

May 2020

Client Advisory

Important Update on SBA Guidance Relating to Paycheck Protection Program Good Faith Certification Standards

This morning (5/13), the Small Business Administration (SBA) issued additional guidance on the Paycheck Protection Program (PPP) through the form of a new Frequently Asked Question (FAQ). This guidance addresses how the SBA will review the “good faith certification” required of applicants to the program concerning the necessity of loans. This guidance is of particular importance given the SBA’s previously announced “safe-harbor” date of May 14th, by which loan proceeds can be returned without penalty.

The SBA has announced through FAQ #46 that borrowers that received loans in an amount less than \$2,000,000 (including all affiliates) will be deemed to have made the required certification that “current economic uncertainty makes this loan request necessary to support the ongoing operations of the applicant” in good faith.

While loans in excess of \$2,000,000 will not be subject to the bright-line “good faith” determination above, such loan recipients may still be able to meet the test for making the certification in good-faith based on their economic realities and the impact of COVID-19.

As previously announced by the SBA, loans in excess of \$2,000,000 will be subject to review. The SBA has stated today that if after review the SBA determines that a borrower lacked an adequate basis for the certification, the SBA will then seek repayment of the outstanding PPP loan balance, and it will inform the borrower’s lending institution that the borrower is not eligible for loan forgiveness. In addition, the SBA will not pursue administrative enforcement - or refer matters to other federal agencies - if the borrower repays the loan upon being notified by SBA of its determination that the borrower lacked an adequate basis for submitting the certification.

Frequently Asked Question #46 can be found in its entirety on page 16 of the PDF available [here](#).

Any clients who have received a PPP loan or are considering applying to the program - especially those receiving more than \$2,000,000 in loan proceeds - should reach out to their Archer attorney or any member of Archer’s COVID-19 Task Force to discuss this new guidance in advance of the PPP safe-harbor date of May 14th.

Please reach out to your Archer contact or any member of [Archer’s COVID-19 Task Force](#) with any questions you may have.

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