

SBA ANNOUNCES SAFE HARBOR FOR PPP LOANS UNDER \$2 MILLION



On May 13, 2020, the Small Business Administration (SBA) answered a question that has been causing sleepless nights for many small business owners who applied for and received Paycheck Protection Program (PPP) loans.

In FAQ #46, the SBA announced that businesses who received loans less than \$2M will be deemed to have acted in good faith concerning the certification question on the loan application regarding the necessity of the loan. Per their answer in FAQ # 46:

“SBA has determined that this safe harbor is appropriate because borrowers with loans below this threshold are generally less likely to have had access to adequate sources of liquidity in the current economic environment than borrowers that obtained larger loans.”

Several trade and professional organizations, including the AICPA, the AGC, and the ABC had been pressuring SBA and the Treasury Department to release additional clarification and consistent guidance as to what the certification requirements really were, in response to recent remarks by Treasury Secretary Steve Mnuchin. On April 28, Treasury Secretary Steven Mnuchin and SBA Administrator Jovita Carranza announced that SBA would audit all loans over \$2M and other loans as appropriate, and that PPP loans would be “scrutinized” to determine if the applying business really needed the funding. Mnuchin commented further that borrowers could “face criminal liability for making certifications that weren’t true.”

Naturally, these comments worried many small business owners about how they would document their need for the funding. The announcement should allow small business owners to sleep better tonight.

As part of the announcement, FAQ #46 also clarified that borrowers who received loans in excess of the \$2M safe harbor could still demonstrate that they needed the PPP funds. Part of the answer to FAQ #46 reads:

“Importantly, borrowers with loans greater than \$2 million that do not satisfy this safe harbor may still have an adequate basis for making the required good-faith certification, based on their individual circumstances in light of the language of the certification and SBA guidance.”

All things considered, it’s a good day for small businesses trying to keep their businesses afloat in the rough seas of COVID-19.