



## SBA Provides NEW Updates on the PPP: Good Faith Certification and Amnesty

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On April 23<sup>rd</sup>, 2020, the [U.S. Small Business Administration](#) updated its [FAQ list](#) on the [Paycheck Protection Program](#). The FAQ document provides answers to most commonly asked questions relating to payroll cost calculation, business eligibility, affiliation, application requirements, and others.

Aside from these, the update contains an important message to those who already applied or still going to. In FAQ#31 the SBA warns that loans under the PPP are not meant to be distributed to “small” businesses of considerable size that have adequate sources of liquidity and access to capital markets:

“In addition to reviewing applicable affiliation rules to determine eligibility, all borrowers must assess their economic need for a PPP loan under the standard established by the CARES Act and the PPP regulations at the time of the loan application. Although the CARES Act suspends the ordinary requirement that borrowers must be unable to obtain credit elsewhere (as defined in section 3(h) of the Small Business Act), borrowers still must certify in good faith that their PPP loan request is necessary. Specifically, before submitting a PPP application, all borrowers should review carefully the required certification that “[c]urrent economic uncertainty makes this loan request necessary to

support the ongoing operations of the Applicant.” **Borrowers must make this certification in good faith, taking into account their current business activity and their ability to access other sources of liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business. For example, it is unlikely that a public company with substantial market value and access to capital markets will be able to make the required certification in good faith, and such a company should be prepared to demonstrate to SBA, upon request, the basis for its certification”.**

The SBA provided an opportunity to get “amnesty” for companies that won’t qualify, but have already applied to the PPP adding the following:

“Lenders may rely on a borrower’s certification regarding the necessity of the loan request. **Any borrower that applied for a PPP loan prior to the issuance of this guidance and repays the loan in full by May 7<sup>th</sup>, 2020 will be deemed by SBA to have made the required certification in good faith”.**

Such measures may be explained by the fact that a lot of publicly-traded companies with market values exceeding hundreds of millions [have already received aid under PPP](#). In connection to this the [Treasury Secretary Steven Mnuchin](#) stated that “there are severe consequences for people who don’t attest properly to this certification. And again, we want to make sure this money is available to small businesses that need it, people who have invested their entire life savings”.

Companies that have not yet applied but are considering doing so should closely examine the FAQ’s to reduce the legal risks associated with the hardship certification. Companies that receive SBA assistance should consider segregating the loan funds in a separate account and document that such funds were only used for SBA-approved purposes.

Please note that this article does not constitute legal advice, and you should seek advice of competent counsel before making a decision to seek or not to seek SBA

assistance.



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