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SBA extends safe harbor date for PPP loans to May 18, 2020

By Morgan Nighan, Robert Drobnak, Chris Keefe, Christopher M. Mason, Patrick “Rick” Cox, Richard Price

On May 13, 2020, the Small Business Administration (SBA) issued FAQ 47. In the new FAQ, the SBA extended the deadline for the “safe harbor” return of PPP funds for borrowers with an issue concerning their certification of “necessity” for the loan. This extension was made in order “to give borrowers an opportunity to review and consider FAQ #46” related to that issue. “Borrowers do not need to apply for this extension.”¹

Under FAQ 46, “[a]ny borrower that, together with its affiliates, received PPP loans with an original principal amount of less than \$2 million will be deemed to have made the required certification concerning the necessity of the loan request in good faith.”

The plain reading of the SBA’s language is that certifications concerning the necessity for PPP loans under \$2 million will be deemed to have been made in good faith—addressing the concerns of many borrowers, given the confusing guidance on certification to date. Importantly, the SBA clarifies in the new FAQ that borrowers with loans greater than \$2 million “may still have an adequate basis for making the required good-faith certification, based on their individual circumstances in light of the language of the certification and SBA guidance.”

Equally importantly, FAQ 46 states that “[i]f SBA determines in the course of its review that a borrower lacked an adequate basis for the required certification concerning the necessity of the loan request, SBA will seek repayment of the outstanding PPP loan balance and will inform the lender that the borrower is not eligible for loan forgiveness.” And, “[i]f the borrower repays the loan after receiving notification from SBA, SBA will not pursue administrative enforcement or referrals to other agencies based on its determination with respect to the certification concerning necessity of the loan request.” (emphasis added). While FAQs do not carry the authority of law, it is unlikely that the Treasury will pursue enforcement actions against their own FAQ.

¹ Additional discussion regarding FAQ 46 can be found in our May 13 alert, [“SBA provides some clarification on the good-faith certification and creates new safe harbor for PPP loans.”](#)

Borrowers should carefully review this recent guidance and decide whether or not it makes sense for them to exercise the extended safe-harbor. For more information on the content of this alert, please contact our [Coronavirus Response Team](#), your Nixon Peabody attorney or:

- Morgan C. Nighan, 617-345-1031, mnighan@nixonpeabody.com
- Robert A. Drobnak, 312-977-4348, radrobnak@nixonpeabody.com
- Christopher Keefe, 617-345-1350, ckeefe@nixonpeabody.com
- Christopher M. Mason, 212-940-3017, cmason@nixonpeabody.com
- Patrick “Rick” M. Cox, 212-940-3066, pcox@nixonpeabody.com
- Richard Price, 202-585-8716, rprice@nixonpeabody.com