

SBA PPP LOANS - 4 MORE DAYS TO REASSESS AND RETURN

Amidst negative publicity from the media regarding publicly traded and other large companies receiving Paycheck Protection Program loans (PPP), the Small Business Administration (SBA) issued Frequently Asked Questions (FAQ) on 23rd April 2020. Refer <https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf> for these FAQs. FAQ 31 and 37 address these concerns by adding “necessity and liquidity test” to already existing criteria for PPP eligibility.

While these FAQ are reproduced below for your reference, the key takeaways are as under:

- a) A borrower must carefully review and certify in good faith whether the current economic uncertainty makes the PPP loan request necessary to support the ongoing operations of the borrower. Additionally, in assessing their existing liquidity condition, the borrower must consider their current business activity and their ability to access other sources of liquidity, which may include funding from the owners of the business and the affiliated entities.
- b) This requirement is retroactive and apply even to certifications for those loans which were applied or already issued prior to this additional guidance.
- c) The SBA has announced a safe harbor until **May 7, 2020**, for borrowers to return loans if any of the SBA’s subsequent guidance (including these 2 important FAQs) has changed the validity of prior certifications.

It is therefore extremely important for all the businesses who have already applied for or have already received the loan proceeds to re-assess their eligibility considering this necessity and liquidity tests. In case of loans already issued, businesses must see the need to return it back on or before **May 7, 2020 (only 4 more days to go)** to avoid any penal consequences of holding on to this PPP through erroneous certification. FAQ 31 and 37 are reproduced below for ready reference-

31. Question: Do businesses owned by large companies with adequate sources of liquidity to support the business’s ongoing operations qualify for a PPP loan?

Answer: In addition to reviewing applicable affiliation rules to determine eligibility, all borrowers must assess their economic need for a PPP loan under the standard established by the CARES Act and the PPP regulations at the time of the loan application. Although the CARES Act suspends the ordinary requirement that borrowers must be unable to obtain credit elsewhere (as defined in section 3(h) of the Small Business Act), borrowers still must certify in good faith that their PPP loan request is necessary. Specifically, before submitting a PPP application, all borrowers should review carefully the required certification that “current 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 liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business. For example, it 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.

Lenders may rely on a borrower’s certification regarding the necessity of the loan request. Any borrower that applied for a PPP loan prior to the issuance of this guidance and repays the loan in full by May 7, 2020, will be deemed by SBA to have made the required certification in good faith.

37. Question: Do businesses owned by private companies with adequate sources of liquidity to support the business’s ongoing operations qualify for a PPP loan?

Answer: See response to FAQ #31



KNAV refers to one or more member firms of KNAV International Limited ('KNAV International'); which itself is a not-for-profit, non-practicing, non-trading corporation incorporated in Georgia, USA. KNAV International is a charter umbrella organization that does not provide services to clients. Each firm within KNAV's association of member firms, is a legally separate and independent entity. Services of audit, tax, valuation, risk and business advisory are delivered by KNAV's independent member firms in their respective global jurisdictions.

All member firms of KNAV International in India, North America, Singapore and UK are a part of the US\$ 4 billion, US headquartered Allinial Global; which is an accounting firm association, that provides a broad array of resources and support for its member firms, across the globe. The International Accounting Bulletin has released the result of its 2020 world survey and has ranked Allinial Global as the world's second largest accounting association.

For any queries, please get in touch with us at markets@knavcpa.com or visit us at www.knavcpa.com

Head office: One Lakeside Commons, Suite 850, 990 Hammond Drive NE, Atlanta, GA 30328

Other offices: Canada | India | Netherlands | Singapore | UK | USA