

## Trilogy of FAQ's Reminds Applicants of Certification Standard to Obtain a PPP Loan

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May 12, 2020 – On April 23, 2020, the Small Business Administration (SBA) issued guidance in the form of an additional Frequently Asked Question (FAQ) that reminded applicants for a Paycheck Protection Program (PPP) loan that they should review carefully the certification that is required in order to obtain the loan. This certification requires borrowers to certify that the "current economic uncertainty makes this loan request necessary to support the ongoing operations of the applicant."

This FAQ, Number 31, provided that 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 suspended the ordinary requirement that borrowers must be unable to obtain credit elsewhere (as defined in section 3(h) of the Small Business Act), borrowers are required to certify in good faith that their PPP loan request is necessary. Specifically, before submitting a PPP application, all borrowers are required to review carefully the required certification that "current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant."

FAQ # 31 was then followed up with two additional FAQ's that reinforced the analysis relative to the certification. Essentially, the additional FAQ's pointed out that the analysis detailed in FAQ # 31 should be extended to privately owned businesses with adequate sources of liquidity to support a business's on-going operations. In addition, the SBA indicated it will review individual loan files to further ensure PPP loans are limited to eligible borrowers in need and all loans in excess of \$2 million dollars will be reviewed.

We note that 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. Unfortunately, there is no real guidance as to what this certification means. However, one thing is certain — this certification and the question of access to "other sources of liquidity" will be judged in retrospect. As such, there are many questions that have no ready answer through current SBA rules or guidance. If you would like to discuss this recent SBA guidance, please contact a Dopkins and Company, LLP professional.

**For more information, contact [Gregory Urban](mailto:gurban@dopkins.com) at [gurban@dopkins.com](mailto:gurban@dopkins.com) or your existing Dopkins contact.**