
SBA Provides New Guidance on Loan Necessity Questionnaires for PPP Loan Recipients: Prepare Now or Risk Being Denied Forgiveness

Description

On December 9, 2020, the Small Business Administration (the “SBA”) released Paycheck Protection Program (“PPP”) Loans FAQ #53, which provides additional information regarding the Loan Necessity Questionnaires (SBA Forms [3509](#) or [3510](#)) that will be required for all PPP borrowers that, together with their affiliates, received loans of \$2 million or more. The SBA is requiring that these borrowers submit information pursuant to the questionnaires in order to review their loans for eligibility, fraud or abuse, and compliance with loan forgiveness requirements, including whether borrowers had an adequate basis for making the statutorily mandated certification in PPP loan applications that “[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.” The new FAQ #53 clarifies that a request to complete a Loan Necessity Questionnaire does not mean that the SBA is challenging a borrower’s certification.

The assessment of a borrower’s certification will be based on the totality of each borrower’s individual circumstances through a multi-factor analysis. Importantly, the SBA has stated that the “certification is required to have been made in good faith at the time of the loan application, *even if subsequent developments resulted in the loan no longer being necessary.*” However, the SBA may also take into account the borrower’s circumstances and actions both before and after the borrower’s certification to the extent that doing so will assist it in determining whether the certification was made in good faith at the time of the loan application. FAQ #53 also adds that the SBA may request additional information from borrowers, at which point borrowers will have an opportunity to provide a narrative response to the SBA explaining their unique circumstances, before any final determination is made.

This guidance should calm some fears that a loan may not be forgiven if subsequent events outside of a borrower’s control resulted in the loan no longer being necessary. Nonetheless, the SBA explicitly reserves the right to assess circumstances and borrower actions both before and after the certification was made in determining whether economic uncertainty actually made the loan request necessary.

The questionnaires ask for information and backup documentation regarding receipts, expenses, operations, required closures, and liquidity, among others. Once received, a borrower must return the completed questionnaire to its lender within 10 business days. Given this short timeframe for completion, to ensure that their loans are forgiven, borrowers should begin assembling answers and required supporting documentation to facilitate a timely response. Additionally, borrowers should start to think about any actions or circumstances, both before and after their loan applications were made, that could raise a red flag with the SBA. Borrowers should be prepared to explain the rationale for any actions that the SBA might consider questionable, in case additional information is requested and a narrative response is required.

The [Business Law Group](#) at Partridge Snow & Hahn are ready to answer questions you may have about the new guidance on the questionnaires and PPP loans. To read our previously published client alert on this topic, [click here](#). For additional information and resources visit the firm’s [COVID-19 Advisory Group](#) page.

Date Created

December 11, 2020