

April 23, 2020

New Guidance by SBA on PPP Loans

On April 23, 2020, the U.S. Small Business Administration (SBA) issued new guidance with an aim of increasing the chances that small businesses receive the next round of PPP loans.

The revised SBA "Frequently Asked Questions" focuses on the borrower's certification as to the "necessity of the loan request."

Before submitting a PPP application, all borrowers must carefully review their required certification that "[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant."

According to the SBA, borrowers must make this certification "in good faith", "taking into account their current business activity and their ability to access other sources of liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business." [Emphasis added].

The SBA stated, by way of example, that it is unlikely that a public company with substantial market value and access to capital markets will be able to make the required certification in good faith.

Any borrower that applied for a PPP loan prior to the issuance of the April 23rd guidance and repays the loan in full by May 7, 2020 will be deemed by the SBA to have made the required certification in good faith. All other borrowers should be prepared to demonstrate that their certification as to necessity was made in good faith. However, the SBA FAQ does not provide guidance as to what is necessary in order to make such a demonstration.

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