



Alerts

SBA Provides Additional Guidance on Review of Economic Uncertainty Certifications Made by PPP Loan Applicants

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Hinshaw Alert

In the past few weeks, the U.S. Department of Treasury and Small Business Administration (SBA) have raised [issues concerning the economic uncertainty certification made by both public and private companies](#) in FAQs #31 and #37, respectively. They stated that they had concerns about whether a borrower who had access to adequate liquidity to support its ongoing operations at the time of its Paycheck Protection Program (PPP) application could make this certification in good faith.

Then, with FAQ #39, they announced that all PPP loans in excess of \$2 million—in addition to other loans as appropriate—would be reviewed after the forgiveness application was submitted. Pursuant to [FAQ #43](#), the original deadline of May 7, 2020 was extended to May 14, giving concerned borrowers an additional week to return the loan proceeds in full. If they did, they would be deemed to have made the required certification in good faith. *Note, after this alert was originally published, Treasury and SBA issued [FAQ #47](#), which extends the return date deadline to May 18, 2020.*

Needless to say, these announcements caused quite a stir among PPP borrowers.

Earlier today, the Treasury and SBA released an [updated version of PPP FAQs](#), which now includes FAQ #46. This FAQ states that any borrower who, together with its affiliates, received PPP loans of \$2 million or less will be deemed to have made the required certification in good faith.

If the SBA subsequently determines that a borrower of PPP loans in excess of \$2 million lacked an adequate basis to make the certification, the SBA will inform the borrower and seek repayment of the loan. If the borrower returns the loan proceeds after being so notified, the SBA will not pursue administrative actions against the borrower or refer the borrower to other agencies based upon its determination with respect to the certification concerning the necessity of the loan.

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