



PPP Update - Safe Harbor Provision

As has been the case throughout the PPP loan process, there continues to be a lot of confusion and ambiguity about **how the Paycheck Protection Program loan forgiveness process will work**. We were expecting to receive additional guidance on loan forgiveness from the Treasury/SBA by April 26th but have not yet received that official guidance.

We now understand that all PPP loans of \$2 million and above will be audited by the SBA, and smaller PPP loans may be randomly chosen for audit. The SBA created significant uncertainty for PPP participants when they issued FAQs #31 & #37. A key concern in these FAQ's relates to whether "private companies with adequate sources of liquidity to support their ongoing operations" can in good faith certify that they qualify for the PPP loan. See the specific language below:

"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."

The SBA has established a "no questions asked" deadline for PPP loan funds to be returned without subjecting borrowers to any liability. This limited safe harbor is available for any applicants who repay their loan in full by **Thursday, May 14, 2020**.

While we understand the desire to know definitively if the loan needs to be paid back, unfortunately it is not possible for us to make that determination. Each business has the sole responsibility for making the decision related to the handling of PPP loan funds. We will continue to monitor and inform you of new guidance issued by the SBA or Treasury regarding this matter. We suggest you use this information along with consultation with your legal counsel and financial institution to make the final determination.

For clients that choose to stay in the PPP loan program, we recommend having good written documentation regarding the determination that the PPP loan funds are necessary to support ongoing operations in light of other access to capital. This documentation would be specific to each organization's individual circumstances and could take the form of an internal memo or written position statement. The documentation may include some or all the items listed below. This is not intended to be an exhaustive list.

1. The impact of COVID-19 on current and ongoing operations. Why this loan is needed. Why you consider the COVID-19 impacts to be beyond the normal, typical risks faced when running a business.
2. If access to other sources of liquidity to support operations are available, it may be helpful to determine whether the use of such access would have been "significantly detrimental" to the business. The reasons for these other sources being detrimental should be noted.
3. Other items to consider documenting as part of your written internal position statement:
 - a. The direct current and anticipated future impacts on revenues, pricing, and/or profit as a result of COVID-19
 - b. Lost customers, dropped orders, delay in payments from customers & the resulting financial impacts
 - c. Known or expected impacts on your supply chain
 - d. Reduced efficiency of using a remote workforce and the resulting financial impacts
 - e. The risks & costs related to taking on other regular debt financing to fund current operations
 - f. Your plan to reduce staff and/or implement wage cuts if the PPP loan was not available

We want to reiterate that the decision related to making the required PPP loan certifications is a business decision and one that each client has the responsibility to make themselves. This is a fluid situation with new guidance coming out often. We will seek to keep you informed as new guidance is provided and support you through this period.