only a matter of returning the rate of pay to the prior rate. Please note that the actual reduction to the forgiveness amount continues to be the aggregate reduction in pay across all hours worked by the employees. These clarifications resolve many differing opinions that were published by various commentators over the last several weeks.

The Salary/Hourly Wage Reduction should be done using the PPP Schedule A Worksheet attached to the PPP Loan Forgiveness Application on a "by employee" basis. To determine if there is a reduction that must be applied, first determine if the average rate

of pay of any individual employee was reduced more than 25% during the covered period as compared to the average salary or wage of the individual during the period of January 1, 2020 through March 31, 2020. If there was no reduction, the reduction was less than 25%, or the wages were increased, the analysis stops, and no reduction will apply, with respect to that employee.

If there was a reduction greater than 25%, the next step is to determine whether the Salary/Hourly Wage Reduction Safe Harbor will apply, again on a “by employee” basis. The steps to accomplish this using the PPP Loan Forgiveness Application appear somewhat complicated. Basically, if you (by June 30, 2020) return the salary and wage to the February 15, 2020 level the safe harbor is met, and no reduction will apply with respect to that employee. If the safe harbor is not satisfied, the forgiveness amount will be reduced by the amount that the reduction exceeds 25% of the prior pay.

MULTIPLIED BY FTE Reduction Quotient

- **How should I calculate FTEs?**

The SBA has defined “full-time equivalent employee” to mean an employee who works 40 hours or more, on average, each week.^[2] Therefore, for each employee, borrowers enter the average number of hours paid per week, divide by 40, and round the total to the nearest tenth. The maximum for each employee is capped at 1.0. A simplified method that assigns a 1.0 for employees who work 40 hours or more per week and 0.5 for employees who work fewer hours may be used by borrowers. Borrowers may select only one of these two methods and must apply that method consistently to all of their part-time employees in both the reference period and the 8-week covered period (as described in Question #26 below).

- **Will a borrower’s PPP loan forgiveness amount be reduced if the borrower laid off an employee between February 15, 2020 and April 26, 2020, offered to rehire the same employee during the covered period, but the employee declined the offer?**

No. The Loan Forgiveness Interim Final Rule and the PPP Loan Forgiveness Application state that forgiveness will not be reduced for any employee for which the borrower made a good-faith, written offer to rehire the employee during the Covered Period or the Alternative Payroll Covered Period which was rejected by the employee. Employees and employers should be aware that employees who reject offers of re-employment may forfeit their eligibility for continued unemployment compensation.

- **Will a borrower's PPP loan forgiveness amount be reduced if an employee voluntarily resigns, voluntarily requested and received a reduction in hours, or was fired for cause during the covered period?**

No. As with the preceding question, the Loan Forgiveness Interim Final Rule and the PPP Loan Forgiveness Application state that forgiveness will not be reduced for any employees that were fired for cause, voluntarily resigned, or voluntarily requested and received a reduction of their hours.

The PPP Loan Forgiveness Application refers to these scenarios, and the scenario described in the preceding question, as "FTE Reduction Exceptions." The methodology used in Schedule A Worksheet of the application to take advantage of these exceptions is somewhat confusing and we are hoping the SBA provides additional guidance. The Loan Forgiveness Interim Final Rule is clearer in this regard and indicates that these employees may be counted at the same full-time equivalency level before the FTE reduction event.

- **How does a reduction in FTE affect the forgiveness amount?**

The Loan Forgiveness Interim Final Rule and the PPP Loan Forgiveness Application instructions state that the reduction in loan forgiveness resulting from a reduction in FTE levels, if it is not saved under the FTE Reduction Safe Harbor for reductions that are restored by June 30, 2020, will be proportionate to the reduction in FTE. The borrower must divide the average FTE in the forgiveness covered period by the average FTE in the reference period (February 15, 2019 to June 30, 2019 or January 1, 2020 to February

29, 2020). This quotient is then applied to payroll costs (that have already been adjusted for the Salary/Hourly Wage Reduction).

Compare the Modified Total, with the PPP loan amount and the amount that is the Payroll Costs divided by 75%. The smallest amount is the Forgiveness Amount.

We made it to the end of the calculation. You know what's coming next . . .

Representations and Certifications on Behalf of the Borrower (page 4 of the PPP Loan Forgiveness Application)

Similar to the PPP loan application, an authorized representative of the borrower has to make certain certifications. The certifications include a certification that the amount for which forgiveness is requested was used to pay costs that are eligible for forgiveness. If funds are knowingly used for unauthorized purposes, the federal government may pursue recovery of loan amounts or civil or criminal fraud charges.

Documents that Each Borrower must Submit with its PPP Loan Forgiveness Application (page 10 of the PPP Loan Forgiveness Application)

Certain documentation is to be submitted with the actual PPP Loan Forgiveness Application. The second list of documents to be maintained by borrowers but not submitted with the original PPP Loan Forgiveness Application is also included. Borrowers should add the documents listed on page 10 of the PPP Loan Forgiveness Application to the borrower's loan file checklist. The SBA may request additional information for the purposes of evaluating the borrower's eligibility for the PPP loan, the support behind the "necessity" certification, loan forgiveness, and compliance with other components of the PPP. We do not know when the SBA will request the additional information and how long a borrower will have to submit the additional information that is requested. It is very important that borrowers are keeping track of how they are using loan proceeds and making sure the proceeds are being used for permissible expenses under the CARES Act and subsequent SBA

guidance.

All records relating to the borrower's PPP loan, including documentation submitted with the PPP loan application, documentation supporting the borrower's certifications as to the necessity of the loan request and its eligibility for a PPP loan, documentation necessary to support the borrower's PPP Loan Forgiveness Application, and documentation demonstrating the borrower's material compliance with the PPP requirements must be retained by borrowers for a no less than six years after the date the loan is forgiven or repaid in full. Borrowers must permit authorized representatives of the SBA, including representatives of its Office of Inspector General, to access these files upon request.

When does the PPP Loan Forgiveness Application have to be submitted?

While there is no hard date on when a borrower has to submit its PPP Loan Forgiveness Application, a borrower may submit the application to its lender after the end of its 8-week period. Borrowers should submit the PPP Loan Forgiveness Application (SBA Form 3508 or lender equivalent) to their lenders or the lenders servicing their loan. Borrowers should talk with their lenders to see if their lenders are using their own form before completing the application. After the PPP Loan Forgiveness Application is submitted to the lender, the lender will review the application and determine whether the borrower is entitled to loan forgiveness. The lender has 60 days from receipt of a completed application to determine if the borrower is eligible for loan forgiveness. If the lender determines that the borrower is entitled to forgiveness of all or a portion of the amount applied for the lender will request payment from the SBA at the time the lender issues its decision to the SBA. The SBA will, subject to any SBA review of the loan or loan application, remit the appropriate forgiveness amount to the lender, plus any interest accrued through the date of payment, not later than 90 days after the lender issued its decision to the SBA. If only a portion of the loan is forgiven, or if the forgiveness request is denied, any remaining balance due on the loan must be repaid by the borrower on or before the two-year maturity of the loan.

The PPP Loan Forgiveness Application states that businesses will be evaluated “in accordance with the PPP regulations and guidance issued by SBA through the date of this application,” which we expect to mean the date the application is submitted by the borrower. Borrowers will have the right to appeal any adverse determination made by the SBA regarding loan forgiveness. The SBA intends to issue a separate Interim Final Rule describing these procedures. Frost Brown Todd’s Financial Services Industry Team is prepared to assist clients in navigating the loan forgiveness process and any appeal challenging a denial of loan forgiveness.

For more information, please contact [Becky Moore](#), [Shannon Kuhl](#) and [Joe Brammer](#) or any attorney in Frost Brown Todd’s [Financial Services](#) Industry Team.

To provide guidance and support to clients as this global public-health crisis unfolds, Frost Brown Todd has created a [Coronavirus Response Team](#). Our attorneys are on hand to answer your questions and provide guidance on how to proactively prepare for and manage any coronavirus-related threats to your business operations and workforce.

[1] The “necessity” certification refers to the certification made by the borrower in its original application for a Paycheck Protection Program loan that “[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.”

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