

May 2020

Client Advisory

**Updated SBA Guidance - Good Faith Certification
of Economic Uncertainty and Loan Necessity**

Late today, the SBA issued a new Frequently Asked Question (FAQ) related to the “good faith” certification required of applicants to the Paycheck Protection Program (PPP). FAQ #43 (issued 5/5/20) extends the “safe harbor” date by which loan proceeds can be returned without penalty from May 7, 2020 to May 14, 2020. The SBA has also indicated that additional guidance on the review of certifications will be promulgated in advance of May 14, 2020. This guidance supplements FAQ #31 and borrowers who are uncertain about the propriety of moving forward with a loan will now have an additional week to consider the matter and evaluate their certification after reviewing the forthcoming guidance. Any questions regarding this, or any other element of the PPP, can be addressed to the Archer attorney that you have been in contact with, or any member of [Archer's COVID-19 Task Force](#).

FAQ #43 can be found at this link: <https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf> and is set forth below:

43. Question: FAQ #31 reminded borrowers to review carefully the required certification on the Borrower Application Form that “[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.” SBA guidance and regulations provide that any borrower who applied for a PPP loan prior to April 24, 2020 and repays the loan in full by May 7, 2020 will be deemed by SBA to have made the required certification in good faith. Is it possible for a borrower to obtain an extension of the May 7, 2020 repayment date?

Answer: SBA is extending the repayment date for this safe harbor to May 14, 2020. Borrowers do not need to apply for this extension. This extension will be promptly implemented through a revision to the SBA's interim final rule providing the safe harbor. SBA intends to provide additional guidance on how it will review the certification prior to May 14, 2020.

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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