

The SBA Issues a Safe Harbor and Additional Guidance on Good Faith Certifications for PPP Loans

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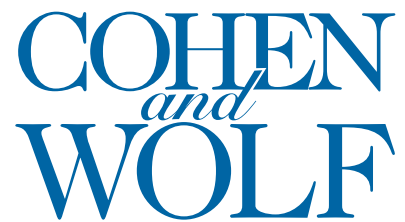
By David M. Morosan

On May 13, 2020 the Small Business Administration (“SBA”) issued a safe harbor and additional guidance regarding the required good faith certification for Paycheck Protection Program Loans (“PPP Loans”) under the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”).

When submitting a PPP Loan application, all borrowers must certify in good faith that “current economic uncertainty makes this loan request necessary to support the ongoing operations of the applicant.” Initially, it was unclear how the SBA would review this certification. In today’s guidance, the SBA announced a safe harbor and stated that 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.

PPP Loans in excess of \$2 million will not receive the benefit of this safe harbor. 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 PPP Loan, the SBA will seek repayment of the outstanding PPP Loan balance and the borrower will not be eligible for loan forgiveness. However, if the borrower repays the loan after receiving notification from the SBA, the 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.

It is expected that the SBA will continue to issue further guidance and rulemaking on the PPP Loan program. We will continue to provide updates as details become available.



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Please contact us with any questions.

ATTORNEYS

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