New Guidance from SBA on PPP Loans

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On May 13, 2020 the SBA updated its guidance on the Payroll Protection Program (PPP) loans, in Frequently Asked Questions (the FAQs) linked here . The new guidance contains 47 FAQs–some new, and some revised–partly in response to concerns from prior guidance and public statements over whether PPP loans would be forgiven, and the potential exposure for Applicants' false certification of need for PPP funds. This summary discusses only a few of the more notable FAQs with respect to the certification of need. Other FAQs in the new guidance are helpful and relevant to many Applicants and should be reviewed closely.

- FAQ 17 provides that borrowers and lenders may rely on laws, rules and SBA guidance available at the time they submitted applications. If a submitted application has not been processed, FAQ 17 also allows the Applicants to revise the application based on the new guidance.
- FAQ 31 discusses whether businesses owned by large companies with adequate sources of liquidity can qualify for a PPP loan, and it notes, along with FAQ 46, that Applicants must certify "[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant." There is a safe harbor, such that borrower will not have exposure based on this certification if they return the funds within a certain timeframe (which has now been extended, as addressed below).
- New FAQ 46 creates a safe harbor for borrowers that, together with affiliates, received PPP loans totaling less than $2 million. Such borrowers are deemed to have made the so-called "necessity certification" in good faith. While loans of less than $2 million may still be audited and the borrower may be required to return the funds if the SBA determines such borrower "lacked an adequate basis for the required certification concerning the necessity of the loan request," the SBA will *not* pursue administrative enforcement or referrals to other agencies that fall within this new safe harbor.
- New FAQ 47 extends the time all Applicants may return PPP loan funds without exposure, from May 14, 2018 to **May 18, 2020**. Notably, borrowers receiving less than $2 million do *not* need to return PPP funds to take advantage of the new safe harbor referenced in FAQ 46.

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