



Hello everyone, I hope you and your family are staying safe and doing well.

Since my last update the SBA has sent out additional guidance concerning the PPP Certification.

One of the requirements to obtain the PPP was that you had to self certify that "An eligible recipient applying for a covered loan shall make a good faith certification that the uncertainty of current economic conditions makes necessary the loan request to support the ongoing operations of the eligible recipient."

A few days ago, the SBA added to the rule which could be problematic for some PPP borrowers. In the newly released Q&A the SBA made the statement that, "In addition to reviewing applicable affiliation rules to determine eligibility, **all borrowers** must assess their economic need for a PPP loan under the standard established by the CARES Act and the PPP regulations at the time of the loan application. **Although the CARES Act suspends the ordinary requirement that borrowers must be unable to obtain credit elsewhere** (as defined in section 3(h) of the Small Business Act), **borrowers still must certify in good faith that their PPP loan request is necessary.** Specifically, before submitting a PPP application, all borrowers should review carefully the required certification that "current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant." **Borrowers must make this certification in good faith, 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.** For example, it is unlikely that a public company with substantial market value and access to capital markets will be able to make the required certification in good faith, and such a company should **be prepared to demonstrate to SBA, upon request, the basis for its certification.** Lenders may rely on a borrower's certification regarding the necessity of the loan request. **Any borrower that applied for a PPP loan prior to the issuance of this guidance and repays the loan in full by May 7, 2020 will be deemed by SBA to have made the required certification in good faith.**

The wording is very broad and does not include any specific standards that need to be met in order to self certify. My concern is that at some point the Treasury and the SBA may start to produce rules that could require firms that obtained funding to repay those funds if they had access to other sources of capital other than the PPP.

Yesterday, the SBA and the Treasury announced that they would be reviewing all loans in excess of \$2 million, in addition to other loans as appropriate. Regulatory guidance implementing this procedure will be forth coming. [Read the press release here.](#)

If you received PPP funds, I would spend some time documenting the reason you felt that the uncertainty of current economic conditions made it necessary to request the PPP loan to support the ongoing operations of the eligible recipient.

If after reading these new rules surrounding the self certification, you feel that you could not justify obtaining the PPP, the SBA has provided a Safe Harbor. **If you repay the loan in full by May 7, 2020, you will be deemed by the SBA to have made the certification in good faith.**

Please let me know if you have any questions.

Thank you!

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