

Paycheck Protection Program: New Needs Certification Safe Harbor

By Bryan Decker, CPA, Partner

As we have previously mentioned in our articles, the guidance surrounding the Paycheck Protection Program (PPP) keeps changing and evolving. On May 13, 2020, the Small Business Administration (SBA), in consultation with the Department of the Treasury (Treasury), has again issued new guidance. Specifically, the guidance relates to the borrowers' good faith certification of the necessity of the loan request.

Previously

Previously, the PPP Frequently Asked Question (FAQ) No. 31 stated that all borrowers must assess their economic need for a PPP loan as of the time of their loan application. It further described that when borrowers applied for the loan they were to certify their need for the loan by "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." In addition, FAQ No. 39 indicated that all loans in excess of \$2 million, in addition to other loans as appropriate, would be reviewed. The outcomes of those reviews could possibly result in loan forgiveness being denied, immediate repayment of loan, or even criminal penalties.

PPP FAQ No. 46

FAQ No. 46 states "[a]ny 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." Borrowers who received a PPP loan over \$2 million can still have an adequate basis for certifying the necessity of their loan request based on the certification language and their individual situation.

FAQ No. 46 indicates still that the SBA will review all loans in excess of \$2 million and other PPP loans as appropriate. Presumably, if a loan of \$2 million or less is reviewed, the safe harbor would apply as long as no fraudulent information was provided during the application process. FAQ No. 46 goes on to say that if the SBA does review a loan and determines that the borrower lacked an adequate basis for certifying the necessity of the loan request, the SBA will seek repayment of the outstanding PPP loan balance and inform the lender that the borrower is not eligible for loan forgiveness. Additionally, "If the borrower repays the loan after receiving notification from SBA, SBA will not pursue administrative enforcement or referrals to other agencies."

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PKF O'Connor Davies is monitoring the situation regarding federal financial assistance. If you have any questions regarding the PPP, other disaster programs, or any other issues, please contact the PKF O'Connor Davies partner overseeing your account or contact:

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