SBA Issues New Guidance Providing Safe Harbor for Paycheck Protection Program Loans Under $2 Million; Extends Repayment Deadline to May 18, 2020

Client Alert

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The Small Business Administration (SBA) is providing ongoing updates to its guidance documents regarding the Paycheck Protection Program (PPP). While many questions remain regarding the loan program, on May 13, 2020 the SBA provided clarification on its review and enforcement of the good faith certification related to the necessity of the loan request.

Previous guidance documents had indicated that the SBA would be examining the required certification in PPP loan applications that "current economic uncertainty makes this loan request necessary to support the ongoing operations" of an applicant, and that the SBA could scrutinize whether the applicant had other sources of liquidity.

The newly-released guidance clarifies that "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." To qualify for this safe harbor, the applicant must include all affiliates in the application.

The SBA has determined to conserve its finite audit resources and focus its reviews on larger loans, for which their compliance efforts may yield higher returns. This determination should provide comfort to applicants who receive loans under the $2 million threshold.

Borrowers with loans greater than $2 million will still be subject to scrutiny and should be prepared to demonstrate an adequate basis for making the good faith certification based on their individual circumstances concerning the necessity of the loan request. If the SBA determines that the certification was not made in good faith, the SBA will seek repayment of the outstanding PPP loan balance. If the loan is not repaid, the SBA may also pursue administrative enforcement action or referrals to other agencies based on its determination with respect to the good faith certification. If the borrower repays the loan after receiving SBA notification, the SBA has

advised that it will not pursue administrative enforcement or referrals to other agencies.

The SBA has also extended the time period for borrowers to repay their loans in order to take advantage of the safe harbor if they have concerns regarding their certification that "current economic uncertainty makes this loan request necessary" because they had other sources of liquidity. Borrowers now have until Monday, May 18, 2020 to consider the updated guidelines and repay their loans.

We will continue to monitor developments related to the PPP loan program and will provide updates accordingly. Please contact the author of this Alert, **Steven Firkser** sfirkser@greenbaumlaw.com | 732.476.2388 with questions. Mr. Firkser is a member of the firm's **Real Estate** and **Redevelopment & Land Use** Departments.

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