

SBA issues additional guidance on the loan repayment safe harbor

Published May 13, 2020

On May 13, the SBA issued one additional FAQ providing guidance on the loan repayment safe harbor. As many are aware, this loan repayment safe harbor is extended to May 14, 2020 from the original deadline of May 7, 2020. When the SBA extended the safe harbor deadline, it indicated additional guidance on how the SBA would review the certification criteria would be forthcoming.

While not comprehensive, the SBA FAQ Question 46 update provides that borrowers with loan amounts under \$2 million will not be subject to SBA review and such borrowers will be deemed to have met the certification concerning the necessity of the loan request in good faith.

For borrowers with loans in excess of \$2 million, the SBA confirms that it will review the loan amount and if a borrower is determined to have not met the economic uncertainty certification, the SBA will seek repayment of the outstanding PPP loan balance and will inform the lender that the borrower is not eligible for loan forgiveness. Borrowers that repay the loan after receiving this notification will not be subject to additional SBA enforcement or referral to other Federal agencies for potential criminal penalties.

Several borrowers have inquired if they can avoid the SBA review by repaying a portion of the loan to decrease the principal to not exceed \$2 million. The FAQ states the SBA loan review is applicable to PPP loans in excess of \$2 million (including loans issued to affiliates) and that the \$2 million threshold is based on the *original* principal amount.

For more information, please contact [Robert Pollock](mailto:rpollack@dopkins.com) at rpollack@dopkins.com.

