



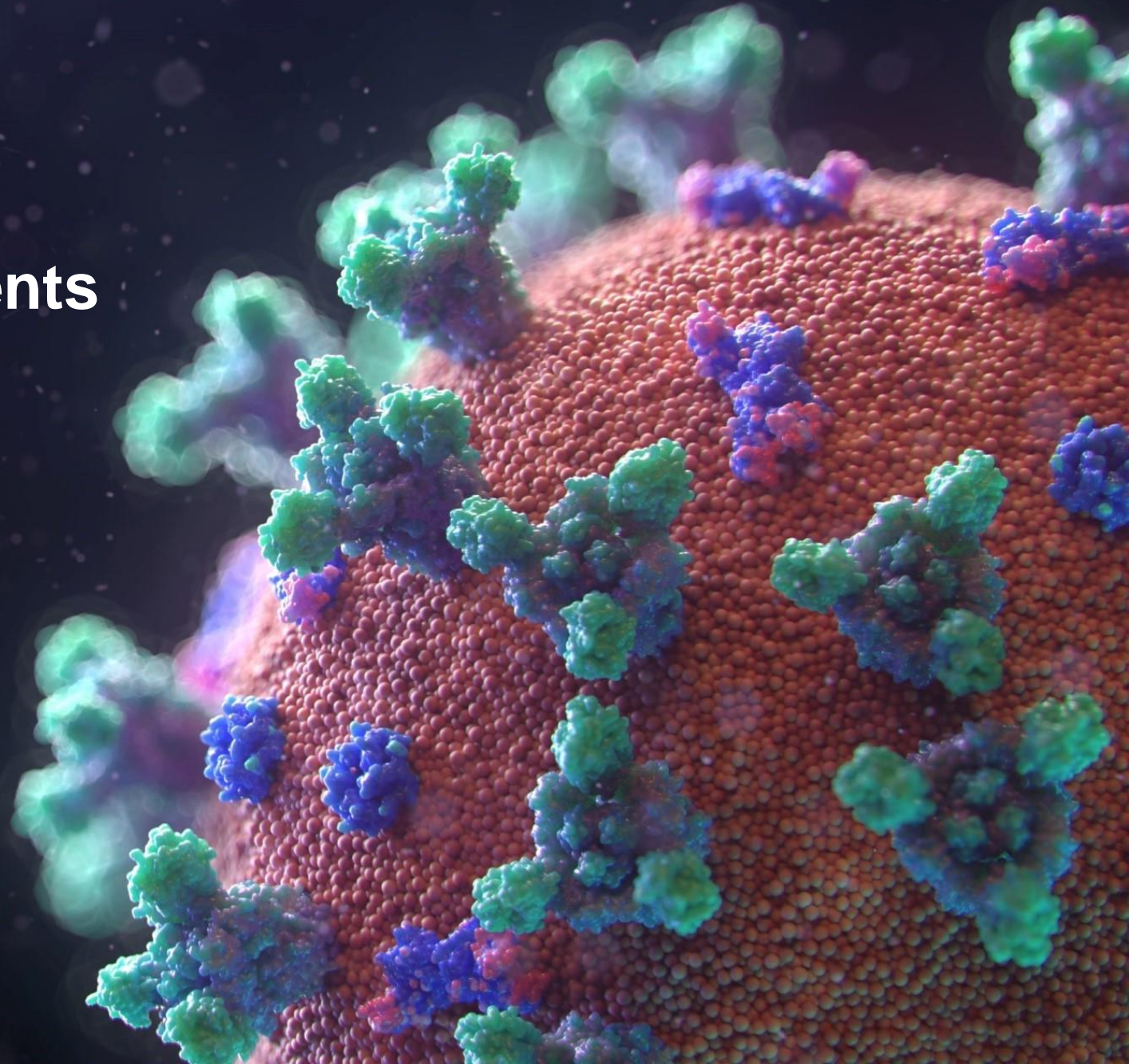
Administrative Developments and Guidance for Accessing Small Business Stimulus Dollars

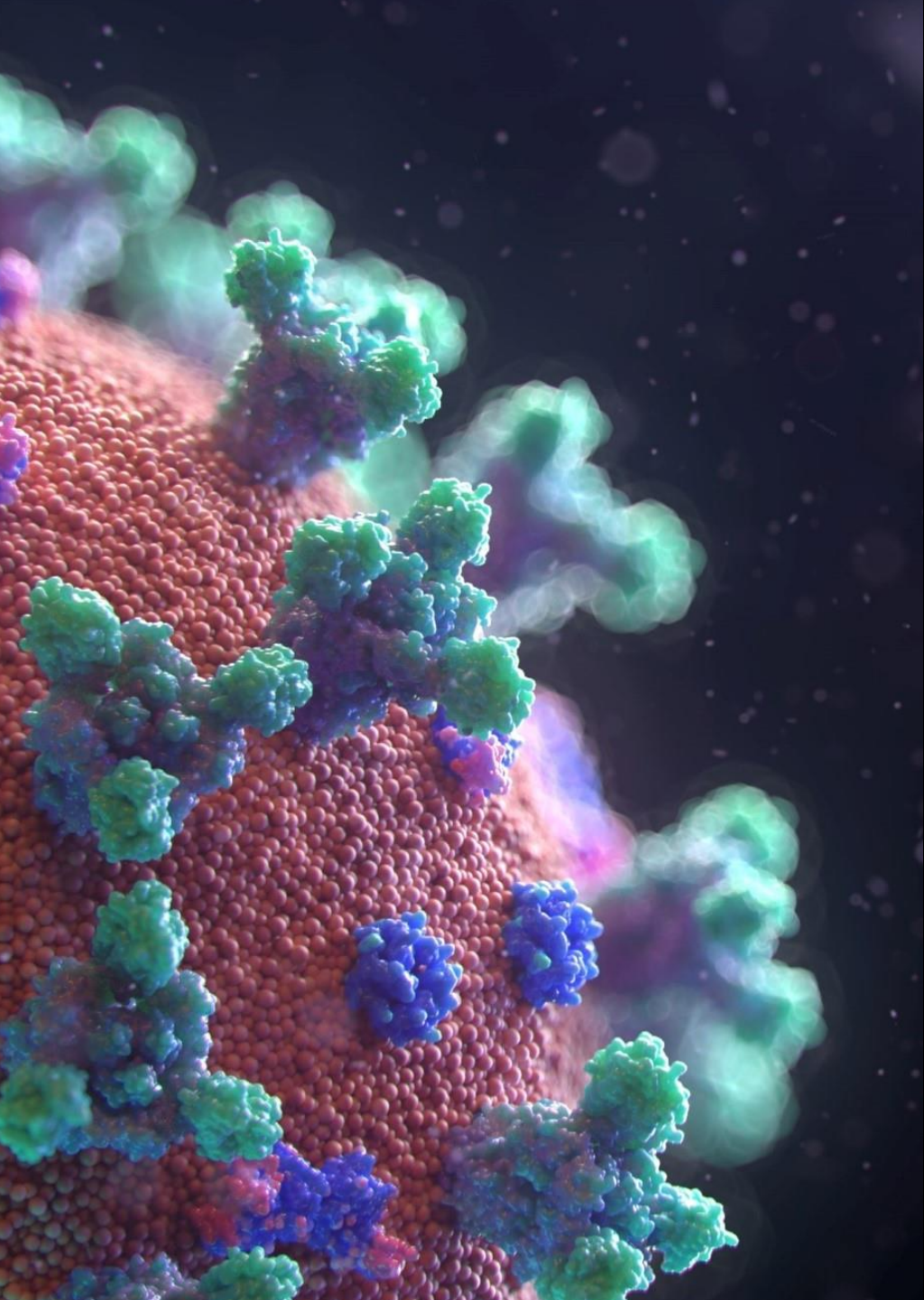
Marcantonio Barnes
Chuck Evans
John Fleming

April 9, 2020

Seyfarth Shaw LLP

“Seyfarth” refers to Seyfarth Shaw LLP (an Illinois limited liability partnership).
©2020 Seyfarth Shaw LLP. All rights reserved. Private and Confidential





Announcements

- Upcoming webinar on loan forgiveness tentatively planned for April 23
- Visit Seyfarth’s COVID-19 Resource Center to sign up for daily updates: www.seyfarth.com/covid19
- Seyfarth has a multi-disciplinary core group of COVID-19 First Responders. For help, please reach out to your Seyfarth attorney contact(s), or send an email to mwbarnes@seyfarth.com



Legal Disclaimer

This presentation has been prepared by Seyfarth Shaw LLP for informational purposes only. The material discussed during this webinar should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The content is intended for general information purposes only, and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have.

Seyfarth Shaw LLP

“Seyfarth” refers to Seyfarth Shaw LLP (an Illinois limited liability partnership).
©2020 Seyfarth Shaw LLP. All rights reserved. Private and Confidential

Speakers



Marcantonio W. Barnes
Corporate Partner
SEYFARTH SHAW LLP



Chuck Evans
Executive Vice President
WINDSOR ADVANTAGE



John Fleming
District Director
U.S. SMALL BUSINESS
ADMINISTRATION'S DELAWARE
DISTRICT OFFICE

Agenda



1 | Week in Review



2 | Where is my Loan?



3 | Eligibility and Affiliation Rules



4 | Loan Forgiveness Updates

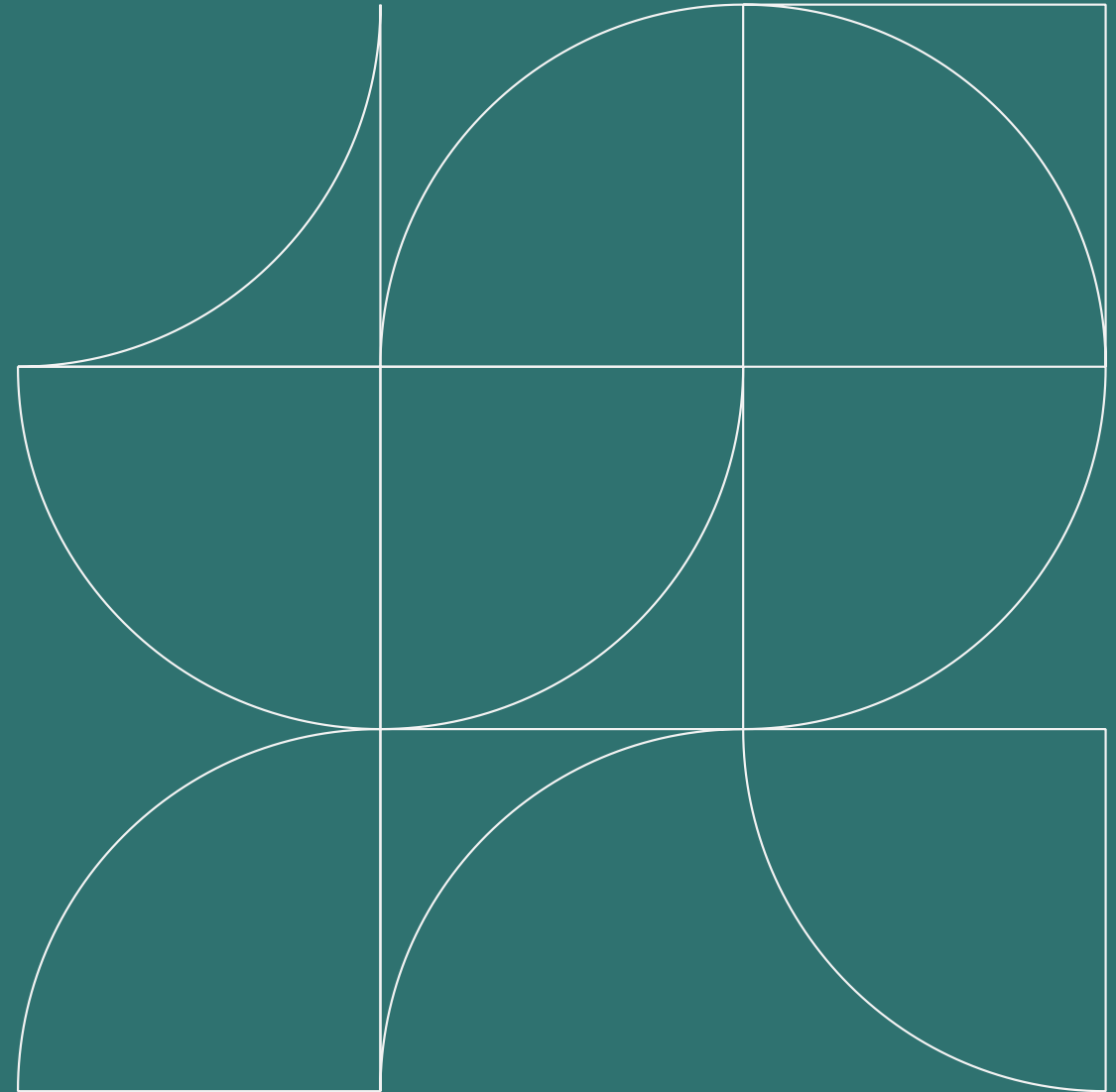


5 | EIDL and PPP Combinations



6 | Borrower Certification Issues

Week in Review

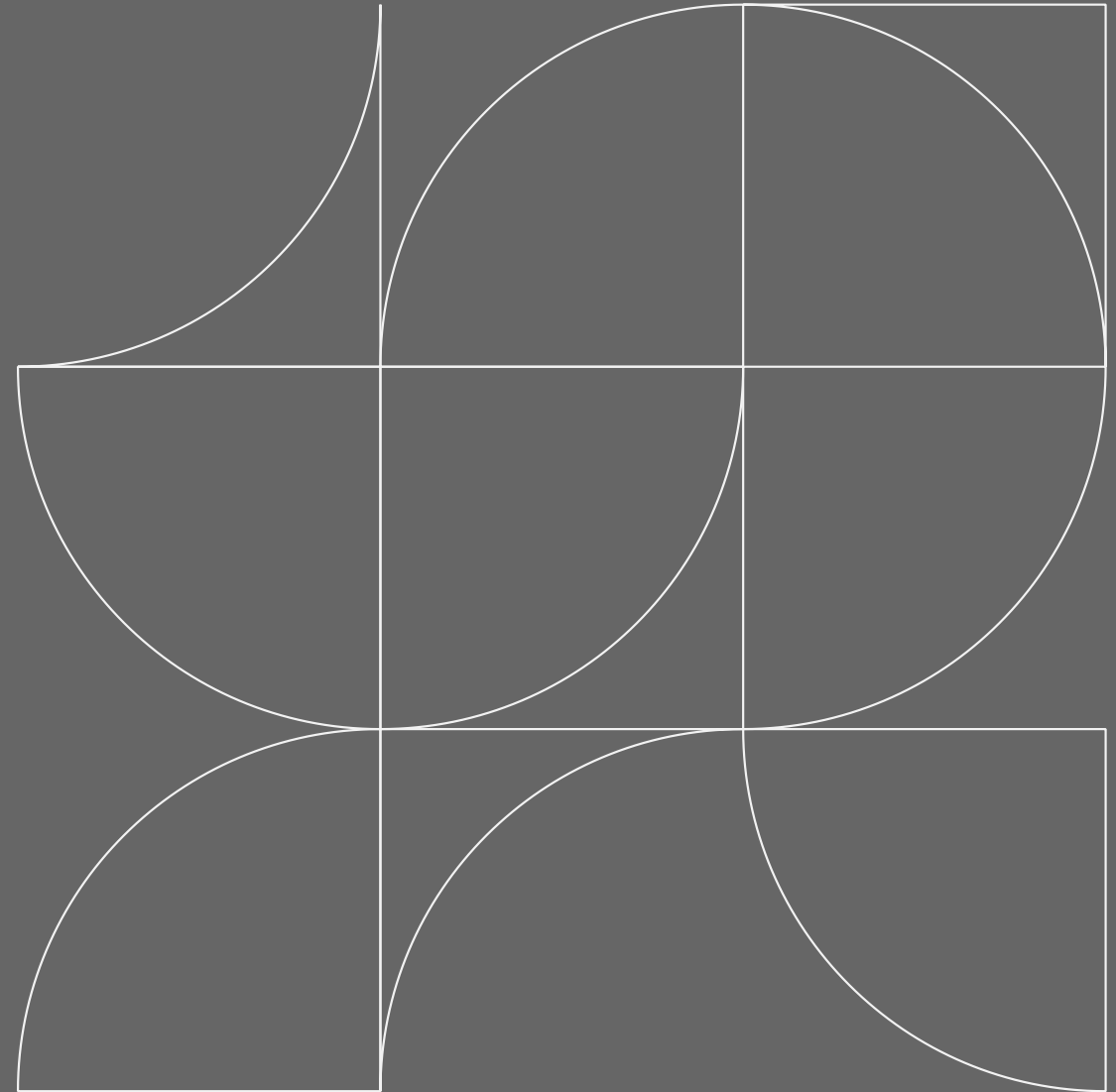


Week in Review



- Approximately 300,000 PPP applications filed within past week, representing including approximately \$100B approved loans to date.
- PPP interest rate increased from .5% to 1%, and term reduced from 10 years to 2 years.
- SBA released new guidance/interim rules covering:
 - Eligibility, affiliation, forgiveness, borrower/lender certifications and disbursement
- Most banks not lending to non-clients, resulting in scramble to file applications.
- Senate seeking to boost PPP loan program by an additional 251B.

Where is my Loan?



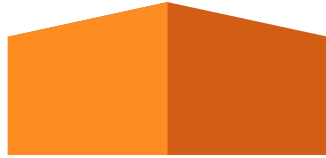
Where is my Loan?



01



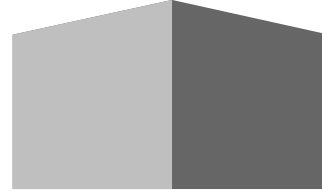
Applications submitted to Lender



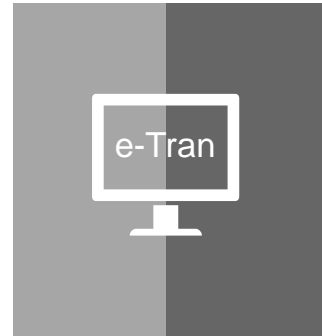
02



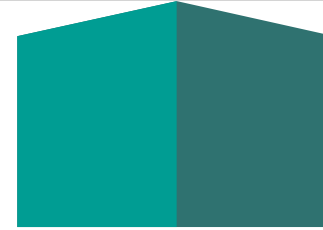
Lender prepares Form 2483, Form 2484 and loan calculation (based on borrower documentation and certification)



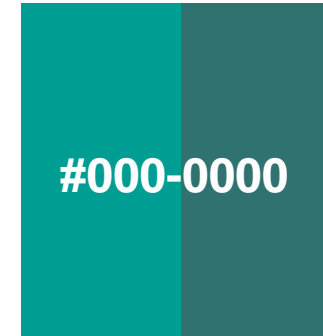
03



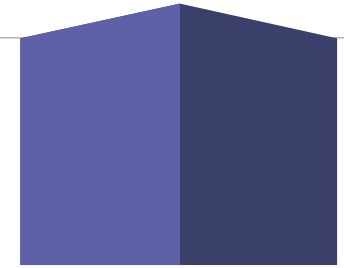
Lender enters information and documentation to SBA e-Tran



04



Lender receives an Authorization Number from SBA



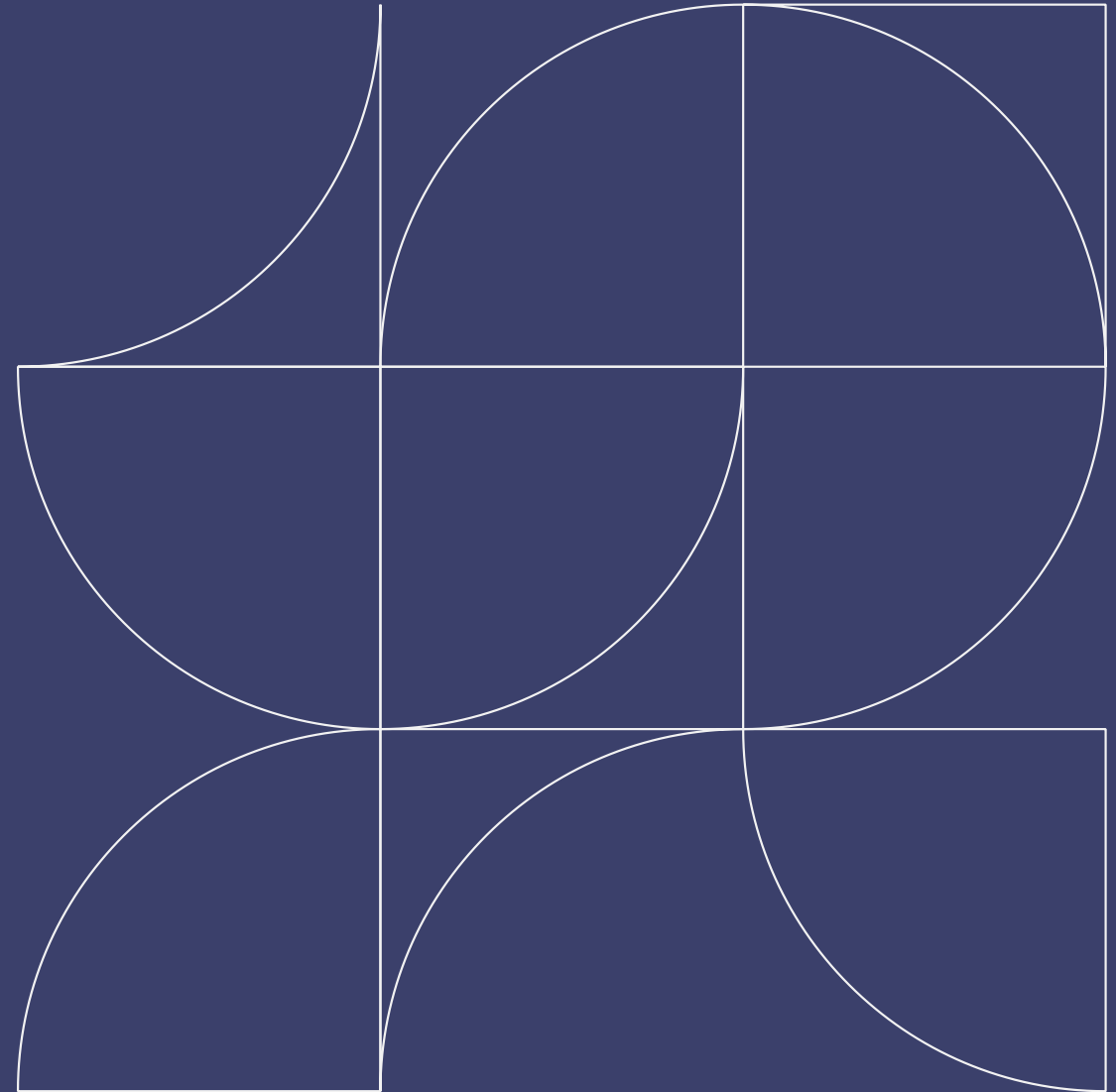
05



Currently, closing is supposed to occur within ten (10) days or authorization expire

Lenders are still awaiting guidance from SBA on closing directives/guidance

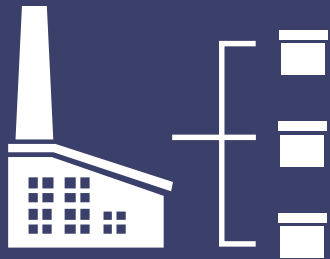
Eligibility and Affiliation Rules



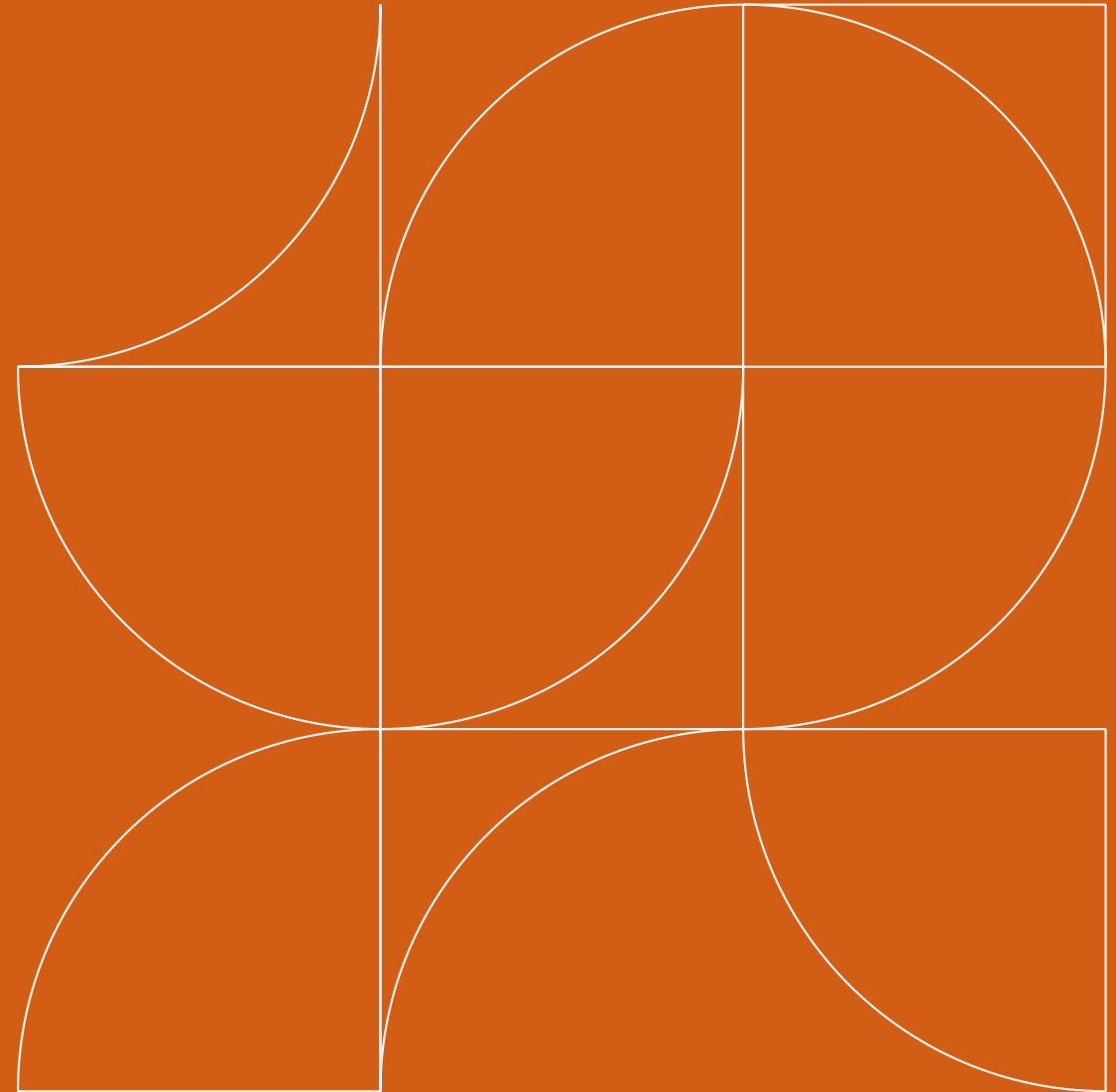
Eligibility and Affiliation Rules

- Applies to investment companies, **UNLESS** “any amount” SBIC funding (loans, debt, equity features, equity, guarantees, and or securities purchased from an underwriter under 107.825)
 - Even if owned/controlled by other investment firms
- Passive (non-operating) enterprises generally not eligible for 7(a)/PPP
- Borrowers are responsible for determining affiliation, size, and certifying same
 - Lender permitted to rely
- Parent-sub affiliation applies, but entities file separate applications
- Faith-based exemption to affiliation for non-profits

Eligibility and Affiliation Rules



Loan Forgiveness Updates

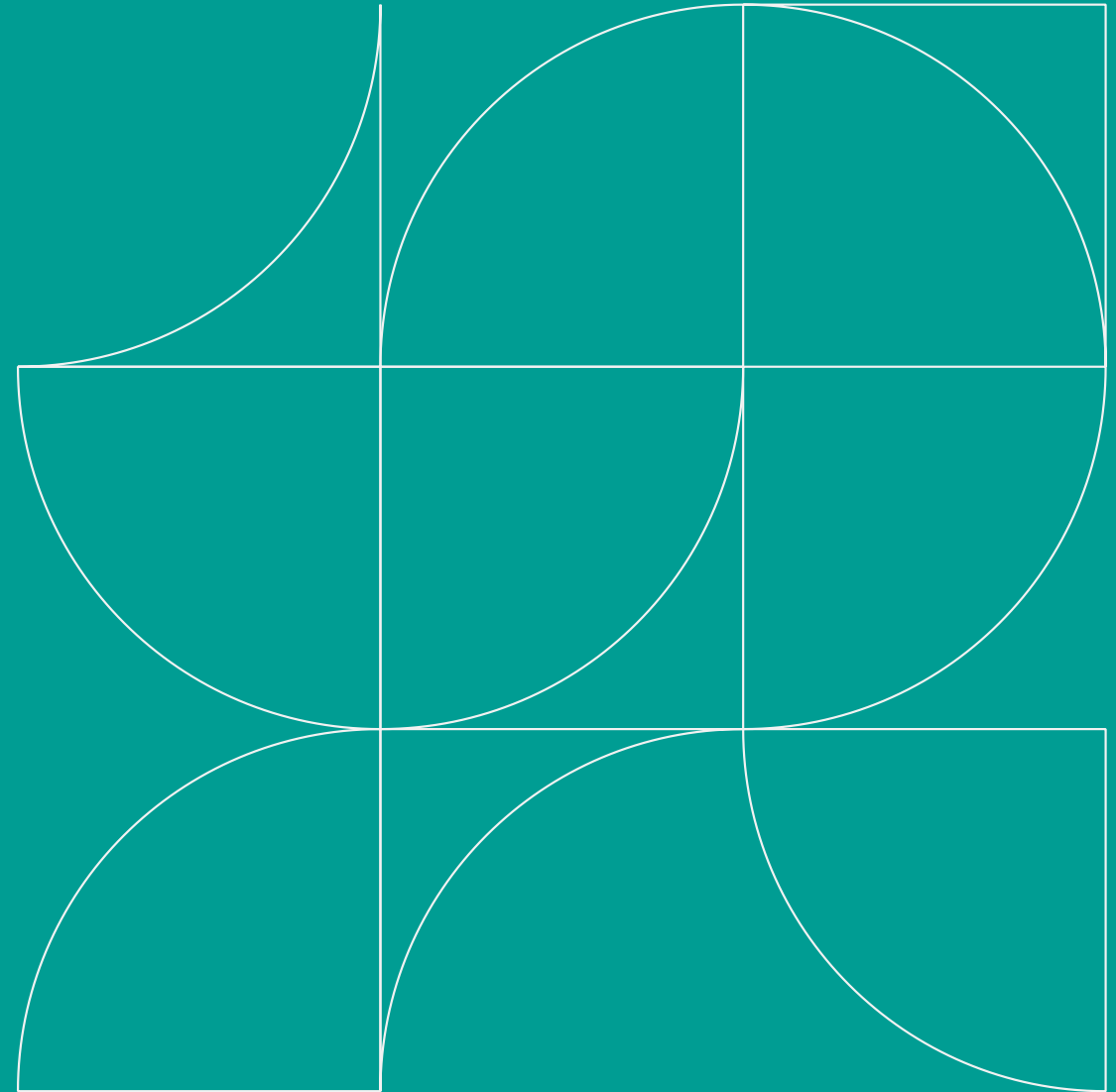


Loan Forgiveness Updates



- Additional forgiveness guidance to be released within next 1-2 weeks
- Lenders have sixty (60) days to submit for forgiveness, following disbursement (Chuck/John)
- Actual amount of forgiveness will match percentage of payroll and qualifying expenses, using the requirement of 75% use of proceeds for payroll costs
- Funds must be used immediately for intended purpose (i.e., paycheck protection)

EIDL and PPP Combinations

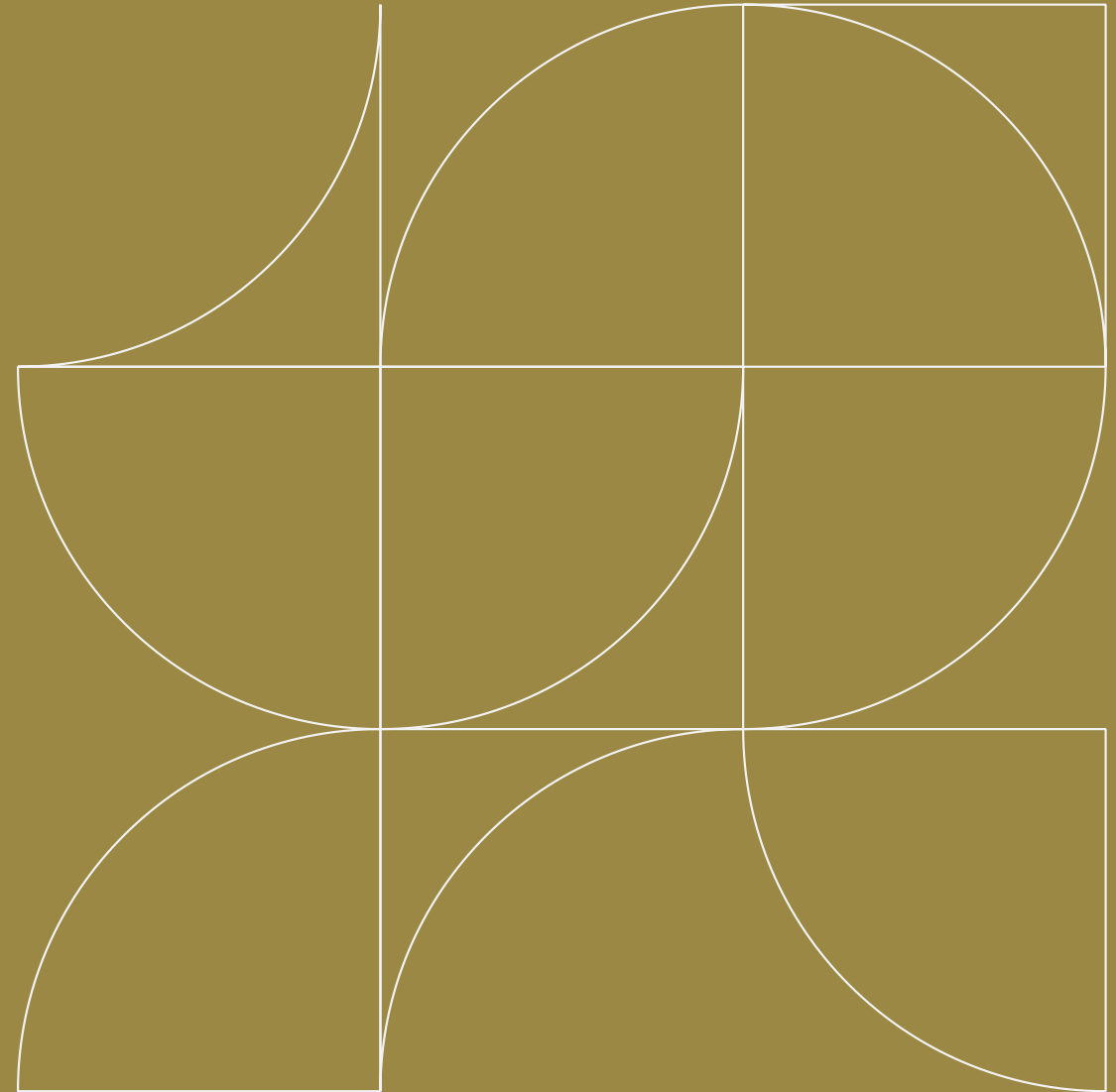


EIDL and PPP Combinations

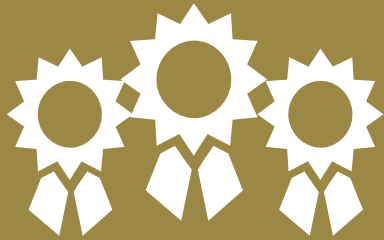


- General guidance: Cannot use EIDL and PPP loans to cover the same expenses
- Recent guidance addresses **EXISTING** EIDL and new PPP:
 - Application of \$10k grant, reduces PPP disbursements
 - If EIDL was used for payroll costs, PPP must be used to refinance EIDL
- Borrowers can apply for new EIDL and new PPP at same time

Borrower Certification Issues



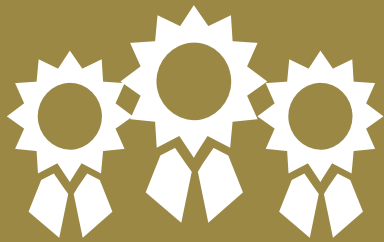
Borrower Certification Issues



What's in a Certification?

- Important to remember that Borrower (not Lender) makes bulk of certifications with respect to accuracy of information for application AND forgiveness.
- Lender's underwriting obligations is mainly limited to:
 - Confirming receipt of information; and
 - Confirming dollar amounts
- Borrower's will be responsible for “good faith” determinations with respect to affiliation, size and other eligibility requirements
- Additional Lender-mandated representations within loan documents.

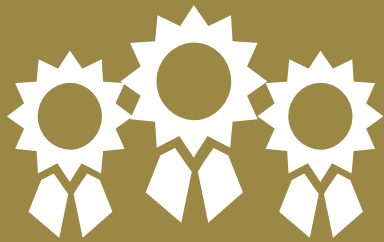
Borrower Certification Issues



Why Does this Matter?

- A lot of “grey” area in certifications, particularly in this rapidly-developing environment:
 - “Necessity” of loan
 - Use of funds: funds will be used to retain workers and maintain current payroll or make mortgage payments
 - Information provided is “true and accurate in all material respects”
 - Eligibility, affiliations and size, employees, etc.
- Standard is “knowing” misuse of funds...and false statements not made in good faith
- Certifications and representations will also likely appear in closing loan docs

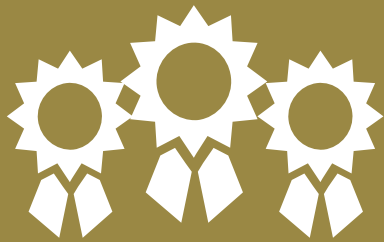
Borrower Certification Issues



Why Does this Matter? (cont.)

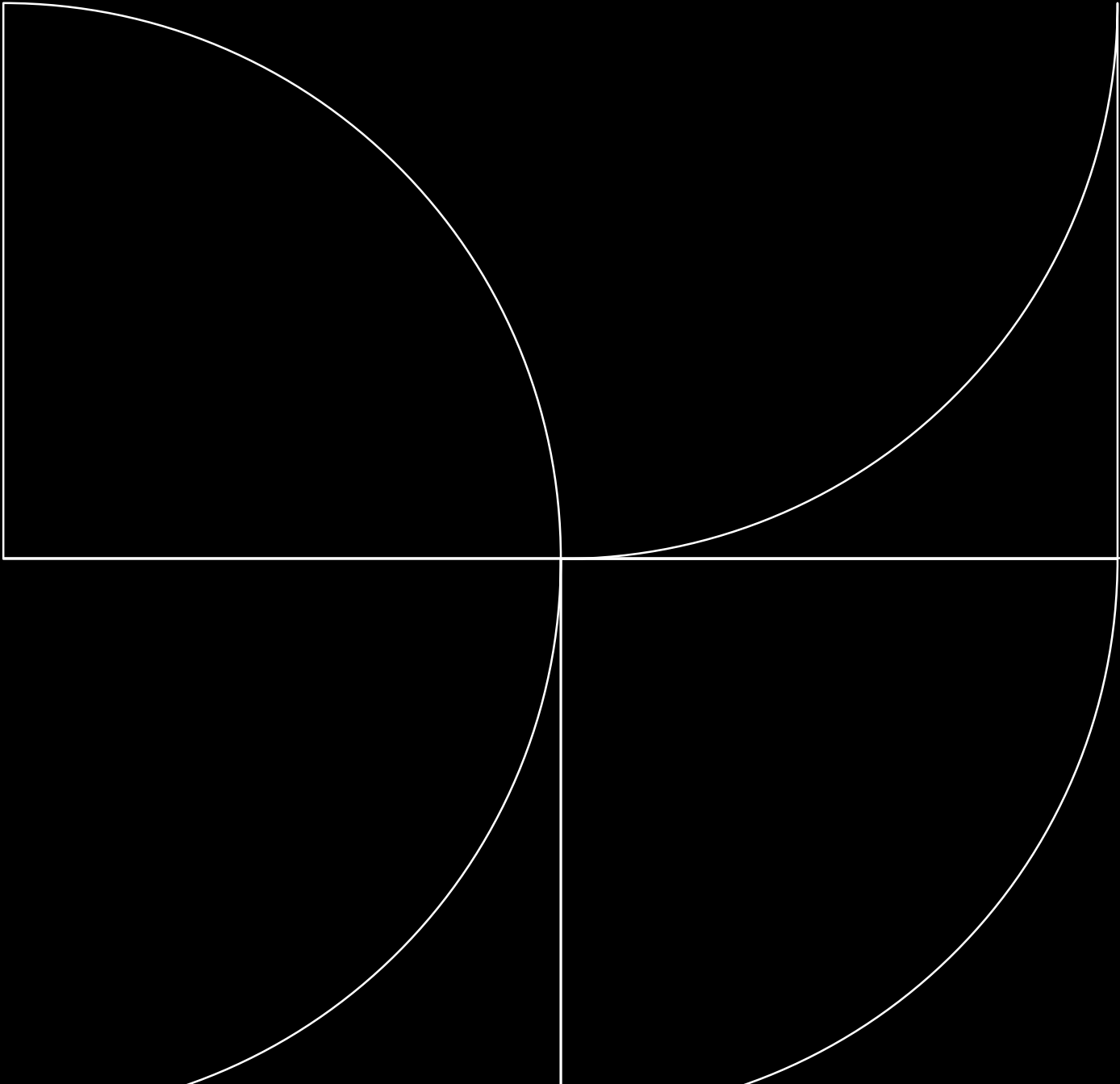
- Company's strategy and care for submitting application, certifying records and other information should reflect consequences for misstatements for guaranteed SBA loan:
 - Loss of forgiveness
 - Acceleration of note
 - Recourse of loan back to shareholder, member, partner, etc.
 - Debarment
 - Criminal penalties as specified in final rule (e.g., imprisonment and fines)

Borrower Certification Issues



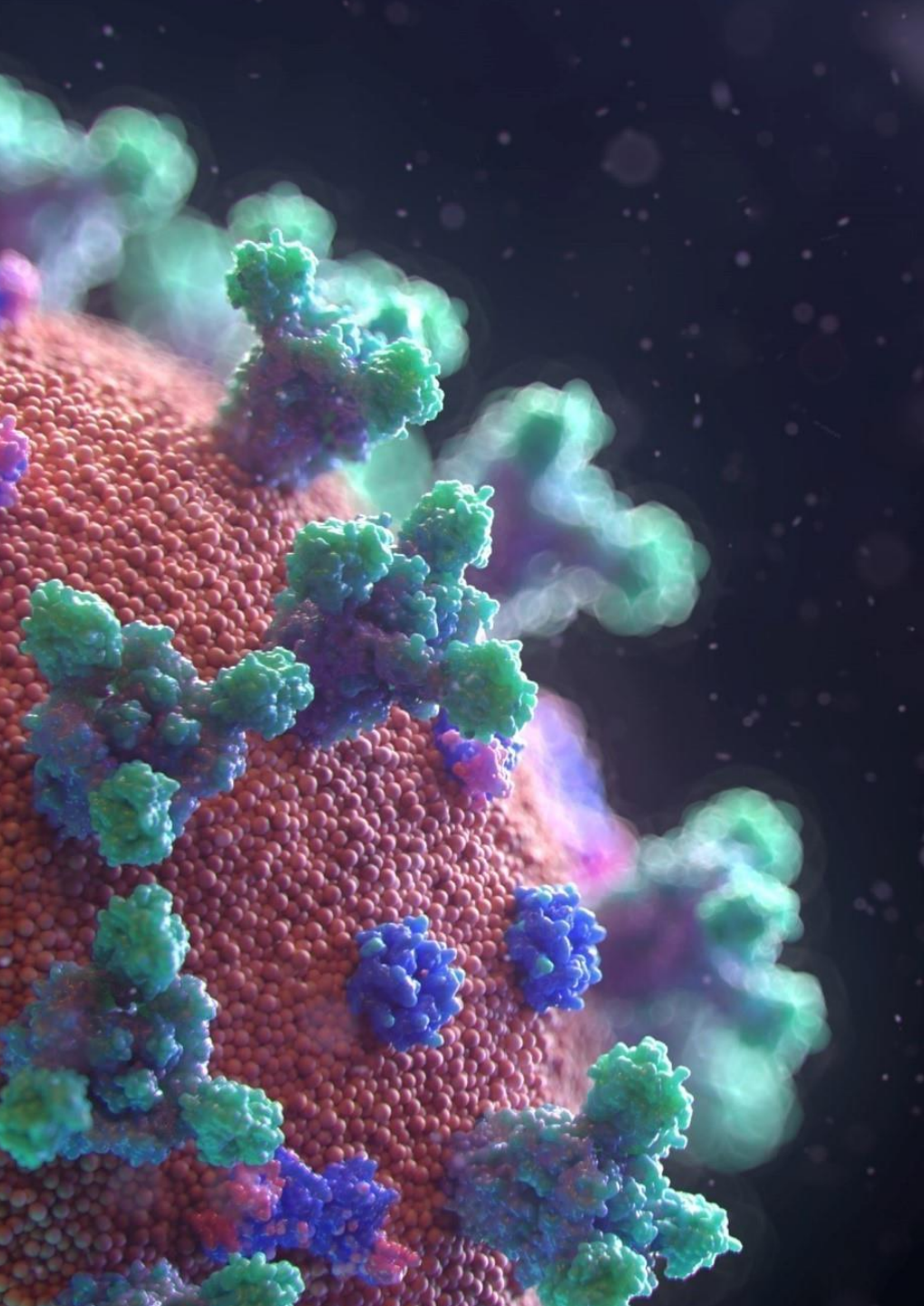
Best Practices for Accessing Stimulus Funds

- Consult your attorney to ensure “good faith” size, affiliation, analysis and other borrower-certified determinations are reasonable and appropriate
- Make sure that any inconsistencies or errors are addressed immediately, either before or after closing
 - Mistakes happen, but make sure that you make any corrective disclosures sooner than later
- Put the company in the best position to report/explain representations and use of funds
 - Documentation is critical
 - Segregate funds and track separately (i.e., do not commingle loan proceeds with other funds.)



Questions?

Thank you



**Visit Seyfarth's COVID-19
Resource Center to sign up
for daily updates:**

www.seyfarth.com/covid19