
ALERT

SBA Indicates It Will Not Review PPP Loans Under \$2 Million; Small Loan Borrowers Presumed to Have Certified Economic Necessity in Good Faith

When submitting an application for a Paycheck Protection Program (“PPP”) loan, all borrowers are required to certify in good faith that “[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant”. While PPP loans are issued by individual banks and lenders, the Small Business Administration (the “SBA”) is responsible for overseeing the program.

On May 13, 2020, the SBA issued an updated Paycheck Protection Program Loans Frequently Asked Questions (FAQs) publication. Pursuant to FAQ #39 of the May 13 publication, the SBA will review all PPP loans in excess of \$2 million, “in addition to other loans as appropriate”, for compliance with the certification of economic uncertainty and necessity. With respect to smaller loans, FAQ #46 provides: “*Any borrower that, together with its affiliates, received PPP loans with an original principal amount of less than \$2 million will be deemed to have made the required certification concerning the necessity of the loan request in good faith.*” [emphasis added] This is referred to as the “Safe Harbor”. The Safe Harbor will cover the vast majority of businesses who received a PPP loan. According to Treasury Secretary Steven Mnuchin, the average amount of a PPP loan is less than \$100,000.

Pursuant to FAQ #46, the SBA has determined that the Safe Harbor is appropriate because borrowers with loans below this threshold are generally less likely to have had access to adequate sources of liquidity in the current economic environment than borrowers that obtained larger loans. This Safe Harbor will also promote economic certainty as PPP borrowers with more limited resources endeavor to retain and rehire employees. In addition, given the large volume of PPP loans, this approach will enable the SBA to conserve its finite audit resources and focus its reviews on larger loans, where the compliance effort may yield higher returns.

For borrowers who determine that their business does not conform with the required certification or meet the PPP qualifications, or who determine that they do not need all or a portion of the loan funds, the business is permitted to repay the loan funds without penalty. The SBA has extended the repayment deadline until **May 14, 2020**. Any borrower who repays the loan by this date will be deemed by the SBA to have made the required certification in good faith.

If you have any questions or would like further clarification on the PPP or other CARES Act programs, please do not hesitate to contact us.

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