

PPP Update: (1) safe harbor extended to 5/14; (2) Congressional support for deduction

Safe Harbor Extended to May 14th; Additional Guidance to be Issued

On Friday we sent an alert regarding eligibility for a PPP loan and the borrower certification that “current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.” If you determined that your company did not demonstrate the necessity for the loan, the loan could be repaid by May 7, 2020 – no questions asked.

There has been concern on whether the eligibility rules are changing midway through and what exactly the SBA will be looking for in its review of the certification. FAQ #43 was posted last night. The May 7th repayment date is being extended to May 14th, and guidance is to be issued prior to that date on how the SBA will review the certification. [Click here for the FAQs. https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf](https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf)

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.

Congressional Support for Deduction

Last week, the IRS said it would deny tax deductions paid for with tax-exempt forgiven PPP proceeds. As an example, if a business receives a \$100k PPP loan and spends it all on forgivable/ deductible expenses, the business would not be taxed on the \$100k of forgiveness income and would not get a tax deduction for the \$100k of expenses.

On the other hand, if deductions were allowed for the forgiven expenses (and assuming a 25% federal tax bracket), the business would receive an additional \$25k cash benefit through reduced taxes. The Wall Street Journal reported yesterday that this benefit was exactly what Congress intended. The article indicates that bills will be introduced in the House and the Senate to expressly allow the deductions. [Click here for WSJ article.](#)

[**Tax Deductions Tied to Forgiven Small Business Loans Draw Support**](#)

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