

New PPP Loan Safe Harbor Guidance

Given the questions concerning the factual underpinnings for the certification that each PPP Loan Applicant made that “[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant”, the SBA issued additional guidance on May 13, 2020.

In short, the updated guidance provides PPP borrowers with positive clarifications:

- The SBA created a safe harbor such that any borrower that, together with its affiliates, received PPP loans with an aggregate original principal amount of less than \$2,000,000 will be deemed by the SBA to have made its Certification in good faith.
- Borrowers with PPP loans greater than \$2,000,000 will remain subject to potential review by the SBA on the Certification. If the SBA determines during the course of its review that the borrower did not have an adequate basis for its Certification, the SBA will seek full repayment of the outstanding PPP loan balance and notify the lender making such loan that the affected loan is not eligible for forgiveness. However, if the borrower repays the PPP loan, the SBA will not pursue any other administrative remedies or referrals of the borrower to other agencies for further action.

While the SBA has stated it will not make referrals to other agencies for further action in connection with its demand for repayment of a PPP loan, this guidance does not bind any other government agency or any whistleblower from unilaterally pursuing such action on its own accord.

Finally, pursuant to additional guidance also issued by the SBA on May 13, 2020, the deadline for any Borrower who is concerned about their initial need Certification now has until May 18, 2020 to repay the PPP Loan in full.

CARES Act

Alert

This alert was prepared by Hand Arendall Harrison Sale's CARES Act Team. For further information or assistance, please contact the attorney with whom you normally work or any of the team members listed below.

R. Preston Bolt, Jr.
rbolt@handfirm.com
Mobile, AL

J. Cole Davis
cdavis@handfirm.com
Panama City, FL

Christopher M. Gill
cgill@handfirm.com
Mobile, AL

Benjamin S. Goldman
bgoldman@handfirm.com
Birmingham, AL

T. Bruce McGowin
bmcgowin@handfirm.com
Mobile, AL

Sarah Outlaw McLaughlin
smclaughlin@handfirm.com
Mobile, AL

Brooks P. Milling
bmilling@handfirm.com
Mobile, AL

Dion J. Moniz
dmoniz@handfirm.com
Destin, FL

Kevin D. Obos
kobos@handfirm.com
Panama City, FL

Yanya O'Hara
yohara@handfirm.com
Fairhope, AL

Alabama: MOBILE • BIRMINGHAM • ATHENS • FAIRHOPE
Florida: DESTIN • PANAMA CITY • SANTA ROSA BEACH

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