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The Paycheck Protection Program “Necessity Certification” — The Review, Safe Harbor and Potential Penalties

For up-to-date details on PPP loans, please click the link below

[Davis & Gilbert FAQ: Paycheck Protection Program](#)

On May 13, 2020 the Small Business Administration (the SBA) updated its guidance related to the “Necessity Certification” required to be made in connection with a Paycheck Protection Program (PPP) loan application.

The Necessity Certification requires that each applicant certify that the “[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations...” Previous SBA guidance led to confusion over whether borrowers could make the Necessity Certification in good faith. For more information on this, please refer to [Question #B.5](#) of the Davis & Gilbert FAQ regarding PPP updates.

The SBA created a “safe harbor,” which permitted borrowers to return their PPP funds by May 7, 2020 if they felt they could not make the Necessity Certification in good faith. That deadline was subsequently extended to May 14, 2020.

Through a further update to the “Paycheck Protection Program Loans Frequently Asked Questions” (the FAQ), the SBA indicated that any borrower who, together with its affiliates, received PPP loans with an aggregate original principal amount of less than \$2 million will be deemed to have made the Necessity Certification in good faith.

The additional guidance also provides that if, following its review, the SBA determines that a borrower who received a loan equal to, or in excess of, \$2 million did not make the Necessity Certification in good faith, the SBA will seek repayment of the outstanding loan balance and the loan will not be

The Bottom Line

Through its update to the FAQ, the SBA provided significantly clearer guidance on which PPP applications will be subject to further review and what the ramifications will be for borrowers who the SBA determines have not made the Necessity Certification in good faith.

Any borrower who, together with its affiliates, received PPP loans equal to, or in excess of, \$2 million should review the guidance provided by the SBA to determine whether they were able to make the Necessity Certification in good faith. If a borrower determines they were unable to make this certification, they should repay all outstanding amounts on their loan by May 18, 2020.

eligible for forgiveness. If the borrower repays the loan upon request from the SBA, the SBA will not pursue other administrative enforcement or referrals to other agencies.

Finally, the SBA indicated that it is extending the safe harbor deadline for repayment of loans to May 18, 2020 in order to give borrowers an opportunity to review and consider the new guidance described in this alert.

For More Information

Please contact the attorneys listed below or the D&G attorney with whom you have regular contact.

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