

SBA Asks: Did You Really Need Your PPP Loan?

Recent published reports have identified dozens of public companies that have received Paycheck Protection Program loans. When PPP ran out of money, some of these companies attracted a great deal of public attention and some questions and criticism, given that many other applicants did not receive funding before money ran out.

On April 23, the Small Business Administration issued an FAQ directly addressing this controversy. The question is: Do businesses owned by large companies with adequate sources of liquidity to support the business's ongoing operations qualify for a PPP loan? The answer states that all borrowers need to assess their eligibility under the CARES Act and PPP regulations at the time of the application. The CARES Act waived the usual SBA requirement that an applicant demonstrate that it cannot obtain credit from other sources.

However, the application requires the applicant to certify 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 capital to support ongoing operations. The answer then states: "[I]t 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." Although not specifically mentioned, other applicants and borrowers may also be subject to additional scrutiny.

In light of the public attention, the political controversy, public statements by members of Congress and administration officials (including Treasury Secretary Mnuchin), and this FAQ, it seems likely that loan applicants may receive an additional level of review of their certification when they submit their applications for forgiveness or in other contexts (e.g., Congressional or agency investigations, False Claims Act proceedings, etc.).

The SBA's position is that any borrower that applied for a PPP loan prior to April 23 and that repays its loan in full by May 7 will be deemed by the SBA to have made its certification in good faith. Existing borrowers and new applicants should be aware of this position and the possibility of heightened scrutiny on the question of need.



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