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Applying for Loan Forgiveness

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5/26/2020

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Questions

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Outline

- PPP Recap
- PPP Application Summary & Interim Final Rule on Loan Forgiveness
- Covered Period & Alternative Payroll Covered Period
- Nonpayroll and Payroll Costs
- FTE Reduction
- FTE Reduction Exception
- Salary/Wage Reduction
- Documentation
- Certifications
- IRS Notice 2020-32
- Planning and Unknowns

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Paycheck Protection Program

- \$600 Billion “loan” program as part of the CARES Act
- Approximately \$100 Billion still available
- Amount spent on applicable expenses over eight-weeks is eligible for forgiveness
- The Application for PPP Loan Forgiveness has been released along with detailed instructions
- Interim Final Rule for Forgiveness released Friday night 5/22/2020
- Safe Harbor FAQ #46 regarding “need”

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Paycheck Protection Program

- Rules and guidance incomplete, messy and after-the-fact
- No history to rely on
- Piecemeal guidance makes proactive planning difficult if not impossible
- There are not many “answers”, therefore understand the options and the most reasonable approach
- Consider waiting for more clarity before submitting application for forgiveness

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Application Summary

- **Borrower must apply** for forgiveness using this application (Form 3508) or one electronically through their lender after the 8-week period
- Lender has 60 days to ***decide*** forgiveness upon submission; if more information is requested – another 60 days
- Lender then submits to SBA who has up to 90 days to review the lender's decision
- <https://www.sba.gov/document/sba-form--paycheck-protection-program-loan-forgiveness-application>

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Application Summary

- SBA *may* review PPP loans of any size for up to 6 years!
 - Borrower eligibility
 - Loan amount
 - Use of proceeds
 - Loan forgiveness amounts

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Application Summary

- Each application has the following components:
 1. PPP Loan Forgiveness Calculation Form (required)
 2. PPP Schedule A (required)
 3. PPP Schedule A Worksheet
 4. PPP Borrower Demographic Information Form (Optional)

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Application Summary

- Forgiveness amount is lesser of:
 1. PPP loan amount
 2. Forgivable costs reduced by FTE and/or salary/wage reductions; or
 3. Payroll costs divided by 75%

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	Paycheck Protection Program Loan Forgiveness Application	OMB Control Number 3245-0407 Expiration Date: 10/31/2020									
PPP Loan Forgiveness Calculation Form											
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">Business Legal Name ("Borrower")</td> <td colspan="2">DBA or Tradename, if applicable</td> </tr> <tr> <td>Business Address</td> <td>Business TIN (EIN, SSN)</td> <td>Business Phone</td> </tr> <tr> <td></td> <td>Primary Contact</td> <td>E-mail Address</td> </tr> </table>		Business Legal Name ("Borrower")	DBA or Tradename, if applicable		Business Address	Business TIN (EIN, SSN)	Business Phone		Primary Contact	E-mail Address	
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:											
<input type="checkbox"/> Weekly <input type="checkbox"/> Biweekly (every other week) <input type="checkbox"/> Twice a month <input type="checkbox"/> Monthly <input type="checkbox"/> 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: <input type="checkbox"/>											
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Forgiveness Amount Calculation:	
<u>Payroll and Nonpayroll Costs</u>	
Line 1. Payroll Costs (enter the amount from PPP Schedule A, line 10):	
Line 2. Business Mortgage Interest Payments:	
Line 3. Business Rent or Lease Payments:	
Line 4. Business Utility Payments:	
<u>Adjustments for Full-Time Equivalency (FTE) and Salary/Hourly Wage Reductions</u>	
Line 5. Total Salary/Hourly Wage Reduction (enter the amount from PPP Schedule A, line 3):	
Line 6. Add the amounts on lines 1, 2, 3, and 4, then subtract the amount entered in line 5:	
Line 7. FTE Reduction Quotient (enter the number from PPP Schedule A, line 13):	
<u>Potential Forgiveness Amounts</u>	
Line 8. Modified Total (multiply line 6 by line 7):	
Line 9. PPP Loan Amount:	
Line 10. Payroll Cost 75% Requirement (divide line 1 by 0.75):	
<u>Forgiveness Amount</u>	
Line 11. Forgiveness Amount (enter the smallest of lines 8, 9, and 10):	
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	Paycheck Protection Program Loan Forgiveness Application	OMB Control Number 3245-0407 Expiration Date: 10/31/2020
<u>PPP Schedule A</u>		
<u>PPP Schedule A Worksheet, Table 1 Totals</u>		
Line 1. Enter Cash Compensation (Box 1) from PPP Schedule A Worksheet, Table 1:	<div style="border: 1px solid black; height: 20px; width: 100%;"></div>	
Line 2. Enter Average FTE (Box 2) from PPP Schedule A Worksheet, Table 1:	<div style="border: 1px solid black; height: 20px; width: 100%;"></div>	
Line 3. Enter Salary/Hourly Wage Reduction (Box 3) from PPP Schedule A Worksheet, Table 1: If the average annual salary or hourly wage for each employee listed on the PPP Schedule A Worksheet, Table 1 during the Covered Period or the Alternative Payroll Covered Period was at least 75% of such employee's average annual salary or hourly wage between January 1, 2020 and March 31, 2020, check here <input type="checkbox"/> and enter 0 on line 3.	<div style="border: 1px solid black; height: 20px; width: 100%;"></div>	
<u>PPP Schedule A Worksheet, Table 2 Totals</u>		
Line 4. Enter Cash Compensation (Box 4) from PPP Schedule A Worksheet, Table 2:	<div style="border: 1px solid black; height: 20px; width: 100%;"></div>	
Line 5. Enter Average FTE (Box 5) from PPP Schedule A Worksheet, Table 2:	<div style="border: 1px solid black; height: 20px; width: 100%;"></div>	

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<u>Non-Cash Compensation Payroll Costs During the Covered Period or the Alternative Payroll Covered Period</u>	
Line 6. Total amount paid by Borrower for employer contributions for employee health insurance:	<div style="border: 1px solid black; height: 20px; width: 100%;"></div>
Line 7. Total amount paid by Borrower for employer contributions to employee retirement plans:	<div style="border: 1px solid black; height: 20px; width: 100%;"></div>
Line 8. Total amount paid by Borrower for employer state and local taxes assessed on employee compensation:	<div style="border: 1px solid black; height: 20px; width: 100%;"></div>
<u>Compensation to Owners</u>	
Line 9. Total amount paid to owner-employees/self-employed individual/general partners: This amount may not be included in PPP Schedule A Worksheet, Table 1 or 2. If there is more than one individual included, attach a separate table that lists the names of and payments to each.	<div style="border: 1px solid black; height: 20px; width: 100%;"></div>
<u>Total Payroll Costs</u>	
Line 10. Payroll Costs (add lines 1, 4, 6, 7, 8, and 9):	<div style="border: 1px solid black; height: 20px; width: 100%;"></div>
<u>Full-Time Equivalency (FTE) Reduction Calculation</u> If you have not reduced the number of employees or the average paid hours of your employees between January 1, 2020 and the end of the Covered Period, check here <input type="checkbox"/> , skip lines 11 and 12 and enter 1.0 on line 13.	
Line 11. Average FTE during the Borrower's chosen reference period:	<div style="border: 1px solid black; height: 20px; width: 100%;"></div>
Line 12. Total Average FTE (add lines 2 and 5):	<div style="border: 1px solid black; height: 20px; width: 100%;"></div>
Line 13. FTE Reduction Quotient (divide line 12 by line 11) or enter 1.0 if FTE Safe Harbor is met:	<div style="border: 1px solid black; height: 20px; width: 100%;"></div>

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Interim Final Rule on Loan Forgiveness

- 26 pages of narrative based guidance
- Between the Application and the Interim Final Rule, more questions remain
- Supposedly 30 FAQ's will be released any day now
- <https://home.treasury.gov/system/files/136/PPP-IFR-Loan-Forgiveness.pdf>
- <https://home.treasury.gov/policy-issues/cares/assistance-for-small-businesses>

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Basic Information

- If you haven't already, gather your basic information:
 - SBA PPP Loan Number
 - Lender PPP Loan Number
 - PPP Loan Amount
 - Employees at Time of Loan Application
 - Employees at Time of Forgiveness Application
 - PPP Loan Disbursement Date
 - EIDL Advance Amount
 - EIDL Application Number
 - Payroll Schedule

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Covered Period

- “Covered Period” begins the day of the loan disbursement and extends eight weeks (56 days)
 - If the PPP Disbursement Date is 4/15/2020, Covered Period is 4/15/2020 to 6/20/2020
- Costs can be paid *or* incurred within the eight-week period to be eligible for forgiveness, a difference from the statutory language of the CARES Act

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Incurred or Paid – Nonpayroll Costs

- Expenses for interest, rent and utilities as defined in the rules, will be forgivable if:
 - 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

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Alternative Payroll Covered Period

- Borrowers can choose the eight-week Covered Period for payroll to begin on the first day of the first pay period after the Disbursement Date (Alternative Payroll Covered Period)
- **Option** for borrowers that is available **only** for Payroll Costs
- **Is only applicable for those with weekly and bi-weekly payroll processing**

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Alternative Payroll Covered Period Example

- PPP Disbursement Date 4/15/2020
- First day of your next payroll period is 4/22/2020
- Borrower may elect to count the Payroll Costs for the eight-week period beginning 4/22/2020 rather than 4/15/2020

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Incurred or Paid – Payroll Costs

- Payroll Costs incurred but not paid during the Borrower's last pay period of the "Period" are eligible for forgiveness if paid on or before the next regular payroll date.
- Payroll costs are considered paid on the day that paychecks are distributed, or the borrower originates an ACH credit transaction.
- Consider what is "incurred" and consider prepaying payroll in those instances

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Nonpayroll Costs

- Nonpayroll costs include Mortgage Interest, Rent, and Utilities
- Nonpayroll costs eligible for forgiveness if:
 - Paid during 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
- Prepaid expenses not addressed except for Mortgage Interest, which is not allowed (prepaid)

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Mortgage Interest

- Mortgage interest secured by real or personal property
- Debt must have been incurred prior to 2/15/2020
- Does not include prepayment or principal
- Non-mortgage interest is an eligible PPP cost however, is NOT eligible for forgiveness

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Utilities

- Electricity
- Telephone
- Gas
- Transportation – *still no clarification here*
- Water
- Internet
- Service must have been in place before 2/15/2020

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Rent

- Rent or lease payments for real or personal property
- Agreement must have been in place before 2/15/2020
- If no agreement, will a “memorialize and ratify” lease document be sufficient?
- Still no clarity on related-party rent
- Mortgage Interest, Utilities and Rent costs may not exceed 25% of the forgiveness amount

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Payroll Costs

- Compensation to employees whose principal place of residence is in the US
 - Salary
 - Wages
 - Commissions, or similar compensation (hazard pay)
 - Cash tips or equivalent
 - Payment for vacation, parental, family, medical or sick leave
 - Allowance for separation or dismissal

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Payroll Costs

- Compensation eligible for forgiveness may not exceed an annual salary of \$100,000 or \$15,385 during the eight-week period
- This \$100,000 limit does not include group health and retirement paid by the employer (*generally*)
- Does **not** include independent contractors (1099)
- FFCRA (COVID) sick leave or family leave may **not** be included in Payroll Costs

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Payroll Costs

- Bonuses to employees count as an eligible loan expense provided the total compensation does not exceed the \$100,000 limit. *Consider reasonableness here.*
- Wages, compensation, etc. paid to furloughed employees is eligible for forgiveness not to exceed the \$100,000 limit
- For those employees who are not working but still being paid, payroll costs are incurred based on the schedule when the employee **WOULD** have worked

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Payroll Costs

- Employee group health care coverage paid by the employer (*see limits on self-employed, owners, partners*)
- Retirement expenses for employee paid by the employer (*see limits on self-employed, owners, partners*)
- State and local taxes assessed on compensation of employees
- Does **not** include employer portion of payroll tax (Medicare/Social Security Tax)

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Payroll Costs

- **Owner-employees/self-employed** are capped, across all businesses, at the lesser of:
 - \$100,000 annualized/\$15,385 (eight-week max); **or**
 - The eight-week equivalent of their applicable compensation for 2019
- “Owner-Employee” not defined - assume S Corp and *maybe* C Corp owners

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Payroll Costs

- **Schedule C filers** – capped by the amount of their owner comp. replacement, calculated based on 2019 net profit
- No additional forgiveness is provided for retirement or health insurance contributions

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Payroll Costs

- **General partners** are capped by:
 1. The amount of their 2019 net earnings from self-employment
 2. Reduced by Section 179 depreciation, unreimbursed partnership expenses
 3. Multiplied by .9235
- No additional forgiveness is provided for retirement or health insurance contributions for self-employed individuals as those expenses are paid out of their net self-employment income

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Payroll Costs

- Payroll Costs divided by 75% is your MAXIMUM forgiveness
 - \$100,000 PPP Loan Amount
 - \$70,000 Payroll Costs
 - \$30,000 Nonpayroll Costs
 - Max Forgiveness is \$93,333 ($\$70,000 / 75\%$), \$6,667 will be paid back
- Will Congress modify this 75% requirement??

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Full-Time-Equivalent (FTE)

- FTE's used to determine any reduction in forgiveness
- SBA wants to know if you had fewer employees over the Covered Period then before the pandemic, if not, no reduction
- If lower FTEs than before the pandemic, there may be a reduction in forgiveness since the PPP wasn't used to keep people employed

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Full-Time-Equivalent (FTE)

- For **each** employee, calculate the average number of hours worked per week and divide by 40 and round to the nearest tenth
- Maximum FTE per employee is 1
- Can use alternative method and select “1” for everyone who worked 40 hours or more per week and “0.5” for those that did not
- Method chosen must be consistent throughout the application

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Full-Time-Equivalent (FTE)

- Borrowers will need to measure FTE's for several periods:
 - Eight-week Covered Period or Alternative Payroll Covered Period
 - 2/15/2019 to 6/30/2019
 - 1/1/2020 to 2/29/2020
 - Payroll that includes 2/15/2020
 - Average FTE's for 2/15/2020 to 4/26/2020
 - 6/30/2020

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Full-Time-Equivalent Reduction

- Start by calculating the FTEs over the Covered Period
- Then, calculate your reference period (elect a period):
 - FTEs over 2/15/2019 – 6/30/2019; or
 - FTEs over 1/20/2020 – 2/29/2020
- Forgiveness is reduced if your average FTEs during the Covered Period is less than the average number of FTEs for any of the periods above (borrower elects)
- An FTE reduction decreases the loan forgiveness amount by the same percentage as the percentage reduction in FTE employees

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FTE Reduction – Example

- 8 FTEs over the Covered Period
- FTE's over the reference periods (elect a period):
 - 10 - FTEs over 2/15/2019 – 6/30/2019; or
 - 12 - FTEs over 1/20/2020 – 2/29/2020
- Forgiveness is reduced if your average FTEs during the Covered Period is less than the average number of FTEs for any of the periods above (borrower elects)
- $8 / 10 = 80\%$ of eligible expenses are available for forgiveness
- Borrowers should choose the lowest reference period

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FTE Reduction – Safe Harbor

- Reduction not required if “safe harbor” is met
- Calculate the FTEs for 2/15/2020 - 4/26/2020; **and**
- Calculate the FTEs for the pay period which includes 2/15/2020
- If the average FTEs for the first period (2/15/2020 – 4/26/2020) is < the FTEs for second period (2/15/2020), borrower then must compare the second period to the FTEs as of 6/30/2020
- If the 6/30/2020 FTEs are greater than the FTEs on 2/15/2020 then the safe harbor is met, no reduction

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Salary/Wage Reduction

- Applies to **each** employee who was not paid an annualized salary or wage of more than \$100,000 for any single pay period in 2019
- A reduction of employee salary or wage will reduce loan forgiveness amount *if* salary or wage is reduced by > 25% during eight-week period vs. period 1/1/2020 thru 3/31/2020
- Only applies to a decline in employee salary and wages that is **not** attributable to the FTE reduction

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Salary/Wage Reduction Example

- Employee's full-time weekly salary dropped from \$1,000/week during reference period to \$700/week during covered period
- Continued to work full-time during covered period with FTE of 1.0
- The first \$250 (25% of \$1,000) is exempted from the reduction
- Borrower would show \$400 as salary/hourly wage reduction for that employee (extra \$50 times eight-weeks)

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Salary/Wage Reduction – Safe Harbor

- Reduction not required if “safe harbor” is met
- Calculate average annual salary or hourly wage as of 2/15/2020
- Calculate average annual salary or hourly wage as of 2/15/2020 – 4/26/2020
- If average salary/wage dropped over 2/15/2020 – 4/26/2020 from the 2/15/2020 reference point, calculate average annual salary or hourly wage as of 6/30/2020
- If 6/30/2020 is > 2/15/2020 – safe harbor is met

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Reduction Exception

- If borrower offered to rehire or restore a reduction in hours to an employee but the employee declined the offer, there is a reduction exception if borrower can establish the following:
 - A **good-faith, written offer to rehire an employee** during the Covered Period or the Alternative Covered Period which was rejected by the employee; and
 - Any employees during the Covered Periods above, were **fired for cause, voluntarily resigned, or voluntarily requested and received a reduction of their hours**
- **Borrower must inform the applicable state unemployment insurance office of the rejected offer or reemployment within 30 days**

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Documentation

- Payroll Costs
 - Bank statements or third-party payroll service provider reports
 - Tax forms or equivalent third-party provider reports
 - Payment receipts, cancelled checks or account statements documenting health insurance and retirement paid

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Documentation

- Mortgage Interest:
 - Lender amortization schedule; and
 - Receipts or cancelled checks; or
 - Lender account statements from 2/2020 and the months of the Covered Period through one month after the end of the Covered Period

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Documentation

- Rent or Lease:
 - Copy of current lease agreement; and
 - Receipts or cancelled checks; or
 - Lessor account statements from 2/2020 and from the Covered Period through one month after the end of the Covered Period

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Documentation

- Utility:
 - Copy of invoices from 2/2020 through the Covered Period; and
 - Receipts, cancelled checks or account statements

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Documentation

- Must submit documentation to receive forgiveness
- Documentation that you must maintain but are **not required** to submit:
 - PPP Schedule A Worksheet or its equivalent including all supporting tables/calculations/FTE safe harbor
 - Documentation regarding any employee job offers and refusals, firings for cause, voluntary resignations and written request by any employee for reductions in work schedule
- Must retain all documentation for six years after the date of forgiveness or amount repaid in full

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Certifications

- Must certify that the requested forgiveness amount:
 - Was used to pay costs that are eligible for forgiveness,
 - Includes all applicable reductions,
 - Does not include nonpayroll costs in excess of 25% of the requested amount; and
 - Does not exceed eight-weeks' worth of 2019 comp. for any owner-employee or self-employed individual capped at \$15,385

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Certifications

- Must certify that you have submitted the required documentation
- Must certify that all information is true and correct
- Must acknowledge that the SBA may request additional information and your intention to provide any additional information

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IRS Notice 2020-32

- Any expenses paid by a borrower – to the extent those amounts are ultimately forgiven by the lender on a tax-free basis – will not be deductible on the borrower's 2020 tax return
- Eliminates “double-dipping”
- Congress *may* amend IRS Code Section 265 to reverse the IRS ruling – *remains to be seen*

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Tips

- Complete your narrative to support your need for the PPP funds
- Loan forgiveness is not guaranteed, a complete application with proper documentation is necessary
- Spend proceeds on eligible expenses that are known first
- Set up separate bank account and account for funds carefully
- Consider prepaying items with the downside, they won't count

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What We Don't Know

- Bonuses to related parties
- Related party rent
- Self insured health plans
- Retirement plan expenses i.e. 2019 costs
- Clearer definitions for nonpayroll costs
- What changes will Congress implement i.e. 75% Payroll Cost test or change 8-week period

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Questions?

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