

## **SBA Offers Eligibility Safe Harbor on PPP Loans**

Today, the SBA released guidance regarding its process for reviewing borrowers' required good faith certifications concerning the necessity of their Paycheck Protection Program (PPP) loan request. That guidance is available [here at Question No. 46](#).

When submitting a PPP application, all borrowers certify in good faith that "[C]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant." SBA and Treasury have determined 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. This is a presumption such borrower meets the eligibility requirement that can still be overcome by the SBA. These borrowers can also be scrutinized for other issues in their loan, including, affiliation rules, the 500 employee threshold or determining loan size, allowable uses or forgiveness amount.

Borrowers with loans greater than \$2 million may still have an adequate basis for making the required good-faith certification, which SBA will review based on the borrower's specific circumstances in light of the language of the certification (quoted above) and prior SBA guidance.

All PPP loans in excess of \$2 million will be subject to review by SBA. This means that borrowers (and lenders) will not receive quick confirmation of loan forgiveness of these loans. If SBA determines 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 also inform the PPP lender that the borrower is not eligible for loan forgiveness. Importantly, SBA will not pursue administrative enforcement or referrals to other agencies based on its eligibility determination if a borrower repays the loan in full. However, this guidance must not be understood to be binding on other enforcement agencies, such as the Department of Justice. Borrowers with loan amounts over \$2 million need to carefully review their individual circumstances at the time of the loan application in view of the language of the required certification and SBA's necessity guidance.

### **Contact Us**

Reach out to Fraser Stryker's business attorneys for more information. We are here to help:



**Mark L. Brasee**

[mbrasee@fraserstryker.com](mailto:mbrasee@fraserstryker.com)

(402) 978-5306



**Neil P. Hassler**

[nhassler@fraserstryker.com](mailto:nhassler@fraserstryker.com)

(402) 978-5374

*This article has been prepared for general information purposes and (1) does not create or constitute an attorney-client relationship, (2) is not intended as a solicitation, (3) is not intended to convey or constitute legal advice, and (4) is not a substitute for obtaining legal advice from a qualified attorney. Always seek professional counsel prior to taking action.*