

SBA Updates Key Guidance on Good-Faith Certifications Concerning the Paycheck Protection Program

As detailed in our previous information memo available [here](#), the U.S. Treasury Department issued guidance on April 24, 2020 providing safe harbor for borrowers that may not have satisfied the required good-faith certification concerning the necessity of the Paycheck Protection Program (PPP) loan funds. Additionally, PPP loans in excess of \$2 million will be subject to the Small Business Association's (SBA)'s review. In order to obtain this safe harbor, the PPP loan funds must be returned by May 14, 2020.

On May 13, 2020, the SBA issued additional guidance regarding the required good-faith certifications.

The guidance states that borrowers that 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.

For borrowers that received PPP loans **greater than \$2 million**, the guidance states that these borrowers "may still have an adequate basis for making the required good-faith certification, based on their individual circumstances in light of the language of the certification and SBA guidance."

The guidance further states: if the "SBA determines in the course of its review that a borrower lacked an adequate basis for the required certification concerning the necessity of the loan request, SBA will seek repayment of the outstanding PPP loan balance and will inform the lender that the borrower is not eligible for loan forgiveness. However, if the borrower repays the loan **after receiving notification from SBA**, SBA will **not** pursue administrative enforcement or referrals to other agencies based on its determination with respect to the certification concerning necessity of the loan request."

As such, borrowers with PPP loans over \$2 million who may not have satisfied the good-faith certification may return the funds *after the completion of an SBA review* at the time the PPP loan forgiveness eligibility is determined and avoid potential penalties.

It is important to note that this guidance only pertains to the certification of necessity when obtaining PPP loan funds. Businesses should thus maintain detailed contemporaneous documentation with respect to the basis for qualification for the PPP loan. The importance for documentation under the PPP can be found [here](#). For background information as to the risk of government investigations and the PPP loan, visit our prior information memo available [here](#).

The attorneys at Bond, Schoeneck & King can help you determine whether your business qualifies for the PPP Loan loan under the good-faith economic uncertainty certifications. Please contact [Jeffrey B. Scheer](#), any of the [attorneys](#) in the [Business and Transactions practice](#), or the attorney at the firm with whom you are regularly in contact.



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