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“Last Call for the Paycheck Protection Program (PPP)”

June 18, 2020

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- Applications for the PPP must be made by June 30.
- The Program has been a lifeline to many businesses coping with lost revenue due to COVID-19 and its associated stay-at-home orders.
- Congress passed additional legislation about the Program in the first week of June. The Small Business Administration seems to release new guidance every week.
- Today, representatives from BRAC, IberiaBank, and Taylor Porter will discuss the PPP and its recent changes, and give information on the latest guidance to ensure you not only can access the Program, but you can also take full advantage of its forgiveness terms.

- P.L. 116-136 (H.R. 748), the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”), was signed into law on March 27, 2020.
- The CARES Act was negotiated and enacted quickly, leaving many open questions with respect to the Paycheck Protection Program (“PPP”).
- Since the enactment of the CARES Act, the U.S. Treasury Department and the Small Business Administration (“SBA”) have released PPP regulations and guidance on a regular basis.

II. Regulations and Guidance

- Unless otherwise provided by the CARES Act or applicable regulations, the PPP is subject to the regulations applicable to SBA Section 7(a) business loans.
- The SBA has published 18 Interim Final Rules (IFR) offering guidance regarding how it interprets certain provisions of the PPP. The 19th IFR, which was filed on June 16th and is scheduled to be published on Friday, June 19th, focuses on revisions made from the PPP Flexibility Act (“Flexibility Act”) signed into law on June 5th.
- SBA also maintains a regularly updated list of frequently asked questions, which is posted on the SBA and Treasury websites.

II. Regulations and Guidance

- The various Interim Final Rules discuss topics such as:
 - How to calculate maximum loan amounts;
 - Loan review procedures;
 - Borrower and lender responsibilities;
 - Information for applicants with self-employment income, such as independent contractors and sole proprietors;
 - Rules for loan forgiveness;
 - Rules applicable to seasonal employers;
 - Eligibility criteria, including eligibility for private equity fund portfolio companies; and
 - Treatment of entities with foreign affiliates.

III. PPP Loan Eligibility

- To be eligible for a PPP loan, an applicant must meet any one of these:
 1. Have 500 or fewer employees.
 2. Meet the SBA employee-based size standard for the North American Industry Classification System (“NAICS”) code applicable to its primary industry.
 3. Its primary industry is in NAICS category 72 (accommodations and food service) AND it has no more than 500 employees per physical location.
 4. It meets the size standard (employee-based or receipts-based) established by SBA for the NAICS code applicable to its primary industry, AND it meets the size standard (employee-based or receipts-based) established by SBA for the NAICS code applicable to either its primary industry or the primary industry of itself and its affiliates on a combined basis, whichever standard is higher.
 5. It has \$15 million or less of tangible net worth as of March 27, 2020, and \$5 million or less of average net income after Federal income taxes (excluding carry-over losses) for the last two full fiscal years before the date of application.

III. PPP Loan Eligibility

- Individuals who operate under a sole proprietorship or as an independent contractor are eligible for PPP loans.
- Non-profits that are tax-exempt organizations under section 501(c)(3) of the Internal Revenue Code are eligible. Non-profits under other sections of the Internal Revenue Code are not eligible unless specifically made eligible by statute or by SBA. Other eligible non-profits include veteran's organizations and certain tribal businesses.
- An applicant does not need to demonstrate that it does not have credit available elsewhere to get a PPP loan. However, Question #31 on the SBA's FAQs suggests the availability of alternate sources of liquidity is relevant regarding whether an applicant can certify in good faith that a PPP loan is necessary, as required by the loan application.

- The PPP is subject to the SBA affiliation rules in 13 C.F.R. § 121.301(f).
- The SBA defines “affiliation” as one business controlling or having the power to control another, or when a third party (or parties) controls or has the power to control both businesses.

- SBA applies four specific affiliation rules for purposes of the PPP size tests:
 - 1. Affiliation based on ownership.** A concern is an affiliate of an individual, concern, or entity that owns or has the power to control more than 50% of the concern's voting equity. If no individual, concern, or entity is found to control, SBA will deem the board of directors or president or CEO (or other officers, managing members, or partners who control the management of the concern) to be in control of the concern. SBA will deem a minority shareholder to be in control if that individual or entity has the ability, under the concern's charter, bylaws, or shareholder's agreement, to prevent a quorum or otherwise block action by the board of directors or shareholders.

- SBA applies four specific affiliation rules for purposes of the PPP size tests:
 - 2. Affiliation arising under stock options, convertible securities, and agreements to merge.** For purposes of determining control and affiliation, options, convertible securities, and agreements to merge (including agreements in principle) are considered effective as if exercised or consummated, as the case may be, unless subject to conditions precedent which are incapable of fulfillment, speculative, conjectural, or unenforceable under state or Federal law, or where the probability of the transaction (or exercise of the rights) occurring is shown to be extremely remote. SBA will not give present effect to a person's or entity's ability to divest all or part of its ownership interest to avoid a finding of affiliation.

- SBA applies four specific affiliation rules for purposes of the PPP size tests:

3. Affiliation based on management. Affiliation arises where the CEO or president of an applicant (or other officers, managing members, or partners who control the management of the applicant) also controls the management of one or more other concerns. Affiliation also arises where a single individual, concern, or entity that controls the Board of Directors or management of one concern also controls the Board of Directors or management of one of more other concerns. Affiliation also arises where a single individual, concern or entity controls the management of the applicant concern through a management agreement.

- SBA applies four specific affiliation rules for purposes of the PPP size tests:

4. Affiliation based on identity of interest. Affiliation arises when there is an identity of interest between “close relatives,” as defined in 13 C.F.R. 120.10, with identical or substantially identical business or economic interests (such as where the close relatives operate concerns in the same or similar industry in the same geographic area). Where SBA determines that interests should be aggregated, an individual or firm may rebut that determination with evidence showing that the interests deemed to be one are in fact separate.

- The CARES Act waives the affiliation rules with respect to eligibility of an applicant that is one of the following:
 - A business within NAICS category 72 that has no more than 500 employees.
 - A franchise with a franchise identifier code assigned by the SBA in the SBA Franchise Directory, i.e. car dealers
 - A business that receives financial assistance from a small business investment company licensed by the SBA.

- **Amount** - An applicant may borrow up to 2.5 times its average monthly payroll costs, plus any EIDL to be refinanced with the PPP loan, subject to an overall cap of \$10 million.
- **Interest** - The interest rate on a PPP loan is 1.0% per annum.
- **Maturity** - Loans funded after June 5, 2020 mature **five years** after the date of funding. Loans funded before June 5, 2020 mature **two years** from the date of funding, though the lender and borrower may mutually agree to extend the maturity of those loans to five years.

- **Payment** - No payments are due on a PPP loan (principal or interest) until SBA has paid the lender the amount of the PPP loan to be forgiven. Thereafter, to the extent loans are not forgiven, banks will likely require borrowers to make monthly or quarterly payments of remaining principal and interest until maturity.
 - However, a borrower that does not apply for forgiveness within ten months after the end of the borrower's Covered Period (defined below) must begin making payments of principal and interest after that date.
- **Collateral** - No collateral is required for a PPP loan.

- **Good Faith Certification** - Before submitting a PPP application, a borrower must certify in good faith that the “current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.” In so certifying, the borrower must assess its current business activity and its ability to access other sources of liquidity sufficient to support its ongoing operations in a manner not significantly detrimental to the business.
- **\$2 Million Safe Harbor** - Any borrower that, together with its affiliates, received PPP loans with an original principal amount of less than \$2 million will be deemed to have made the certification concerning the necessity of the loan in good faith.

- **PPP loans may be used for:**
 - Payroll costs;
 - Costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums;
 - Employee salaries, commissions, or similar compensations;
 - Mortgage interest (but not principal payments or prepayments);
 - Interest on debt incurred before February 15, 2020;
 - Rent (including rent under a lease agreement);
 - Utilities;
 - Interest on any other debt obligations that were incurred before the covered period;
 - Refinancing an Economic Injury Disaster Loan (EIDL) made between January 31, 2020, and April 3, 2020.

- **Payroll Costs** broadly consist of the following:
 - Salaries, wages, commissions, and similar compensation (including hazard pay and bonuses), and cash tips or equivalents (based on employer records of past tips or, absent such records, a reasonable, good faith employer estimate of such tips), up to a maximum of \$100,000 per year on an annualized basis per employee.
 - Payments for vacation, parental, family, medical, or sick leave.
 - Allowance for dismissal or separation.
 - Payment required for the provision of group health care benefits, including insurance premiums.
 - Payment of any retirement benefits.
 - Payment of state or local tax assessed on compensation of employees.

VII. Use of PPP Loans

- Borrowers will be required to maintain and provide evidence of their use of PPP loan proceeds, potentially including, for example, IRS payroll tax filings; state income, payroll, and unemployment insurance filings; and cancelled checks.
- **Misuse** - If PPP funds are used for unauthorized purposes, SBA will require the borrower to repay the loan, and the borrower may be subject to additional liability, such as charges for fraud.

VIII. Forgiveness of PPP Loans

- **Covered Period**

- **CARES Act** - Under Section 1106 of the original CARES Act and initial SBA forgiveness guidance, borrowers were required to use PPP funds within an eight-week (56-day) period beginning when the PPP loan was funded (the “Covered Period”).
- **PPP Flexibility Act** – On June 5, 2020, the CARES Act was amended by the Flexibility Act. The Flexibility Act extends the Covered Period to 24 weeks (168 days) rather than eight weeks, except that no Covered Period may extend beyond December 31, 2020. Borrowers that obtained their loans before June 5th, however, may elect to continue using the eight-week (56-day) Covered Period originally prescribed by the CARES Act.
 - On June 16th, the U.S. Department of Treasury filed an IFR providing additional guidance regarding how the Flexibility Act will be interpreted.
 - The SBA also published two new Loan Forgiveness Applications on June 16th to reflect the changes made by the Flexibility Act.

VIII. Forgiveness of PPP Loans

- **Covered Period**

- **Alternative Payroll Covered Period.** Borrowers with bi-weekly or more frequent payrolls are permitted (though not required) to use an alternative period beginning on first pay period after the PPP is funded (the “Alternative Payroll Covered Period”) to spend payroll costs.

Example: If the Borrower is using a 24-week Alternative Payroll Covered Period and received its PPP loan proceeds on Monday April 20, and the first day of its first period following its PPP loan disbursement is Sunday, April 26, the first day of the Alternative Payroll Covered Period is April 26 and the last day is Saturday, October 10th.

VIII. Forgiveness of PPP Loans

- **Costs Eligible for Forgiveness - Payroll**
 - **Eligible payroll costs.** Borrowers are eligible to receive forgiveness for payroll costs paid and incurred the 24-week (168-day) or 8-week (56-day) Covered Period (or Alternative Payroll Covered Period).
 - For each individual employee, the total amount of cash compensation eligible for forgiveness may not exceed an annual salary of \$100,000, as prorated for the Covered Period (for 24 weeks, a maximum of \$46,154 per individual, or for eight weeks, a maximum of \$15,385 per individual)
 - Owner compensation replacement, based on 2019 net profit, with forgiveness limited to eight weeks' worth (8/52) of 2019 net profit (up to \$15,385) for an eight-week Covered Period or 2.5 months' worth (2.5/12) of 2019 net profit (up to \$20,833) for a 24-week covered period.

VIII. Forgiveness of PPP Loans

- **Costs Eligible for Forgiveness – Eligible Nonpayroll Costs**
 - The following nonpayroll costs are eligible for forgiveness:
 - Payments of interest on mortgage obligations on real or personal property incurred before February 15, 2020 (business mortgage payments);
 - Rent payments on lease agreements in force before February 15, 2020 (business rent payments)
 - Utility payments under service agreements dated before February 15, 2020
 - A nonpayroll cost is eligible for forgiveness if it was (i) paid during the Covered Period, or (ii) 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.

VIII. Forgiveness of PPP Loans

- **Limitations on Forgiveness**

- **Percentage of Covered Funds used on Payroll** - Under the Flexibility Act, at least 60% of the funds must be used on eligible payroll costs in order to obtain full forgiveness of the loan. Despite the wording of the Flexibility Act, the SBA has clarified that this is not a “cliff,” and if a borrower uses less than 60% of the loan on payroll, the borrower will remain eligible for partial forgiveness.

Example - A borrower receives \$100,000 in PPP funds, but only spends \$54,000 (54%) on payroll costs. The maximum amount of loan forgiveness that borrower may receive is \$90,000 (with \$54,000 in payroll costs constituting 60% of the forgiveness amount and \$36,000 in nonpayroll costs constituting 40% of the forgiveness amount).

VIII. Forgiveness of PPP Loans

- **Reductions to Forgiveness**

In general, forgiveness of a borrower's PPP loan will be reduced as follows:

- **Reduction in Full-Time Equivalent (FTE) Employees** – Forgiveness will be decreased if a borrower's average monthly FTE employees is reduced during the covered period when compared to the borrower's average monthly FTE employees during either (i) February 15, 2019 – June 30, 2019, or (ii) January 1, 2020 – February 29, 2020.
- **Reduction to Salary and Wages** – Forgiveness will be decreased by the amount of any reduction in total salary or wages of any employee during the covered period that exceeds 25% of the total salary or wages the employee received during the most recent full quarter prior to the covered period.

VIII. Forgiveness of PPP Loans

- **Exemptions to Reductions in Forgiveness**
 - A borrower will not be penalized for reductions in FTE Employees during the period from February 15, 2020 – April 26, 2020 if the borrower restores the reduction by December 31, 2020.
 - A borrower will not be penalized for a reduction in FTE employees if the borrower can document an inability to rehire individuals that were employees on February 15, 2020 or similarly qualified employees for unfilled positions on or before December 31, 2020.

VIII. Forgiveness of PPP Loans

- **Exemptions to Reductions in Forgiveness (cont.)**
 - A borrower will not be penalized for a reduction in FTE if it is able to document an inability to return to its pre-COVID-19 levels of business activity due to compliance with social distancing, sanitation and customer safety requirements during the period beginning on March 1, 2020 and ending December 31, 2020.

Loan Forgiveness Application

On June 16, the SBA released two new Loan Forgiveness Applications:

- a revised [full-loan application](#) (SBA Form 3508) and [loan application instructions](#), which incorporate the changes made by the Flexibility Act , and
- a new [EZ Version](#) (SBA Form 3508EZ) with corresponding [loan application instructions](#).

Loan Forgiveness Application - SBA Form 3508EZ

The new EZ Loan Forgiveness Application applies to borrowers that:

- Are self-employed and have no employees; OR
- Did not reduce the salaries or wages of their employees by more than 25%, and did not reduce the number or hours of their employees; OR
- Experienced reductions in business activity as a result of health directives related to COVID-19, and did not reduce the salaries or wages of their employees by more than 25%.

The EZ application requires fewer calculations and less documentation for eligible borrowers.

IX. Loan Forgiveness Process

Loan Forgiveness Application – SBA Form 3508EZ (Page 1)



Paycheck Protection Program
PPP Loan Forgiveness Application Form 3508EZ

OMB Control No. 3245-0407
Expiration date: 10/31/2020

Business Legal Name ("Borrower")		DBA or Tradename, if applicable	
Business Address		Business TIN (EIN, SSN)	Business Phone
		() -	
		Primary Contact	E-mail Address

SBA PPP Loan Number: _____ Lender PPP Loan Number: _____

PPP Loan Amount: _____ PPP Loan Disbursement Date: _____

Employees at Time of Loan Application: _____ Employees at Time of Forgiveness Application: _____

EIDL Advance Amount: _____ EIDL Application Number: _____

Payroll Schedule: The frequency with which payroll is paid to employees is:

Weekly Biweekly (every other week) Twice a month Monthly Other _____

Covered Period: _____ to _____

Alternative Payroll Covered Period, if applicable: _____ to _____

If Borrower (together with affiliates, if applicable) received PPP loans in excess of \$2 million, check here:

Forgiveness Amount Calculation:

Payroll and Nonpayroll Costs

Line 1. Payroll Costs: _____

Line 2. Business Mortgage Interest Payments: _____

Line 3. Business Rent or Lease Payments: _____

Line 4. Business Utility Payments: _____

Potential Forgiveness Amounts

Line 5. Add the amounts on lines 1, 2, 3, and 4: _____

Line 6. PPP Loan Amount: _____

Line 7. Payroll Cost 60% Requirement (divide Line 1 by 0.60): _____

Forgiveness Amount

Line 8. Forgiveness Amount (enter the smallest of Lines 5, 6, and 7): _____

IX. Loan Forgiveness Process



Paycheck Protection Program PPP Loan Forgiveness Application Form 3508EZ

By Signing Below, You Make the Following Representations and Certifications on Behalf of the Borrower:

The Authorized Representative of the Borrower certifies to all of the below by **initialing** next to each one.

- _____ The dollar amount for which forgiveness is requested:
- was used to pay costs that are eligible for forgiveness (payroll costs to retain employees; business mortgage interest payments; business rent or lease payments; or business utility payments);
 - includes payroll costs equal to at least 60% of the forgiveness amount;
 - if a 24-week Covered Period applies, does not exceed 2.5 months' worth of 2019 compensation for any owner-employee or self-employed individual/general partner, capped at \$20,833 per individual; and
 - if the Borrower has elected an 8-week Covered Period, does not exceed 8 weeks' worth of 2019 compensation for any owner-employee or self-employed individual/general partner, capped at \$15,385 per individual.

_____ I understand that if the funds were knowingly used for unauthorized purposes, the federal government may pursue recovery of loan amounts and/or civil or criminal fraud charges.

_____ The Borrower did not reduce salaries or hourly wages by more than 25 percent for any employee during the Covered Period or Alternative Payroll Covered Period compared to the period between January 1, 2020 and March 31, 2020. For purposes of this certification, the term "employee" includes only those employees that did not receive, during any single period during 2019, wages or salary at an annualized rate of pay in an amount more than \$100,000.

_____ The Borrower has accurately verified the payments for the eligible payroll and nonpayroll costs for which the Borrower is requesting forgiveness.

_____ I have submitted to the Lender the required documentation verifying payroll costs, the existence of obligations and service (as applicable) prior to February 15, 2020, and eligible business mortgage interest payments, business rent or lease payments, and business utility payments.

_____ The information provided in this application and the information provided in all supporting documents and forms is true and correct in all material respects. I understand that knowingly making a false statement to obtain forgiveness of an SBA-guaranteed loan is punishable under the law, including 18 USC 1001 and 3571 by imprisonment of not more than five years and/or a fine of up to \$250,000; under 15 USC 645 by imprisonment of not more than two years and/or a fine of not more than \$5,000; and, if submitted to a Federally insured institution, under 18 USC 1014 by imprisonment of not more than thirty years and/or a fine of not more than \$1,000,000.

_____ The tax documents I have submitted to the Lender are consistent with those the Borrower has submitted/will submit to the IRS and/or state tax or workforce agency. I also understand, acknowledge, and agree that the Lender can share the tax information with SBA's authorized representatives, including authorized representatives of the SBA Office of Inspector General, for the purpose of ensuring compliance with PPP requirements and all SBA reviews.

_____ I understand, acknowledge, and agree that SBA may request additional information for the purposes of evaluating the Borrower's eligibility for the PPP loan and for loan forgiveness, and that the Borrower's failure to provide information requested by SBA may result in a determination that the Borrower was ineligible for the PPP loan or a denial of the Borrower's loan forgiveness application.

Loan Forgiveness Application – SBA Form 3508EZ (Page 2)

In addition, the Authorized Representative of the Borrower must certify by **initialing at least ONE** of the following two items:

_____ The Borrower did not reduce the number of employees or the average paid hours of employees between January 1, 2020 and the end of the Covered Period (other than any reductions that arose from an inability to rehire individuals who were employees on February 15, 2020, if the Borrower was unable to hire similarly qualified employees for unfilled positions on or before December 31, 2020, and reductions in an employee's hours that a borrower offered to restore and were refused).

_____ The Borrower was unable to operate between February 15, 2020, and the end of the Covered Period at the same level of business activity as before February 15, 2020 due to compliance with requirements established or guidance issued between March 1, 2020 and December 31, 2020, by the Secretary of Health and Human Services, the Director of the Centers for Disease Control and Prevention, or the Occupational Safety and Health Administration, related to the maintenance of standards of sanitation, social distancing, or any other work or customer safety requirement related to COVID-19.

The Borrower's eligibility for loan forgiveness will be evaluated in accordance with the PPP regulations and guidance issued by SBA through the date of this application. SBA may direct a lender to disapprove the Borrower's loan forgiveness application if SBA determines that the Borrower was ineligible for the PPP loan.

Signature of Authorized Representative of Borrower

Date

Print Name
SBA Form 3508EZ (06/20)
Page 2

Title

IX. Loan Forgiveness Process



**Paycheck Protection Program
PPP Loan Forgiveness Application Form 3508EZ**

PPP Borrower Demographic Information Form (Optional)

Instructions

1. **Purpose.** Veteran/gender/race/ethnicity data is collected for program reporting purposes only.
2. **Description.** This form requests information about each of the Borrower's Principals. Add additional sheets if necessary.
3. **Definition of Principal.** The term "Principal" means:
 - For a self-employed individual, independent contractor, or a sole proprietor, the self-employed individual, independent contractor, or sole proprietor.
 - For a partnership, all general partners and all limited partners owning 20% or more of the equity of the Borrower, or any partner that is involved in the management of the Borrower's business.
 - For a corporation, all owners of 20% or more of the Borrower, and each officer and director.
 - For a limited liability company, all members owning 20% or more of the Borrower, and each officer and director.
 - Any individual hired by the Borrower to manage the day-to-day operations of the Borrower ("key employee").
 - Any trustor (if the Borrower is owned by a trust).
 - For a nonprofit organization, the officers and directors of the Borrower.
4. **Principal Name.** Insert the full name of the Principal.
5. **Position.** Identify the Principal's position; for example, self-employed individual; independent contractor; sole proprietor; general partner; owner; officer; director; member; or key employee.

Loan Forgiveness Application – SBA Form 3508EZ (Page 3)

Principal Name		Position
Veteran		1=Non-Veteran; 2=Veteran; 3=Service-Disabled Veteran; 4=Spouse of Veteran; X=Not Disclosed
Gender		M=Male; F=Female; X=Not Disclosed
Race (more than 1 may be selected)		1=American Indian or Alaska Native; 2=Asian; 3=Black or African-American; 4=Native Hawaiian or Pacific Islander; 5=White; X=Not Disclosed
Ethnicity		H=Hispanic or Latino; N=Not Hispanic or Latino; X=Not Disclosed

Disclosure is voluntary and will have no bearing on the loan forgiveness decision

Paperwork Reduction Act – You are not required to respond to this collection of information unless it displays a currently valid OMB Control Number. The estimated time for completing this application, including gathering data needed, is 20 minutes. Comments about this time or the information requested should be sent to Small Business Administration, Director, Records Management Division, 409 3rd St., SW, Washington DC 20416, and/or SBA Desk Officer, Office of Management and Budget, New Executive Office Building, Washington DC 20503. **PLEASE DO NOT SEND FORMS TO THESE ADDRESSES.**

General Process for Obtaining Loan Forgiveness

To obtain loan forgiveness under the PPP:

- Borrower must complete and submit the Loan Forgiveness Application (SBA Form 3508, SBA Form 3508EZ or lender equivalent) to its lender.
- Once the borrower has submitted the required documentation, it is the lender's job to review the application and make a decision regarding loan forgiveness.
- The lender must issue its decision to SBA within 60 days of the date it received the complete application.
- If the lender determines that the borrower is entitled to forgiveness of some or all of the amount applied for, the lender must request payment from the SBA at the time the lender issues its decision to the SBA.

IX. Loan Forgiveness Process

To obtain loan forgiveness under the PPP:

- The SBA will remit to lender the appropriate forgiveness amount not later than 90 days after the lender issues its decision to the SBA. The lender is responsible for notifying the borrower of any forgiveness amount.
- If lender determines that only a portion of the loan may be forgiven, or if the forgiveness request is denied, any remaining balance due on the loan must be repaid by borrower on or before two-year maturity of the loan.

To obtain loan forgiveness under the PPP:

- If the lender determines that the borrower is not entitled to forgiveness in any amount, the lender must notify the borrower in writing and provide the SBA with the reason for its denial.
- Within 30 days of notice from the lender, a borrower may request that SBA review the lender's decision to deny forgiveness of the loan.
- SBA reserves the right to review the lender's decision in its sole discretion.

- **Calculation of the Loan Forgiveness Amount**

- It is the responsibility of the borrower to provide an accurate calculation of the loan forgiveness amount, and the borrower must attest to the accuracy of its calculation.
- Lenders are expected to perform a good-faith review of the borrower's calculations and supporting documentation.

IX. Loan Forgiveness Process

- **SBA's Review of Individual PPP Loans**

The SBA may review any PPP loan that the Administrator deems appropriate. SBA is authorized to review:

- (1) whether a borrower is eligible for the PPP loan based on the provisions of the CARES Act, the rules and guidance in place at the time of the borrower's PPP loan application, and the terms of the borrower's loan application;
- (2) whether a borrower calculated its loan amount correctly and used loan proceeds for the allowable uses; and
- (3) whether a borrower is entitled to loan forgiveness in the amount claimed on the borrower's Loan Forgiveness Application.

IX. Loan Forgiveness Process

- **SBA's Review of Individual PPP Loans**

- SBA review is discretionary, not required. If SBA undertakes a review, SBA will notify the lender in writing and the lender must notify the borrower in writing within five business days of receipt of such notice. The lender may not approve any application for loan forgiveness for that loan until SBA notifies the lender in writing that the SBA has completed its review.
- If loan documentation submitted to SBA indicates that borrower may be ineligible for PPP loan, loan amount, or loan forgiveness, the SBA will require lender to contact the borrower in writing to request additional information.
 - Thereafter, any information obtained by lender will be provided to SBA.

IX. Loan Forgiveness Process

- **SBA's Review of Individual PPP Loans**
 - If SBA determines in the course of its review that a borrower is ineligible for the PPP loan, the SBA will direct the lender to deny the loan forgiveness application.
 - If SBA determines that the borrower miscalculated the loan amount or is not entitled to the amount of forgiveness claimed on the borrower's Loan Forgiveness Application, the SBA will direct the lender to deny the loan forgiveness application in whole or in part.

IX. Loan Forgiveness Process

- **SBA's Review of Individual PPP Loans**
 - **Appeal of SBA Review** - A borrower may appeal the SBA's determination regarding loan eligibility, loan amount, or the loan forgiveness amount claimed by the borrower. The SBA intends to issue a separate interim final rule addressing this process.
 - **Borrower's Retention of PPP Documentation** - A borrower must retain PPP documentation in its files for six (6) years after the date the loan is forgiven or repaid in full and must permit authorized representatives of the SBA to access such files upon request.



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BRAC BUSINESS WEBINAR

QUESTIONS?

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