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Client Alert: SBA Updates FAQ on Good Faith Certification of Need

By Michael J. Barone, Jr. on May 13, 2020



Pursuant to Division A, Title I of the Coronavirus Aid, Relief, and Economic Stability (“CARES”) Act, as amended, Congress, among other things, established a framework for the Paycheck Protection Program (the “PPP”). In the weeks and months following the signing of the CARES Act by President Trump, the Small Business Administration (the “SBA”) and the U.S. Treasury issued guidance including Frequently Asked Questions (“FAQ”) and interim rules relating to the terms of the PPP, including, but not limited to, permitted expenditures for loan proceeds and loan forgiveness.

On May 13, 2020, the SBA and Treasury issued new guidance in the form of FAQ #46, intended to clarify how the SBA will review good-faith certifications made by applicants and borrowers relative to the necessity of the applicant’s loan request.

Broadly speaking, the FAQ #46 clarifies that:

- Any 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, as borrowers with loans below \$2 million are generally less likely to have had access to adequate sources of liquidity.
- If during an audit, the SBA determines that a borrower with a loan in excess of \$2 million lacked an adequate basis for the required certification, the SBA will seek repayment of the outstanding PPP loan balance and will inform the lender that the borrower is not eligible for loan forgiveness. If such borrower repays the loan following notification from the SBA, the SBA will not pursue administrative enforcement nor will the SBA refer the matter to other agencies for enforcement. The most recent FAQ can be found [here](#).

If you have any questions relating to particular aspects of the revised FAQ, please feel free to contact our office. As with all COVID-19 related legal developments, RIW will continue to provide updates and guidance relative to the CARES Act.

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