

Key Guidance on SBA's Loan Necessity Questionnaire for Paycheck Protection Program Loans

The U.S. Small Business Administration (SBA) issued guidance on the recently issued "Loan Necessity Questionnaire" (SBA Form 3509/3510). Lenders must require Paycheck Protection Program (PPP) borrowers to complete the Questionnaire if they received a loan of \$2 million or more. The stated purpose of the Questionnaire is to assist the SBA in its review of such loans for eligibility, fraud or abuse, and compliance with loan forgiveness requirements[C0][C1]. In other words, the Questionnaire essentially is the beginning of the SBA's previously announced audit process.

When applying for the PPP loan, borrowers had to certify in good faith that "current economic uncertainty" made the loan request necessary to support the business's "ongoing operations." There initially was no guidance on what this actually meant, although [SBA's later FAQs](#) provided that this certification must be made by taking into account the borrower's "current economic activity" and "ability to access other sources of liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business."

But with the Questionnaire and SBA's recent guidance, it is now clear that the SBA is concerned with far more than the economic conditions that existed when the application was made. The Questionnaire instead asks for information after the date of the loan application, including the comparison of revenue in Q2 2020 vs. Q2 2019, compensation of individuals in excess of \$250,000, cash on hand, and shareholder equity, among other things. According to the SBA, its assessment of a borrower's good-faith certification will be based on the "totality of the borrower's circumstances through a multi-factor analysis." This is concerning, and certainly is not consistent with the original requirements of the CARES Act. In fact, the guidance seems to confirm that the SBA will use information that was unavailable to the borrower at the time of its loan application to determine whether it made a good faith certification when applying for the loan.

The Questionnaire has been the subject of widespread criticism and has already been challenged in court. But unless the SBA revises the Questionnaire or scraps its use altogether, it is vital that borrowers are prepared to supplement the Questionnaire with information to support the organization's economic status at the time of filing the loan application. The ability to do this may be limited, though, as the Questionnaire itself requests minimal supporting documentation and provides very few 1000-character comment boxes for additional explanation. But of course if the SBA requests additional information, borrowers will have the opportunity to provide a narrative explaining the circumstances that provided the basis for the good-faith certification. Borrowers also should consider providing a calendar or log of the dates of shut down ordinances, industry projections at the time of the application, information regarding supply chain disruptions, and year-over-year sales records, in addition to anything else that may explain economic need.

Because of the delay in SBA's guidance on the Questionnaire, and considering that it represents the type of hindsight analysis that we have feared, it is entirely possible that a borrower's Questionnaire responses may result in an adverse audit or loan forgiveness decision. Our [Audit Counsel](#) team is available to address questions or concerns. In addition, we can help navigate the [appeal process](#) as needed and any subsequent litigation that may result to ensure that, in the end, maximum forgiveness is achieved.

If history is any indicator, this will not be the SBA's last guidance on the Questionnaire. We will continue to stay abreast of these developments and share insight as quickly as possible.

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