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SBA Provides Safe Harbor on Good Faith Certification for Payroll Protection Program (PPP) Loans

May 14, 2020

On Wednesday, May 13, 2020, the SBA provided a much-needed bright-line safe harbor regarding the required good-faith certification made by PPP applicants. As explained in the PPP FAQ document, Question #46, **"any 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"**.

In addition, for those borrowers with loans greater than \$2 million that are subject to automatic review, if the 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, **the SBA will not pursue administrative enforcement or referrals to other agencies if the loan is repaid** in full upon notification by the SBA (although other agencies may still investigate of their own initiative). While borrowers with loans greater than \$2 million must still assess their individual circumstances to determine if they meet the criteria set forth by the SBA, the cloud of potential civil and criminal liability for non-fraudulent certification is lifted if funds are repaid upon request.

The safe harbor deadline to return PPP loans remains Thursday, May 14, 2020. Please contact us with any questions or concerns.