

PPP Update: Clarification on PPP Certification

Guidance was previously posted on Treasury's website regarding the borrower's good faith certification, which provided a safe harbor date of May 14, 2020 to repay the loan if the borrower determined that the certification was not made in good faith.

A new FAQ #46 was just posted on Treasury's website today re: the good faith certification:

- For loans with an original principal amount LESS THAN \$2 million (together with affiliates):
 - ALL are deemed to have made the required certification in good faith. The SBA believes borrowers with loans below this threshold are generally less likely to have had access to adequate sources of liquidity in the current economic environment than borrowers that obtained larger loans.
- For loans with an original principal amount OVER \$2 million (together with affiliates):
 - All loans over \$2 million are subject to review by the SBA. If the SBA determines the borrower did NOT have an adequate basis for the good faith certification, then the borrower has to repay the loan and gets no forgiveness – but the SBA “will not pursue administrative enforcement or referrals to other agencies.” Per the previously posted FAQ #39, the timing of the SBA review is following the lender's submission of the borrower's loan forgiveness application.

This gives clarity on the May 14th deadline; however, we are still waiting for guidance on the forgiveness calculation, including whether or not there will be additional reductions to forgiveness based on need.

If you applied for a loan and after consulting with your board and your attorney, you decide to return the money, you should consider whether you meet the rules for the employee retention credit which can provide up to \$5k per employee in the form of a payroll tax credit. FAQ #45 indicates that if PPP money is returned, a business can still take the employee retention credit (so long as other requirements for the credit are met.) Click here for FAQs on the employee retention credit. {<https://www.irs.gov/newsroom/faqs-employee-retention-credit-under-the-cares-act> }

The full text of FAQ #46 is below (highlights added for emphasis):

Question: How will SBA review borrowers' required good-faith certification concerning the necessity of their loan request?

Answer: When submitting a PPP application, all borrowers must certify in good faith that “[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.” SBA, in consultation with the Department of the

Treasury, has determined that the following safe harbor will apply to SBA's review of PPP loans with respect to this issue: 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.

SBA has determined that this safe harbor is appropriate because borrowers with loans below this threshold are generally less likely to have had access to adequate sources of liquidity in the current economic environment than borrowers that obtained larger loans. This safe harbor will also promote economic certainty as PPP borrowers with more limited resources endeavor to retain and rehire employees. In addition, given the large volume of PPP loans, this approach will enable SBA to conserve its finite audit resources and focus its reviews on larger loans, where the compliance effort may yield higher returns.

Importantly, borrowers with loans greater than \$2 million that do not satisfy this safe harbor 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. SBA has previously stated that all PPP loans in excess of \$2 million, and other PPP loans as appropriate, will be subject to review by SBA for compliance with program requirements set forth in the PPP Interim Final Rules and in the Borrower Application Form. If 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. 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. SBA's determination concerning the certification regarding the necessity of the loan request will not affect SBA's loan guarantee.

About Us

GMS Surgent is a mid-sized, full service, certified public accounting and advisory firm serving business and individual clients located primarily in (but not limited to) the Greater Philadelphia area. We warmly invite you to click around our website to learn a little more about our firm, our clients and the ways in which our services could benefit you.

"Personal Attention – Valuable Results", is the principal component of our mission statement. It highlights the GMS Surgent commitment to forging strong relationships and ensuring constructive communication while earning consistently effective results for our clients. It plays an essential role throughout every aspect of our firm, guides our actions and acts as a benchmark for the services we provide.

This information is of a general nature. It may omit many details and special rules and is current only as of its published date. Please contact us for more information and how it pertains to your specific tax or financial situation.