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SBA Extends Time for Borrowers to Consider PPP Safe Harbor for the Loan Necessity Certification

This is an update to our [alert from yesterday](#). Late May 13, 2020, the Small Business Administration (SBA) issued updated guidance to the [PPP Loan FAQs](#). In the prior alert, we called attention to new PPP Loan FAQs that detailed how the SBA would approach its review of each borrower's required good faith certification concerning the necessity of their PPP loan request (Loan Necessity Certification). As previously noted, if a borrower revisits its Loan Necessity Certification and does not feel good about their initial certification, the SBA is permitting the borrower to repay their PPP loan proceeds in full. That deadline was May 14, 2020, but the updated guidance extends that time to May 18, 2020.

Updated Guidance

Late in the evening on May 13, 2020, in response to questions from borrowers about the safe harbor guidance issued earlier in the day, the SBA issued updated guidance to the PPP Loan FAQs in the form of FAQ 47.

47. Question: An SBA interim final rule posted on May 8, 2020 provided that any borrower who applied for a PPP loan and repays the loan in full by May 14, 2020 will be deemed by SBA to have made the required certification concerning the necessity of the loan request in good faith. Is it possible for a borrower to obtain an extension of the May 14, 2020 repayment date?

Answer: Yes, SBA is extending the repayment date for this safe harbor to May 18, 2020, to give borrowers an opportunity to review and consider FAQ #46 Borrowers do not need to apply for this extension. This extension will be promptly implemented through a revision to the SBA's interim final rule providing the safe harbor.

We expect a new interim final rule to be issued before May 18, 2020, which may also cover more matters in and around the safe harbor guidance. In the meantime, any borrower who has already received a PPP loan and is considering repaying the loan to take advantage of this repayment safe harbor will now have until Monday, May 18, 2020 to do so.

If you have questions about the Paycheck Protection Program, please contact a member of Hill Ward Henderson's [COVID-19 Attorney Response Team](#) below.

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