

THE LAW FIRM OF THE FUTURE

UPDATE ON PPP LOAN FORGIVENESS

An MPF Webinar – December 9, 2020

by

Scott D. Burke, Esq.

Managing Partner, Morrison Mahoney LLP,

Uri Gutfreund

Law Firm Group Leader, Risk Strategies Company

Daniel Mayo, JD, LLM

National Lead-Federal Tax Policy, Withum

Lisa R. Murray

Senior Vice President, Citizens Bank

John Remsen, Jr.

President, TheRemsenGroup

MPF WEBINAR

POWERED BY

TheRemsenGroup
Smart Strategies for the Forward Thinking Law Firm

TheRemsenGroup.com

BIOGRAPHICAL PROFILE

John Remsen, Jr.

President

TheRemsenGroup

Atlanta, Georgia

404.885.9100 – jremsen@therem sengroup.com

John Remsen, Jr., is widely recognized as one of the country's leading authorities on law firm leadership, management, marketing and business development. Since 1997 TheRemsenGroup has consulted with more than 400 law firms and thousands of law firm leaders to help them develop and implement long-term strategic objectives to improve cohesiveness, profitability and sustainability.

John is a frequent speaker and author on law-firm leadership and marketing topics. He has spoken at national and regional conferences of the Legal Marketing Association, Association of Legal Administrators, American Bar Association, and numerous state and local bar associations. His articles have appeared in dozens of highly respected legal publications, including the ABA Journal, Law Practice Management, Law Practice Today, Law360, Legal Management, Marketing for Lawyers, Marketing the Law Firm, Managing Partner, National Law Review and New York Law Journal.

Since 1988, John has been an active member of the Legal Marketing Association, and he has served as President of LMA's Southeastern Chapter, Executive Editor of Strategies (LMA's newsletter) and a member of LMA's national Board of Directors. He is also an active member of the Association of Legal Administrators and a popular speaker at ALA meetings and conferences.

In 2002, John created The Managing Partner Forum, a highly acclaimed conference series and community for managing partners and law firm leaders. More than 1,200 firm leaders from 900 law firms from 43 states have participated in 26 conferences. In addition, John distributes The MPF Weekly, an electronic newsletter to more than 10,500 firm leaders throughout the U.S., Canada and 28 other countries.

John's influence was underscored when he was inducted as a Fellow of the College of Law Practice Management in 2013, in recognition of his 25 years of demonstrated expertise in law firm leadership and management. Founded in 1994, the College honors those who "inspire excellence and innovation in law practice management." Membership is by invitation only and includes just 200 individuals.

And the College was not alone: in 2016, John was recognized by LawDragon as one of the "Top 100 Consultants and Strategists" to the legal profession; and in 2017, John was recognized as one of the world's top "leaders and influencers" in the business of law by the Association of International Law Firm Networks.

A native of West Palm Beach, Florida, John holds an MBA from The University of Virginia (1985) and a bachelor's degree in Business Administration from the University of Florida (1980). Prior to enrolling in graduate school, John was Executive Director of The Florida Council of 100, an organization comprised of Florida's top CEOs and other business leaders.

October 2019

BIOGRAPHICAL PROFILE

Uri Gutfreund

National Law Firm Practice Leader
Risk Strategies Company
New York, New York
212.826.9744 – ugutfreund@risk-strategies.com

Uri Gutfreund is The National Law Firm Practice Leader at Risk Strategies Company, a top 25 national insurance brokerage and The Founder and Moderator of The Managing Partner Round Table™, a regional peer-to-peer professional development group. This unique program has quickly become a leading venue for thought leaders in the legal industry.

At Risk Strategies, Uri is responsible for the development and execution of all insurance and risk management services to the company's law firm clients. He oversees all of law firm specialty areas including: Health, Professional Liability, Property and Casualty, Cyber and EPLI. His practice leadership combines 20 years personal experience with cutting edge innovation remaking law firm insurance programs using the latest technology, peer benchmarking, and real time best practices to serve the company's law firm clients.

He is a Registered Professional Liability Underwriter since 2001 and a frequent speaker and writer on law firm leadership, law firm business practices and insurance and risk management at national and regional conferences.

Selected Publications and Presentations:

- "Everything You Need to Know about Insurance For Your Firm in 60 Minutes," Speaker of the Month, St. Louis, Atlanta, 2016.
- "2015 Tax Deduction Opportunity: 5 Steps to Overpay For Your Professional Liability Insurance," 2015.
- "Is Your Firm the Next Target for Hackers?" Business of Law Conference, 2015.
- "Change or Be Eliminated: Why Every Administrator Should Become a CFO," Business of Law Conference, 2015.
- "Disability Insurance for Law Firms – It's All in the Details," Association of Legal Administrators - Annual Conference Speaker, 2015.
- "Errors, Omissions & Scares-PLI! Professional Liability Insurance Unmasked," Association of Legal Administrators - Annual Conference Speaker, 2014.

- “Buying and Selling a Law Practice,” Westchester Bar Association Speaker, 2014.
- “Suing for your fees: Three insurance considerations to safely collect what’s rightfully yours,” 2013.

April 2019

MPF WEBINAR

Law Firm of the Future

**Managing Partner Forum®**
ADVANCING THE BUSINESS OF LAW

The MPF Webinar Series: The Law Firm of the Future
Update on PPP Loan Forgiveness
An MPF Webinar with **Scott Burke, Dan Mayo and Lisa Murray**
December 9, 2020 – 2:00-3:00pm ET





1

**Managing Partner Forum®**
ADVANCING THE BUSINESS OF LAW



John Remsen, Jr.

- President, TheRemsenGroup
- President & CEO, Managing Partner Forum
- Strategic Planning, Marketing/Business Development, Firm Retreats, COO/CMO Search
- Fellow, College of Law Practice Management
- Speaker:
 - American Bar Association
 - Association of Legal Administrators
 - Legal Marketing Association
 - MPF Annual Conference
 - Law Firm Networks
- Education:
 - University of Virginia – MBA
 - University of Florida – BSBA



2

MPF WEBINAR

Law Firm of the Future



Managing Partner Forum®
ADVANCING THE BUSINESS OF LAW



Uri Gutfreund

- National Law Firm Practice Leader, Risk Strategies Company
- Prof'l Liability, Cyber, EPLI, Employee Benefits, Property and Casualty Insurance Plans
The Managing Partner Roundtable
- Speaker:
 - American Bar Association
 - Association of Legal Administrators
 - Managing Partner Summit
 - MPF Annual Conference
 - Law Firm Networks
- Education:
 - BA – Yeshiva University



TheRemsenGroup
Smart Strategies for the Forward Thinking Law Firm



RISK STRATEGIES

3



Managing Partner Forum®
ADVANCING THE BUSINESS OF LAW



Scott Burke, Esq.

- Managing Partner, Morrison Mahoney LLP
- 190 lawyers
- 10 office locations in Northeastern US
- Member: ALFA International
- Former NYC Prosecutor
- Frequent presenter on trial practice, risk avoidance and legal ethics
- Education:
 - JD – Georgetown University Law Center
 - BA – University of Massachusetts, Amherst



TheRemsenGroup
Smart Strategies for the Forward Thinking Law Firm



RISK STRATEGIES

4

MPF WEBINAR

Law Firm of the Future



Managing Partner Forum®
ADVANCING THE BUSINESS OF LAW



Daniel Mayo, JD, LLM

- National lead, Federal Tax Policy, Withum
- 1,100 CPAs (Top 25)
- HLB Global Accounting Network
- Adjunct Professor, Georgetown Univ. Law Center
- Former Chair, ABA Banking/Savings Institutions Tax Committee
- Author and Speaker:
 - US Federal Income Tax, International Tax
- Education:
 - LLM – New York University School of Law
 - JD – Seton Hall University
 - BS-Accounting – Rutgers University



TheRemsenGroup
Smart Strategies for the Forward Thinking Law Firm



RISK STRATEGIES

5



Managing Partner Forum®
ADVANCING THE BUSINESS OF LAW



Lisa R. Murray

- Senior Vice President and Leader, Professionals Banking Group, Citizens Bank
- \$160 Billion in Assets (Top 25)
- Based in Providence, RI
- Legal, Accounting, REITs
- Diversity and Inclusion Initiative
- State Street Bank, Fleet Bank, Shawmut Bank
- Director, Pine Street Inn
- Education:
 - BA-Economics – University of Connecticut



TheRemsenGroup
Smart Strategies for the Forward Thinking Law Firm



RISK STRATEGIES

6

MPF WEBINAR

Law Firm of the Future



TODAY'S WEBINAR

- Opening Remarks
- Panel Discussion
- Survey and Polling Results
- Your Questions
- Up Next: Predictions for 2021 – Dec 30th



7



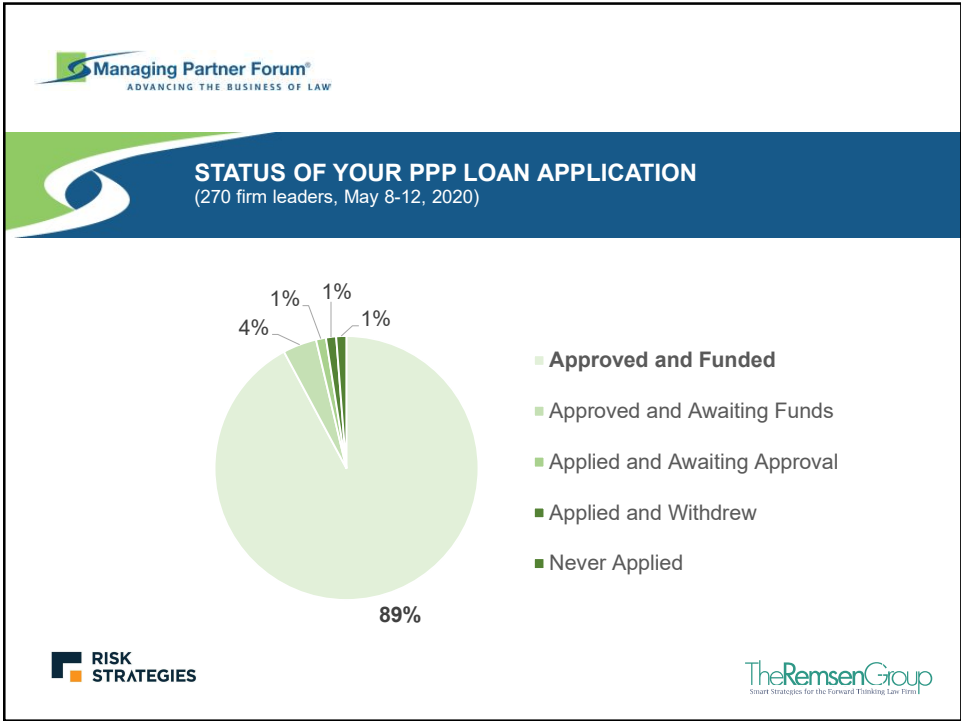
REGISTRANT SURVEY RESULTS – WAY BACK WHEN

- May 8-12, 2020
- 270 firm leaders

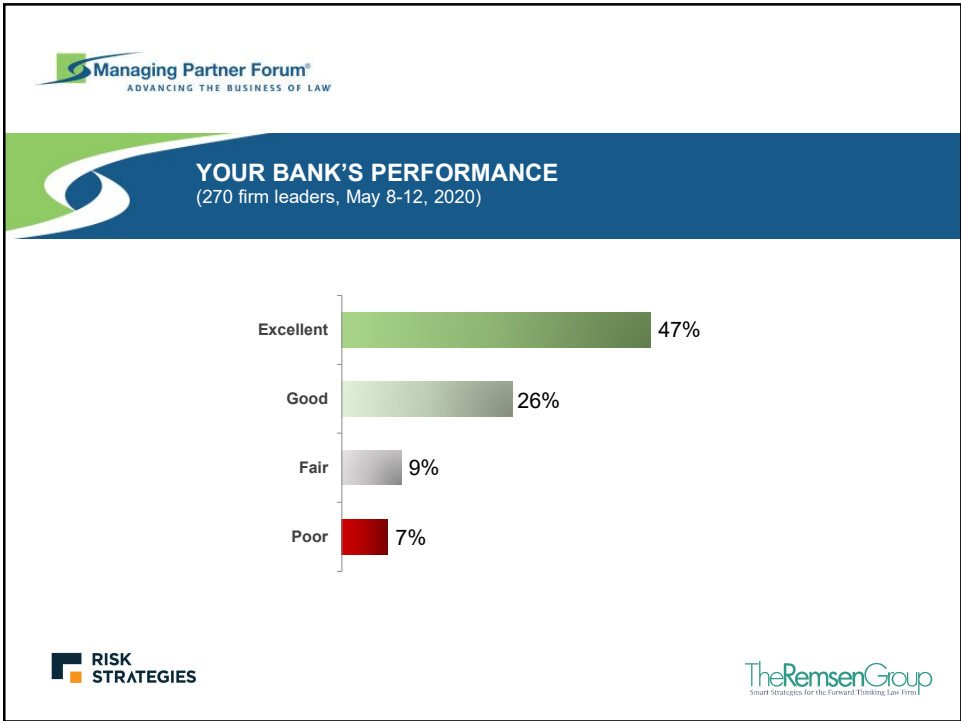


8

MPF WEBINAR
Law Firm of the Future

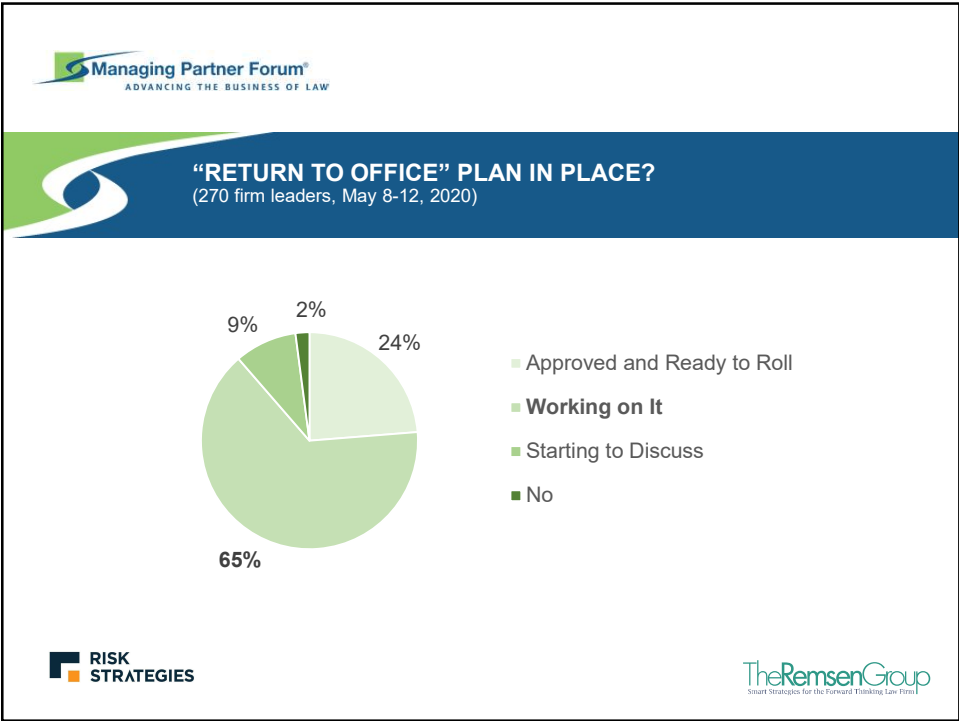


9

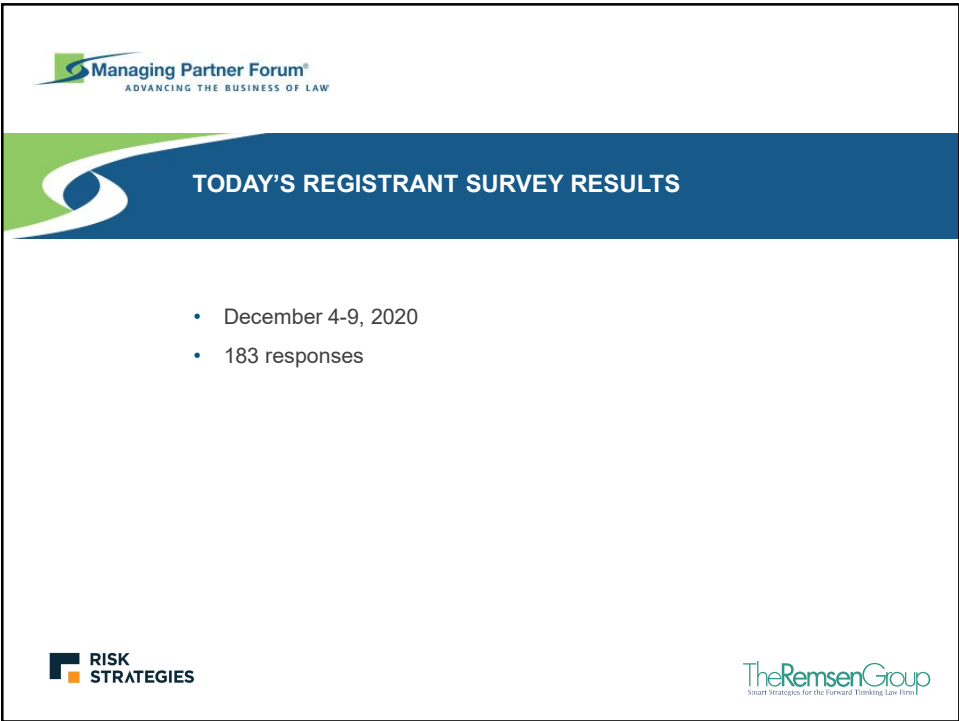


10

MPF WEBINAR
Law Firm of the Future

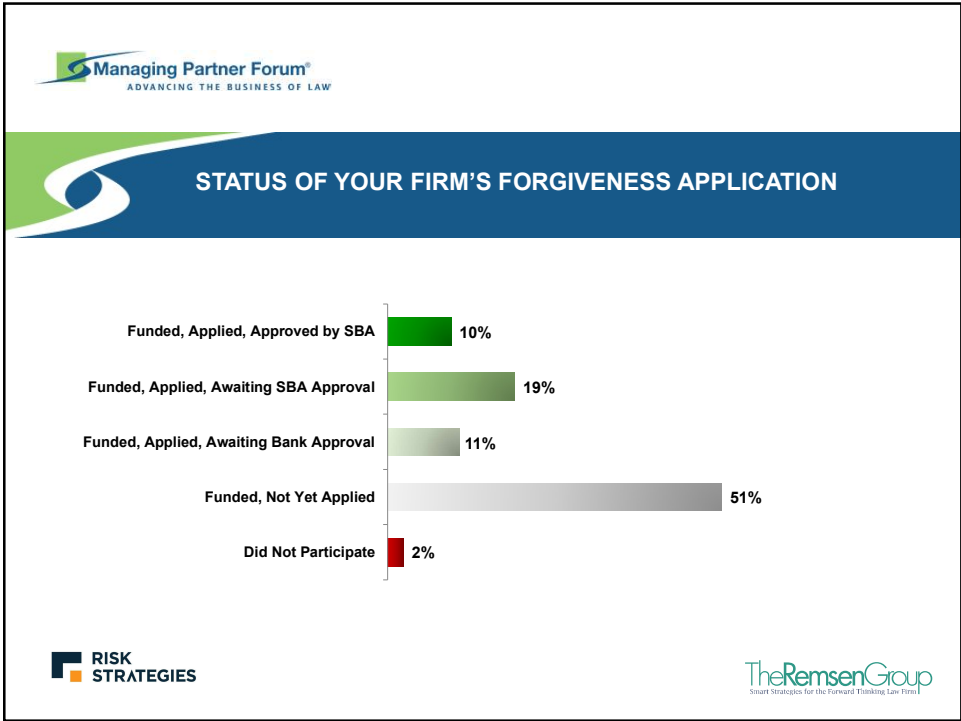


11

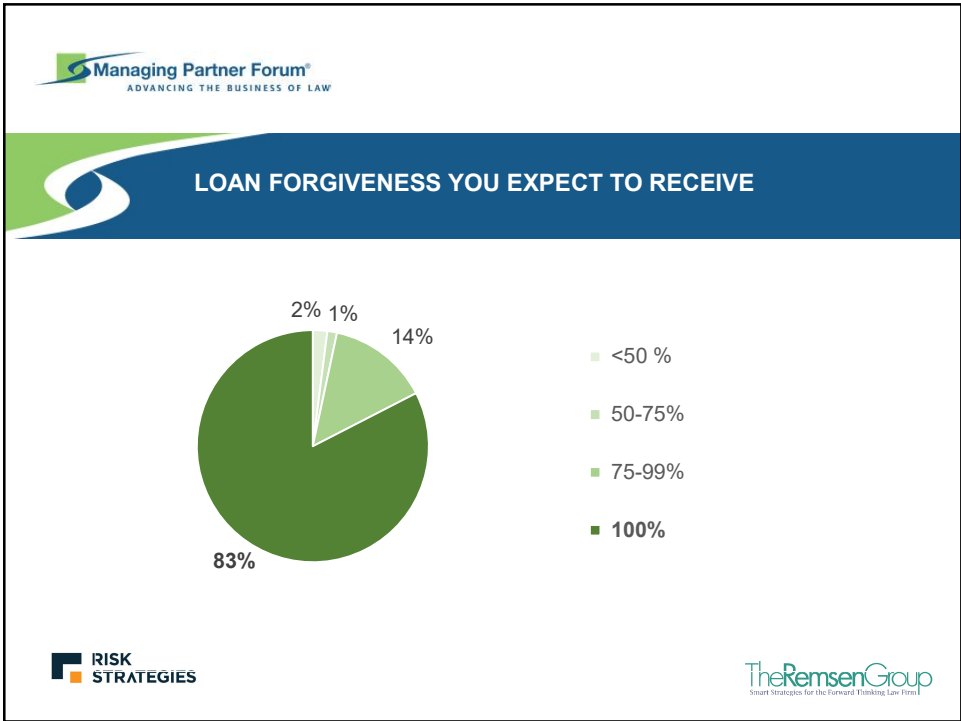


12

MPF WEBINAR
Law Firm of the Future

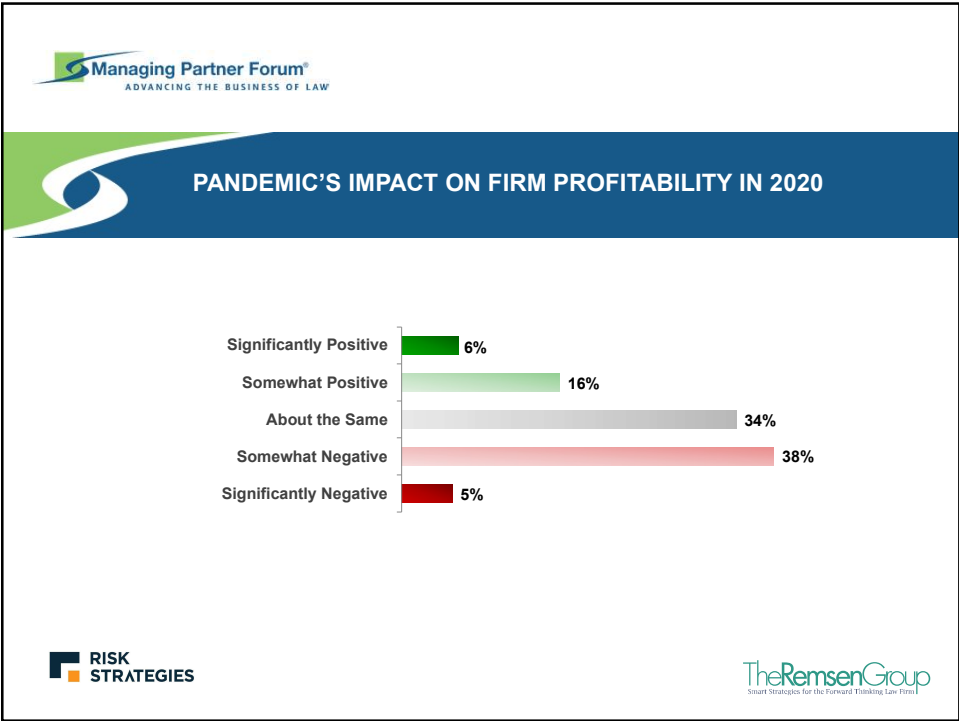


13

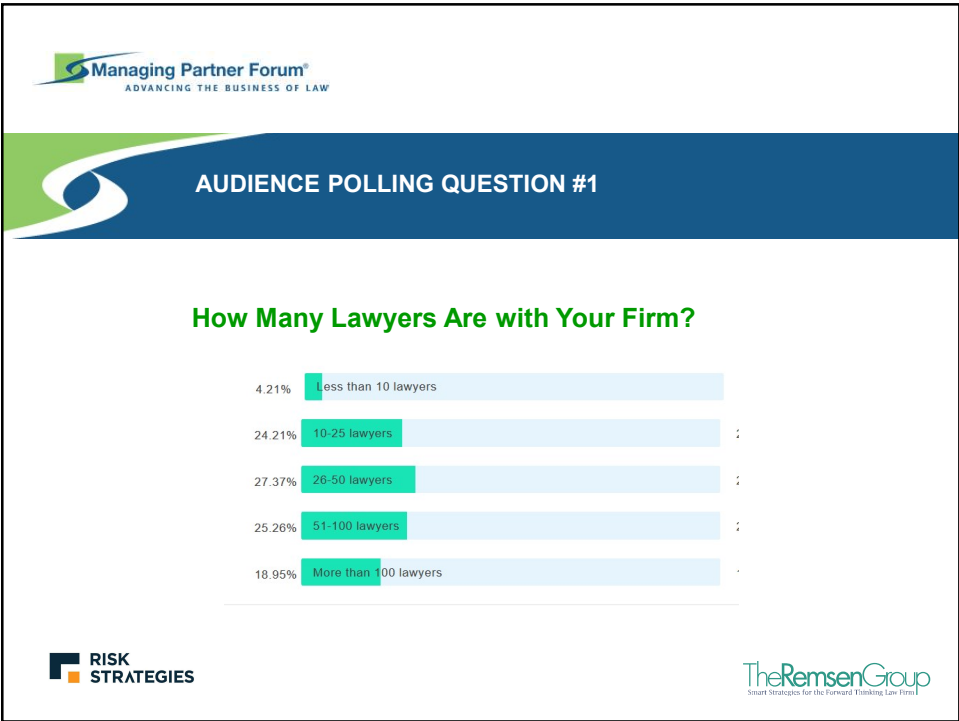


14

MPF WEBINAR
Law Firm of the Future



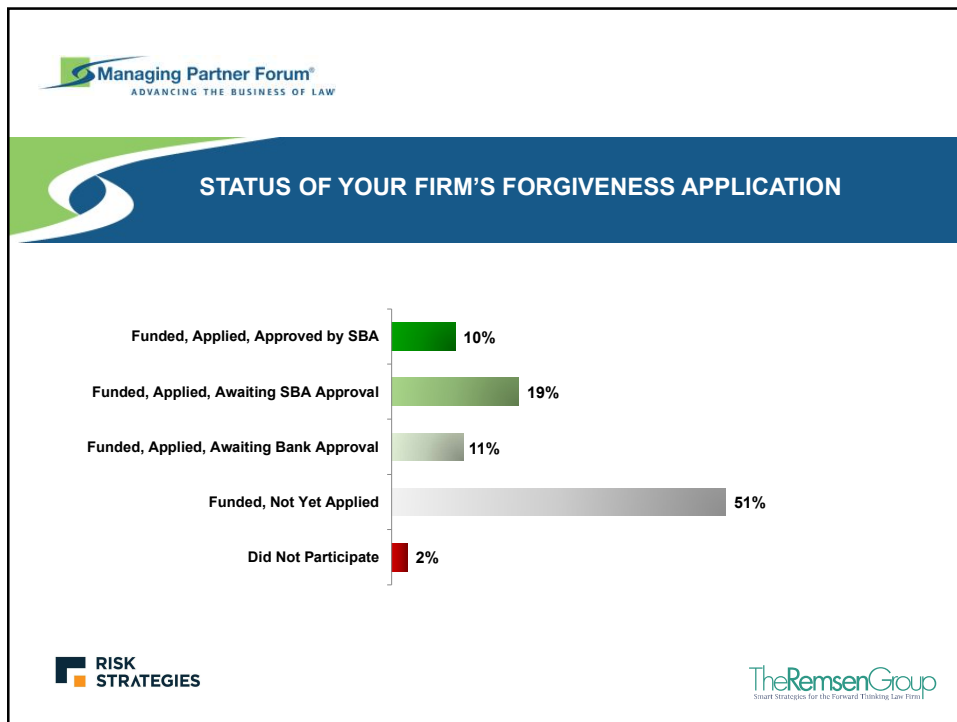
15



16

MPF WEBINAR

Law Firm of the Future



17

Forgiveness Application – Short Form 3508EZ

FTE Certification

>> 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.

AND

>> 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.

M

18

PPP Forgiveness – Short Form 3508EZ

FTE Certification

The FAQs aka Interim Final Rule (IFR)

Q: Will a borrower's loan forgiveness amount be reduced if an employee is fired for cause, voluntarily resigns, or voluntarily requests a schedule reduction?

A: No. When an employee of the borrower is fired for cause, voluntarily resigns, or voluntarily requests a reduced schedule during the covered period or the alternative payroll covered period (FTE reduction event), **the borrower may count such employee at the same full-time equivalency level before the FTE reduction event when calculating the section 1106(d)(2) FTE employee reduction penalty.**



19

Application Preparation

“Give me six hours to chop down a tree and I will spend the first four sharpening the axe.”

-- The SBA incorrectly quoting Abraham Lincoln



20

Loan Necessity Questionnaire

Form 3509

- >> Applies to loans over \$2MM
- >> 10 days to complete and return
- >> Questions seek information on gross revenue in Q2 of 2020 vs. 2019, government orders impacting your business, liquidity assessment, etc.
- >> Lengthy – Start it now



21

Revenue Ruling 2020-27

- Released November 18, 2020
- Addresses 2 scenarios –
 - Apply in 2020 and receive loan forgiveness decision in 2021
 - expense disallowance in 2020 if reasonably expect loan forgiveness at end of 2020
 - No application in 2020 but expect to apply in 2021
 - expense disallowance in 2020 if reasonably expect loan forgiveness at end of 2020
- So who can disallow expenses in 2021?
 - Answer: borrowers with no reasonable expectation of forgiveness at end of 2020
 - Can there be **no reasonable expectation of forgiveness** if a borrower files or plans to file an application with its lender under penalties of perjury?
 - Facts are known and with exclusive control of borrower
 - Rules regarding loan forgiveness are reasonably clear

22

Revenue Procedure 2020-51

- Provides a safe harbor for eligible taxpayers to deduct expenses relating to PPP
- Eligible Taxpayers –
 - Incur eligible expenses in 2020 and reasonably expect loan forgiveness at the end of 2020;
 - Apply for loan forgiveness in 2020 or intend to apply in 2021; and
 - Either –
 - learn in 2021 that their loan forgiveness application has been denied in whole or in part; or
 - decide in 2021 not to seek loan forgiveness for some or all of their PPP loan (e.g., they determine they will not qualify)
- Deduction for expenses can be taken –
 - On a timely filed, including extensions, tax return for 2020;
 - On an amended tax return for 2020 or an administrative adjustment request (AAR) for 2020, as applicable; or
 - On a timely filed tax return for 2021 if a statement is filed with the 2021 tax return to confirm eligibility for the safe harbor

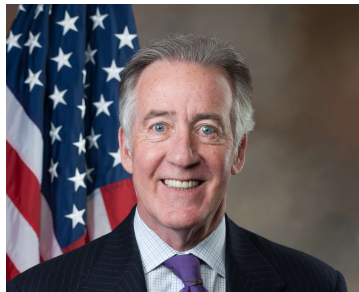
23



Update on PPP Loan Forgiveness

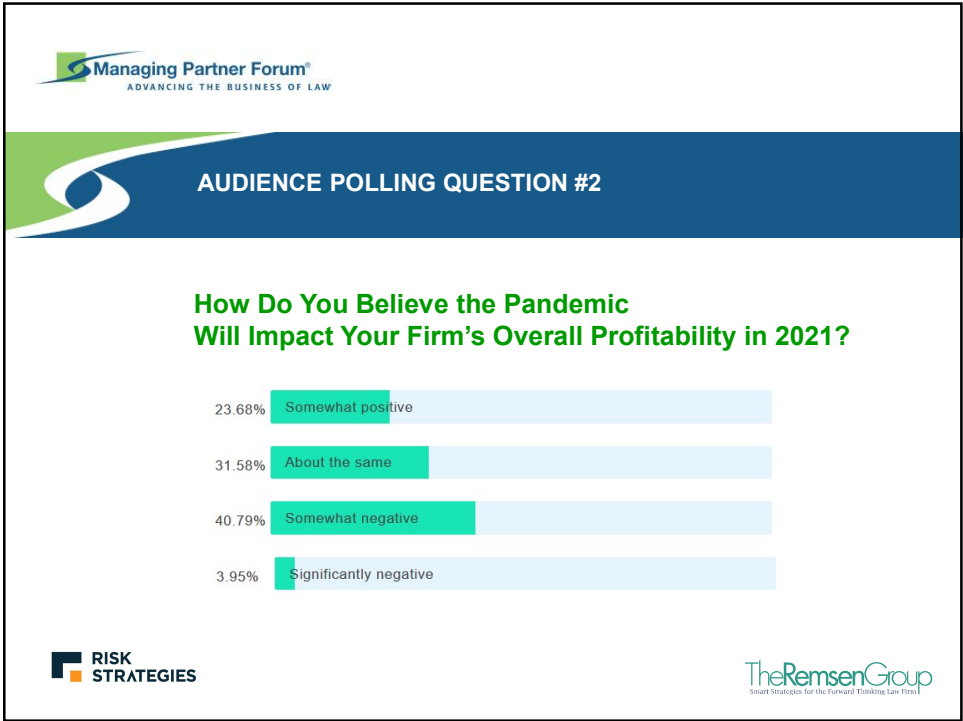
Rep. Richard Neal

Chair, US House Ways and Means Committee

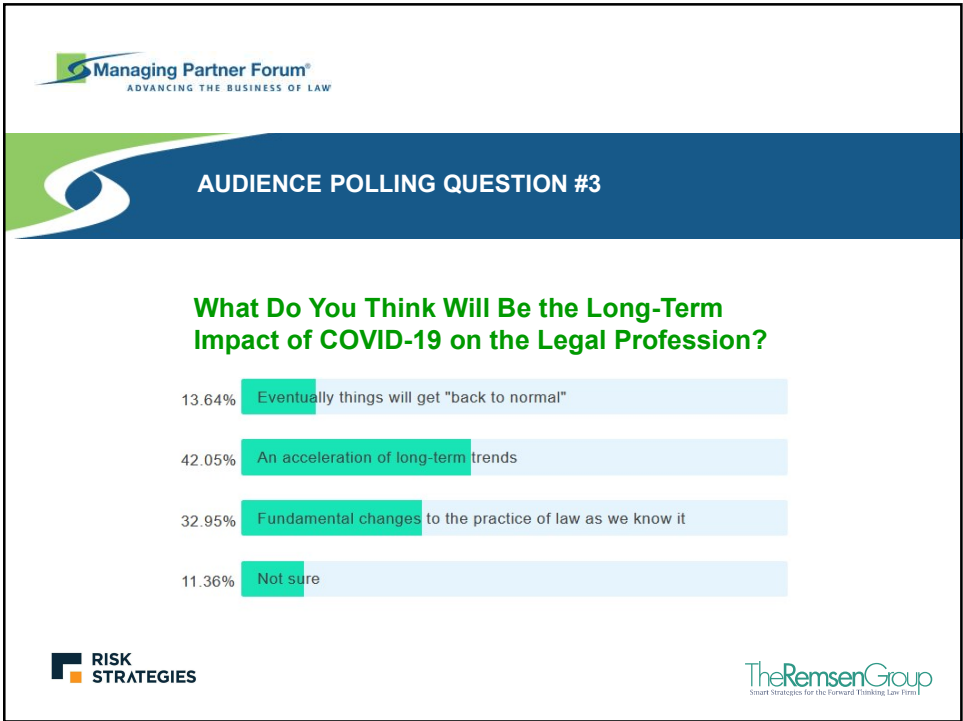


24

MPF WEBINAR
Law Firm of the Future

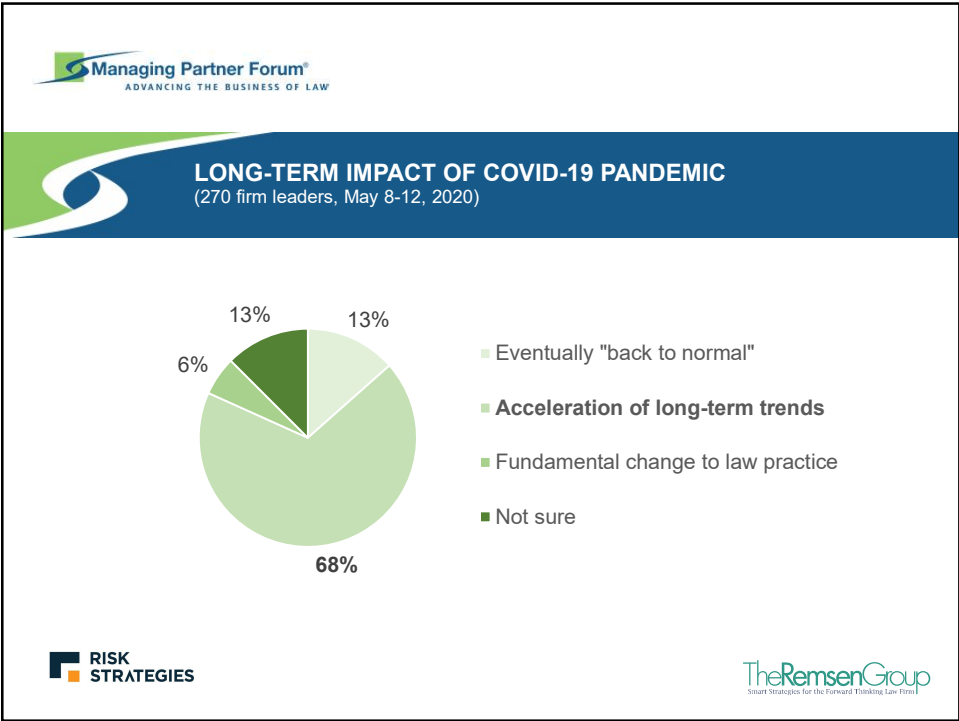


25



26

MPF WEBINAR
Law Firm of the Future



27

 **Managing Partner Forum®**
ADVANCING THE BUSINESS OF LAW

GUIDANCE FOR FIRM LEADERS

- Demonstrate Care for People, Clients and Community
- Stay Educated and Updated
- Communicate Clearly and Frequently
- Keep Open Communication Lines
- Stay Cool, Calm and Collected
- Refer to the Experts
- Credibility, Reliability, Intimacy
- Today's Webinar and Handouts

 **TheRemsenGroup**
Smart Strategies for the Forward Thinking Law Firm

 **RISK STRATEGIES**

28

MPF WEBINAR

Law Firm of the Future



Managing Partner Forum®
ADVANCING THE BUSINESS OF LAW

RESOURCES

- MPF Website – www.ManagingPartnerForum.org
- *The MPF Weekly*
- MPF Webinars and Handouts
- MPF Leadership Conference – May 5-6, 2021
- MPF Listserv and MPIE Conference Calls



TheRemsenGroup
Smart Strategies for the Forward Thinking Law Firm



**RISK
STRATEGIES**

29



Managing Partner Forum®
ADVANCING THE BUSINESS OF LAW

CONTACT US

Scott D. Burke, Esq.
617-439-7578
sburke@morrisonmahoney.com

Uri Gutfreund
212.826.9744
uri.gutfreund@risk-strategies.com

Daniel Mayo
973.532.8847
dmayo@withum.com

Lisa R. Murray
617.725.5667
lisa.murray@citizensbank.com

John Remsen, Jr.
404.885.9100
jremsen@therem sengroup.com



TheRemsenGroup
Smart Strategies for the Forward Thinking Law Firm



**RISK
STRATEGIES**

30

MPF WEBINAR
Law Firm of the Future



Managing Partner Forum®
ADVANCING THE BUSINESS OF LAW

The MPF Webinar Series: The Law Firm of the Future

Update on PPP Loan Forgiveness

An MPF Webinar with Scott Burke, Dan Mayo and Lisa Murray

December 9, 2020 – 2:00-3:00pm ET





TheRemsenGroup
Smart Strategies for the Forward Thinking Law Firm



RISK
STRATEGIES

31

This site uses cookies to store information on your computer. Some are essential to make our site work; others help us improve the user experience. By using the site, you consent to the placement of these cookies. Read our [privacy policy](/info/privacy-policy.html) (</info/privacy-policy.html>) to learn more.

Journal of Accountancy

It's a tough year for year-end tax planning

Advisers face the difficult task of helping clients plan for next year without knowing for certain which party will control the Senate.

By Dave Strausfeld, J.D.

Today

Performing year-end tax planning this year is going to be “very, very difficult,” Bob Keebler, CPA/PFS, said in a Nov. 10 webcast sponsored by the AICPA’s Personal Financial Planning Section.

Advisers face the challenge of helping clients plan for 2021 while control of the Senate remains uncertain. The breakdown of seats in the Senate, and the fate of Democrats’ plans to raise taxes on wealthy taxpayers, likely will not be known until Georgia conducts a special election for its two senators on Jan. 5. The runoff is necessary because none of the candidates for either Senate seat garnered 50% of the vote, a threshold set by Georgia law.

If the Democrats win *both* Georgia Senate seats, the Senate will be divided 50-50, which would give Democrats control of the Senate because the vice president has the constitutional power to break ties. Through the reconciliation process, Democrats would be able to enact tax reforms President-elect Joe Biden proposed in his campaign platform. On the other hand, if the Republicans win *either* of the Georgia Senate seats, they will be able to block Biden’s tax proposals.

Calculating Senate probabilities

All other things being equal, the Democrats’ odds of winning *both* Georgia Senate seats is only 25%. “We all learned in probability and stats,” Keebler said in the AICPA webcast, that if you flip a coin twice, there’s a 25% chance of heads coming up both times. Keebler recommended teaching clients this basic principle of probability.

Even if a client doubts that the Democratic candidates will prevail in the longtime red state of Georgia (and thinks, for instance, that each has only 40% odds of winning), there is still a 16% chance of the Democrats winning both seats (0.4×0.4). That may be enough to drive a planning decision because, Keebler said, if the financial stakes are high, “most people just wouldn’t take that risk.”

“This is what you have to tell your clients. Do not make these decisions for them,” Keebler stressed. “Let them weigh the odds. Just lay out the facts and encourage them to go online and read more about this.”

Capital gain tax

In other words, while Democratic control of the Senate is unlikely, the possibility should not be overlooked in planning for 2021. Three important Biden tax proposals to be aware of involve capital gain tax, charitable giving, and estate tax, Keebler said.

Beginning with capital gain tax, Biden has proposed raising the capital gain rate from 20% to 39.6% for taxpayers with income over \$1 million. Therefore, individuals who are planning to sell in 2021 should perhaps consider doing so in 2020 instead, because of the possibility that Democrats could win both Georgia Senate seats, Keebler said.

For instance, imagine that a father is selling a car dealership to his daughter for \$10 million and has scheduled the deal to close on her 30th birthday, March 18. By moving up the transaction to December, he guarantees himself a 20% capital gain tax rate rather than the possibility of 39.6%.

To take another example, a partner of a CPA firm who is scheduled to retire in May might wish to say to her partners, "Hey, guys, do you want to buy my stock at the end of December?"

Charitable donations

With respect to charitable donations, the Biden campaign platform would cap itemized deductions to a 28% tax benefit for those earning more than \$400,000, compared to 37% currently. Thus, if your client is going to make the charitable donation anyway, it may make sense to do it this year, to protect against the possibility (even if small) that the new Congress will make donation deductions less favorable, Keebler said.

Think of it this way, Keebler said: "You give \$100,000 to Children's Hospital this year, you get a \$37,000 benefit. You give \$100,000 to Children's Hospital next year, if this changes, you get a \$28,000 benefit." If you are planning to donate anyway, making the donation this year may be the safest thing to do, if you are in the highest tax bracket. "Don't take the chance that you'll only get a 28-cent benefit," Keebler said.

Estate tax

With respect to the estate tax, the Biden plan would reduce the gift and estate tax exemption to \$3.5 million from the current \$11.58 million level. Thus, if your high-wealth client has a choice of whether to give away money in December 2020 or wait until later, it may make sense to consider doing it now to avoid being detrimentally affected by an estate tax change such as Biden has proposed, Keebler said.

Biden is also proposing to eliminate the at-death step-up in the basis of inherited assets.

On a separate point, Keebler noted that Biden's proposed tax changes conceivably could be made retroactive to Jan. 1, 2021. All of this assumes, of course, that the Democrats control the Senate and can push through tax legislation. Keebler's webcast also discussed Roth conversions and many other topics.

"The next 51 days [the number of days left in 2020] will certainly be an adventure for most of us," Keebler said. Because the prospect of significant tax changes on the horizon remains unclear for now, "We're all going to have to work very hard to take care of the clients that have entrusted us with giving them solid advice," Keebler said.

—**Dave Strausfeld, J.D.**, is a JofA senior editor. To comment on this article or suggest an idea for another article, contact him at David.Strausfeld@aicpa-cima.com (<mailto:David.Strausfeld@aicpa-cima.com>).

© 2020 Association of International Certified Professional Accountants. All rights reserved.

Click to print or Select 'Print' in your browser menu to print this document.

Page printed from: <https://www.law.com/nationallawjournal/2020/12/09/new-suit-attacks-ppp-questionnaire-as-questions-linger-over-loan-forgiveness/>

New Lawsuit Attacks PPP Questionnaire as Questions Linger Over Loan Forgiveness

The lawsuit, filed by Crowell & Moring attorneys, has implications for the more than 600 law firms that took PPP loans greater than \$2 million.

By Dan Roe | December 09, 2020



The E. Barrett Prettyman U.S. Courthouse, home of the U.S. Court of Appeals for the District of Columbia Circuit and the U.S. District Court for the District of Columbia, on June 6, 2020. Photo: Diego M. Radzinski/ALM

A new lawsuit against the Small Business Administration is targeting the questionnaire that the agency sent to borrowers that took \$2 million or more in paycheck protection loans.

The questionnaire, and the subsequent lawsuit, may have large implications for the 613 law firms across the country that borrowed \$2 million or more, including 11 law firms that took the maximum \$10 million. Questions over whether those loans will be forgiven loom over firm finances.

The loan necessity questionnaire, the existence of which appeared on the federal register in October, asks the roughly 29,000 borrowers in all to describe their revenue and liquidity during the pandemic in order to justify forgiveness for their loan.

The Associated General Contractors of America, which filed the suit (<https://beta.documentcloud.org/documents/20421981-associatedgeneralsbacomplaint>) Tuesday against the SBA and the U.S. Office of Management and Budget, claim that the questionnaire contradicts the original guidance of the SBA, which was to certify that economic uncertainty at the time of the loan application justified the need for the loan.

Attorneys at Crowell & Moring filed the suit in Washington, D.C., federal court on behalf of the construction industry association.

The for-profit borrower questionnaire asks detailed questions about second-quarter revenue in 2019 and 2020, whether borrowers were asked to shut down or significantly alter operations by authorities, whether borrowers engaged in capital improvement projects since the end of the PPP loan forgiveness coverage period.

It also asks borrowers about cash positions and dividends paid during the coverage period, employee compensation and other funds received from the CARES Act. The SBA also released a nonprofit questionnaire.

Although the SBA purports “to be interested in evaluating the borrower’s certification made back in the spring amidst great uncertainty and tumult, the questionnaire focuses exclusively on later events,” the lawsuit claims. “This contradiction is deeply troubling to many borrowers because their success or failure over the balance of 2020 could not possibly have been knowable in those early days of the pandemic when the economy was headed into a tailspin.”

An SBA representative declined to comment on the lawsuit.

The lawsuit asks the court, among other things, to declare that the questionnaire is “arbitrary and capricious” and to permanently enjoin SBA from basing a decision to deny an application for PPP loan forgiveness solely on the information that a borrower provides in response to the questionnaire.

The SBA mentioned the necessity questionnaire in a FAQ published in the second quarter, noting that loans of \$2 million and over would be scrutinized.

The unclear situation regarding forgiveness is causing headaches for firms trying to close their 2020 books.

“Firms and their leaders have to figure out how comfortable they are with their loan certification [for forgiveness purposes]—and then their risk tolerance in deciding how much to distribute to partners and the potential tax liability, which depends on what Congress may decide,” one firm leader told NLJ affiliate The Daily Report (<https://www.law.com/dailyreportonline/2020/12/09/partner-pay-complications-arise-from-ppp-loans/>).