

> Covid-19 Client Alert

SBA Issues Guidance on Borrower Certification for PPP Loans and Extends Loan Repayment Deadline

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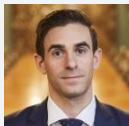
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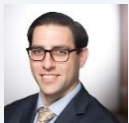
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PPP Borrower Certification Guidance

Under guidance provided yesterday by the SBA, borrowers that, together with their affiliates, received PPP loans of *less than \$2 million* have been granted a safe harbor. The safe harbor means that “under \$2 million” borrowers are automatically deemed to have made a good faith certification of need. As a result, they are safe from having their initial need for the PPP loan second-guessed and challenged on audit by the SBA.

To obtain a PPP loan, a business needs to certify in good faith that “[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations” of the borrower. Some well publicized loans taken out by large, well-capitalized companies resulted in statements from Treasury Department officials suggesting that the quoted language was going to be strictly construed, even against smaller private firms, to potentially challenge borrowers’ good faith certifications, with possible criminal penalties. The new SBA guidance has brought the temperature of that discussion down.

The guidance also provides new comfort to borrowers with loans *greater than \$2 million* who do not qualify for the safe harbor. Under the new guidance, “over \$2 million” borrowers may be able to demonstrate “an adequate basis for making the required good-faith certification, based on their individual circumstances.” If the SBA nonetheless determines on review that there was not a good faith basis for the borrower’s certification, the SBA will require the borrower to repay the loan, and the loan will not be eligible for loan forgiveness. In addition, the SBA said that, if such a loan is repaid, it “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.” Thus it appears that the criminal penalties threatened in the press are not going to be applied to disagreements about the initial judgment call on whether the loan was truly necessary to support the borrower’s ongoing operations. “Over \$2 million” borrowers who remain concerned about whether their certifications are vulnerable should try to keep sufficient funds available to repay their PPP loan in case of a challenge.

PPP Loan Repayment Extension

The SBA has also extended until May 18, 2020 (from May 14, 2020) the deadline for borrowers who applied for a PPP loan prior to April 24, 2020 to return their PPP loans if they are concerned that their certification of necessity may not stand up to scrutiny in light of recent guidance.

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Morrison Cohen LLP has created the [COVID-19 Resource Taskforce](#), a multidisciplinary taskforce comprised of attorneys with deep expertise in a broad range of legal areas, to assist clients navigating the challenging and uncertain business and legal environment caused by the COVID-19 pandemic. We encourage clients to utilize our capabilities by reaching out to their primary Morrison Cohen attorney contact, who will put you in touch with the appropriate Taskforce person. You may also reach out directly to Joe Moldovan and Alec Nealon, the Taskforce co-chairs:

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