

SBA/Treasury Updates FAQ's for Deadline of Loan Eligibility Safe Harbor

On May 14, 2020, the Small Business Administration ("SBA") and Treasury Department again revised the Frequently Asked Questions on the Small Business Administration's Paycheck Protection Program ("PPP").

Key highlights include:

- New as of May 14, 2020:
 - o **Q47:** SBA established a new repayment date safe harbor for the required economic uncertainty election of May 18, 2020. Employers that repay a PPP loan by May 14, 2020, are eligible for the Employee Retention Credit.
 - o **Q46:** SBA's review of borrowers' required good-faith certification for the economic necessity of a PPP loan is divided by loan size. Borrowers with loans of less than \$2.0m will be deemed to have made the certification in good faith. Borrowers with loans of \$2.0m or more may still have an adequate basis for making the required good-faith certification, based on their individual circumstances. All PPP loans in excess of \$2 million, and other PPP loans as appropriate, will be subject to review by SBA for compliance with all program requirements. If SBA determines that a borrower lacked an adequate basis for obtaining a loan, SBA will seek repayment of the outstanding PPP loan balance. If the borrower repays the loan, SBA will not pursue administrative enforcement or referrals to other agencies. SBA's determination concerning the certification regarding the necessity of the loan request will not affect SBA's loan guarantee for lenders.
- SBA and Treasury will issue guidance excluding laid-off employees whom the borrower offered to rehire from the CARES Act's loan forgiveness reduction calculation. The borrower must have made a good faith, written offer of rehire, and the employee's rejection of that offer must be documented by the borrower.
- SBA will review all loans in excess of \$2 million, in addition to other loans as appropriate, following the lender's submission of the borrower's loan forgiveness application. SBA will issue additional guidance implementing this procedure.
- Borrowers must calculate total number of employees for eligibility purposes to include part-time employees.
- SBA clarifies that businesses owned by private companies with adequate sources of liquidity to support the business's ongoing operations are likewise subject to Question 31 to the extent that public companies are. As a result, borrowers should closely review their eligibility under the CARES Act and regulations thereunder.
- Payroll costs includes all cash compensation paid to employees, including housing allowances.
- Agricultural producers are eligible for PPP loans if employee count and revenue standards are met or if such producers qualify as a small business concern. Affiliation rules apply (see link below). Cooperatives are also eligible as long as other PPP eligibility requirements are met.

- All borrowers need to closely adhere to the affiliation rules for eligibility and must assess their economic need for a PPP loan under the standard established by the CARES Act and the PPP regulations.
- Lender must fulfill its responsibility to review the required borrower documentation and calculation of payroll costs before submitting to the SBA.
- The SBA provided guidance to lenders on collection of beneficial ownership based on whether the applicant is an existing or a new customer.
- Confirms beginning of the 8-week Covered Period as date of first disbursed loan proceeds and, for now, disbursement must begin no later than 10 days after loan approval. On 04/10/2020, SBA indicated this 10-day period would not change.
- Lenders may rely on borrower certifications as to the applicability of affiliation rules.
- Lenders do not need to re-verify beneficial ownership information for existing customers. (If participating depository institutions have not yet collected beneficial ownership information on existing customers, they are not required to do so for those customers applying for PPP loans).
- Borrowers must apply the affiliation rules set forth in SBA's Interim Final Rule on Affiliation
(See Rule here: [SBA Affiliation Rules](#))
- The exclusion of compensation in excess of \$100,000 annually applies only to cash compensation, not to non-cash benefits.
- How payroll is defined under the CARES Act, including the calculation of non-cash benefits and coverage of paid leave.
- How to substantiate payroll costs if a borrower uses a third-party payroll processor.
- Methods for determining payroll to calculate maximum loan amounts.

Please reach out to us for the latest guidance, and see the updated FAQ here:
[SBA Frequently Asked Questions, 05/14/2020](#)

Contact Us

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