



## Treasury and Small Business Administration Expand Paycheck Protection Program Safe Harbor

**May 13, 2020**

As originally discussed in our [May 6, 2020 Client Alert](#), the Department of Treasury and SBA issued additional guidance concerning the safe harbor for Paycheck Protection Program Loan recipients relating to the need-based certification contained in the loan application. To briefly recap, the safe harbor generally provides that recipients of Paycheck Protection Program Loans have until May 14, 2020 to return their Paycheck Protection Program Loan if they feel they are unable to provide the required certification in the loan application that reads as follows: “current economic uncertainty makes the loan request necessary to support its ongoing operations” in good faith.

On May 13, 2020, the Department of Treasury and SBA released FAQ Question 46 as part of their ongoing Paycheck Protection Program Frequently Asked Questions guidance<sup>1</sup>. Question 46 addresses how the SBA will review the above-referenced good-faith certification concerning the necessity of loan requests and sets forth two different review standards depending on the size of the loan.

Recipients of Paycheck Protection Program Loans in an original principal amount less than \$2,000,000 will be deemed to have made the required certification concerning the necessity of the loan request in good faith. However, it should be noted that Paycheck Protection Program Loans made to a borrower’s affiliates will be included when calculating and determining whether or not the borrower is under the \$2,000,000 threshold.

Recipients of Paycheck Protection Program Loans in an original principal amount exceeding \$2,000,000 should be prepared to demonstrate an adequate basis for making the required good-faith certification. In the event that the SBA determines that the borrower lacked an adequate basis for the required certification, then the borrower will become ineligible to receive loan forgiveness and will be required to repay the loan. If the borrower repays the loan after receiving notice from the SBA regarding its determination, then the SBA will not pursue administrative enforcement or referrals to other agencies with respect to the certification concerning the necessity of the loan request.

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<sup>1</sup> The full Paycheck Protection Program Loans Frequently Asked Question (FAQs) is available [here](#).

It should also be noted that FAQ Question 46 reaffirms the SBA's statement that it intends to review all loan files for Paycheck Protection Program Loans to recipients in excess of \$2,000,000 and other loans as it deems appropriate in order to determine if such loans are in compliance with the program requirements set forth in the Interim Final rules.

UKS will continue to monitor this developing issue and provide updates as necessary. The UKS Covid-19 Response Team is standing by, ready to help you and your business with questions or concerns regarding a wide range of legal issues relating to the Covid-19 pandemic. For further information on the Paycheck Protection Program, please contact Attorney John F. (Jef) Wolter, Attorney Gregg J. Lallier, or Attorney John J. Alissi.

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Urdike, Kelly & Spellacy, PC would like to thank associate Michael J. Paciorek for his contributions to this client alert.

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