

Preparing for a PPP loan audit; completing the loan necessity questionnaire

By **Emily Cohen, Esq., Harter Secrest & Emery LLP**
and **Luke Werzinger, CPA/CFE, DeJoy, Knauf & Blood LLP**

As businesses who received a Paycheck Protection Program (PPP) loan begin to submit forgiveness applications, many will face Small Business Administration (SBA) audits. Below are some tips to help with the process:

Who will be audited?

The SBA plans to audit all loans in excess of \$2 million, including to confirm that borrowers made good faith certifications regarding the loan's necessity. The SBA created a safe harbor for borrowers that, together with its affiliates, received loans of less than \$2 million. The safe harbor prohibits the SBA from auditing the necessity certification made by these borrowers. However, the SBA may still decide to audit these loans (and larger ones) for other purposes such as eligibility, improper calculation of loan amount, and misuse of funds.

Completing the loan necessity questionnaire

The SBA's first step in this process is requiring borrowers receiving more than \$2 million to complete a necessity questionnaire within 10 business days after receipt of the form. There are two different necessity forms — form 3509 (for a for-

profit borrower) and form 3510 (for a non-profit borrower).

The form requires borrowers to answer specific financial and operational questions about facts just before and after the loan was received. The form allows limited opportunity for additional information (i.e., additional comments are limited to 1,000 characters). Without proper context of a borrower's business and the economic environment, which may be difficult to provide within such constraints, the information provided by a borrower could easily be misinterpreted by the SBA. For example, the form requests a borrower's cash position at the end of the quarter before loan application but does not request information surrounding the borrower's then current obligations.

The SBA will use a borrower's answers to this form as a reference point for conducting audits. We recommend, therefore, that borrowers discuss answers with its accountants and lawyers to make sure that the answers are accurate and capture the unique circumstances facing its business as best as possible within the limitations of the form (e.g., using abbreviated narratives

or acronyms).

Preparing for an audit

If the SBA requests additional information, borrowers will have an opportunity to provide a narrative response explaining the circumstances for their good-faith loan necessity certification.

To prepare for an SBA audit, we suggest that borrowers work with their accountants and lawyers to compile the following information:

- For every borrower, regardless of loan amount — documentation regarding its loan and forgiveness applications and its use of the loan (e.g., computation of employees, payroll records, bank statements/checks to confirm eligible payments); and
- For every borrower of more than \$2 million — a narrative description and supporting documentation for the good faith basis upon which it made the necessity certification (e.g., factors that went into applying, such as projected and actual impacts on its business or its industry, articles/trade publications about actual or projected general and industry economic



Emily Cohen



Luke Werzinger

impacts, specific changes the borrower made to address uncertainty, and decisions the borrower made based on the availability of the loan, such as retaining employees).

To eliminate potential delays and to ensure that a borrower does not struggle to reconstruct the numerous facts and circumstances underlying its loan application, this process should begin now and not wait until the receipt of an audit request.