



Treasury/SBA Issues "Certification Safe Harbor" for PPP Loans Under \$2m

A COVID-19 Update from Questco – May 13th, 2020

Previous guidance from the Small Business Administration (SBA) on the Paycheck Protection Program (PPP) left some businesses questioning whether they would have to repay their PPP loan by May 14, 2020. The SBA indicated businesses that could not in good faith certify that the current economic uncertainty made the loan request necessary to support the ongoing operations of the borrower had until May 14, 2020 to repay the loan. In addition, the SBA communicated that they will be reviewing every borrower with a PPP loan of at least \$2 million, and other loans as appropriate, to ensure that the borrower met the required good faith certification. Should the SBA find a borrower did not meet the good faith certification and did not repay the loan, the borrower could face criminal and civil penalties.

Through a frequently asked question (FAQ No. 46 published on May 13, 2020), the SBA has issued the following safe harbor and additional guidance about how they will review the good faith certification:

- The safe harbor provides that any borrower, who with their affiliates, that received a PPP loan of less than \$2 million will be deemed to have made the required certification concerning the necessity of the loan request in good faith.
- Upon review, if the SBA makes a determination that a borrower with a loan greater than \$2 million did not meet the certification on the necessity of the loan and the loan was not repaid by May 14, 2020:
 - The SBA will seek repayment of the loan.
 - The SBA will inform the lender that the loan is not eligible for forgiveness.
 - If borrower repays the loan after receiving notification of the determination from the SBA, the SBA will not pursue criminal or civil penalties.

The above guidance should provide some comfort to borrowers that were evaluating whether the loan should be paid back by May 14, 2020. However, for those borrowers with loans greater than \$2 million, it is still unknown what criteria the SBA will use to evaluate if the business made a good faith certification with respect to the necessity of the loan. Therefore, we continue to recommend that borrowers carefully review and document their financial situation to meet the certification that the loan was necessary to continue ongoing operations.

Furthermore, we are still waiting on full loan forgiveness guidance, and will let you know as soon as it is published.

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