

Update on the Payroll Protection Program (PPP) as of May 15, 2020

*prepared by Suzanne Baillie, Esq.,
Interim Legal Counsel in the Presiding Bishop's Office*

- The Good Faith Certification is that “current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.”
- In late April, the Treasury Department and the SBA said that this certification requires:
 - An assessment of the organization’s current business activity; and
 - An assessment of the organization’s ability to access other sources of liquidity to support ongoing operations in a matter that is not significantly detrimental to the business.
- On May 13, the Treasury Department and SBA revised its previous guidance. Under the new guidance:
 - Borrowers with PPP loans of less than \$2 million will be deemed to have made the certification in good faith.
 - This does not mean that borrowers with loans of less than \$2 million will not get audited on how they spent the money but just that their certification in good faith will not automatically be subject to review. This is excellent news for many parishes and dioceses throughout the Church.
 - Borrowers with loans of more than \$2million will automatically be audited and their good faith certification will be reviewed.
 - If a borrower is found to have lacked adequate basis for the certification, they will be required to repay the loan (and will not be eligible for loan forgiveness).
 - If the borrower repays the loan, the SBA will not pursue administrative enforcement or referrals to other agencies. Before this guidance, the government had threatened criminal penalties for certifications without an adequate basis so this is a helpful development.
- The government has also extended the safe harbor for returning the loan until today, May 18, 2020.
 - For all borrowers, it will be important to keep scrupulous records of how the money is spent and it is suggested that you segregate the loan funds from your other funds so they can be traced more easily.
 - Also, notwithstanding the guidance that came out last week, you should make sure that you have documented your decision to take the loan including: the economic uncertainty that made the loan request necessary; and why alternative sources of liquidity are not available or are insufficient.
- PPP Loan Forgiveness: On May 15, the SBA released a PPP Loan Forgiveness Application form. Here are some highlights:
 - The application lists an expiration date of October 31, 2020, suggesting that October 31 is the deadline for borrowers to submit applications to their



- lenders.
- The application can be completed electronically.
 - The 75% rule is not an all or nothing requirement:
 - If you spend less than 75% of the loan on payroll, you can still qualify for forgiveness on those payroll costs;
 - But non payroll costs (mortgage interest, utilities and rent) cannot exceed 25% of the total forgiveness amount.
 - The government has indicated that there will be additional guidance coming regarding loan forgiveness.
 - [PPP Loan Forgiveness Application](#)
 - [SBA Gives PPP Borrowers Good News - Forgiveness Application Issues And Answers](#), Forbes
 - [SBA Issues PPP Loan Forgiveness Application](#), Withum
 - [Webinar on Loan Forgiveness on May 21, 2020 at 11 a.m.](#), Withum

