

Compliance Alert

May 14, 2020

SBA Announces Safe Harbor for PPP Loans Less Than \$2M

The Small Business Administration (SBA) recently indicated that they would review any Paycheck Protection Program (PPP) loans made in amounts exceeding \$2 million. Based on new guidance issued May 13, 2020, the Agency announced it would extend an automatic safe harbor to borrowers receiving PPP loans with an original principal amount of less than \$2 million.

These borrowers will be deemed, "... to have made the required certification concerning the necessity of the loan request in good faith."

Borrowers that received PPP loans for amounts over \$2 million will be subject to review by the SBA for compliance with program requirements, including the certification of economic need.

"If the SBA determines in the course of its review that a borrower lacked an adequate basis for the required certification concerning the necessity of the loan request, the SBA will seek repayment of the outstanding PPP loan balance and will inform the lender that the borrower is not eligible for loan forgiveness," said the SBA.

The SBA further explained that borrowers, who repay their loans, after receiving SBA notification, would not be subject to administrative enforcement or referrals to other agencies. Additionally, the SBA's determination regarding the necessity of the loan request will not affect the SBA loan guarantee.

Additionally, the SBA announced that it will extend until May 18, 2020, the deadline for PPP borrowers who did have access to other sources of capital to return funds.

Specifically, the guidance states in part in Q46 the following:

When submitting a PPP application, all borrowers must certify in good faith that, current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant. SBA, in consultation with the Department of the Treasury, has determined that the following safe harbor will apply to SBA's review of PPP loans with respect to this issue: 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.

"SBA has determined that this 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 SBA to conserve its finite audit resources and focus its reviews on larger loans, where the

compliance effort may yield higher returns.

The SBA has indicated that they will follow up this guidance with additional guidance regarding PPP loan forgiveness. To access the full SBA FAQs on the PPP, click the following link:

<https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf>

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