



Tax Alert: PPP Program update 5/6/2020

Safe Harbor May 7th deadline Extended to May 14th

As previously discussed in prior alerts, the SBA issued additional guidance through question 31 and 37 <https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf> which changed the original loan certifications retroactively. Question #31 adds “***Specifically, before submitting a PPP application, all borrowers should review carefully the required certification that “[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.” 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.***”

For example, it is unlikely that a public company with substantial market value and access to capital markets will be able to make the required certification in good faith, and such a company should be prepared to demonstrate to SBA, upon request, the basis for its certification. Lenders may rely on a borrower’s certification regarding the necessity of the loan request. ***Any borrower that applied for a PPP loan prior to the issuance of this guidance and repays the loan in full by May 7, 2020 will be deemed by SBA to have made the required certification in good faith.***

We encourage our clients to review this new guidance and reassess their initial certification. This article <https://www.jdsupra.com/legalnews/the-price-of-ppp-guidance-for-37202/> which provides some ideas on how to reassess the initial certification to ensure you have considered and documented the retroactive changes.

On May 5, 2020, the deadline was extended to May 14, 2020, see Question #43.

Loan Forgiveness

As of today, the SBA has not issued guidance on the computation of the PPP loan forgiveness and there are many unanswered questions. The latest batch of FAQs, released on Sunday night

<https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf>, clarified that an employer's PPP forgiveness won't be reduced if he or she offers to rehire a laid-off employee and the individual rejects the job.

IRS Announces Expenses Paid With Forgiven PPP Funds are Not Deductible

On April 30, 2020, the IRS Released Notice 2020-32 <https://www.irs.gov/pub/irs-drop/n-20-32.pdf> which provides guidance on the deductibility of expenses paid with Paycheck Protection Program (PPP) loan proceeds that are partially or completely forgiven and excluded from a taxpayer's income. Specifically, the IRS has determined that otherwise deductible expenses that are paid with PPP funds and forgiven may not be deducted for federal income tax purposes.

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