

Updated: PPP Loan Repayment “Safe Harbor” Clarified and Deadline Extended to May 18

05/13/20

On May 13, 2020, the Small Business Administration (SBA) issued new guidance ([Frequently Asked Question No. 46](#)) clarifying that where the PPP loans to a borrower and its affiliates aggregate less than \$2 million, the borrower will be deemed to have made the required certification concerning the necessity of the loan request in good faith. The SBA said this decision reflects the economic reality that borrowers with loans below \$2 million are generally less likely to have had access to adequate sources of liquidity in the current economic environment than borrowers with larger loans.

As described in our post on May 4, "[Paycheck Protection Program Loan Forgiveness Now Conditioned on SBA Review](#)," earlier guidance clarified that in order to certify the necessity for PPP loans in good faith, borrowers must consider their ongoing operations and access to other sources of liquidity. Borrowers that received loan proceeds but that have determined they are unable to demonstrate their need for PPP loans in good faith could repay their loans in full by May 7, 2020 and be deemed to have made the required certification of need in good faith, thus avoiding investigation and possible prosecution. Subsequently, the date by which loan proceeds can be repaid was extended to May 14, 2020, and then extended again to May 18, 2020.

Borrowers with PPP loans of \$2 million or more may still demonstrate their need for their loans based on their individual circumstances in light of the language of the certification and SBA guidance.

Borrowers of any loan amount who have doubt concerning their certification of necessity will still be able to return their loan proceeds by May 18 under the “safe harbor” established by earlier guidance (Frequently Asked Questions No. 31, April 23, 2020 and No. 43, May 5, 2020) and avoid possible scrutiny by SBA.

SBA has also stated that in cases where it is determined that a borrower lacked an adequate basis for its certification of loan necessity, the borrower must repay the loan and SBA will not pursue administrative enforcement or referrals to other agencies based on its determination with respect to the certification concerning necessity of the loan request.

If you have concerns about your determination of need or any other questions concerning the PPP, please contact [Douglas Watson Lubic](#), [Peter Greenbaum](#) or any member of our [Business Law team](#).

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Practice

- Corporate