**NECA Legal and Government Affairs Alert**

**PPP Loans and Forgiveness Guidance**

**5.13.2020**

The SBA has issued yet another update on its FAQS for the PPP loans program. The biggest news is a borrower’s ability to repay a disqualified loan after notification without further enforcement or remedial efforts by the SBA. The new question and answer number 46 states as follows:

*46.* ***Question:*** *How will SBA review borrowers’ required good-faith certification concerning the necessity of their loan request?*

***Answer:*** *When submitting a PPP application, all borrowers must certify in good faith that “[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.” SBA, in consultation with the Department of the Treasury, has determined that the following safe harbor will apply to SBA’s review of PPP loans with respect to this issue: Any borrower that, together with its affiliates, received PPP loans with an original principal amount of less than $2 million will be deemed to have made the required certification concerning the necessity of the loan request in good faith.*

*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. This safe harbor will also promote economic certainty as PPP borrowers with more limited resources endeavor to retain and rehire employees. In addition, given the large volume of PPP loans, this approach will enable SBA to conserve its finite audit resources and focus its reviews on larger loans, where the compliance effort may yield higher returns.*

*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. SBA has previously stated that all PPP loans in excess of $2 million, and other PPP loans as appropriate, will be subject to review by SBA for compliance with program requirements set forth in the PPP Interim Final Rules and in the Borrower Application Form. If SBA determines in the course of its review that a borrower lacked an adequate basis for the required certification concerning the necessity of the loan request, SBA will seek repayment of the outstanding PPP loan balance and will inform the lender that the borrower is not eligible for loan forgiveness. If the borrower repays the loan after receiving notification from SBA, SBA will not pursue administrative enforcement or referrals to other agencies based on its determination with respect to the certification concerning necessity of the loan request. SBA’s determination concerning the certification regarding the necessity of the loan request will not affect SBA’s loan guarantee.*

The important points here are:

* While all borrowers are required to submit applications for PPP loans by certifying in good faith that “[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant,” those that borrow $2 million or less will be deemed to have made the required certification in good faith.
* Loans above $2 million will be subject to review based on the borrower’s “individual circumstances in light of the language of the certification and SBA guidance.”
* If during a compliance review the SBA determinations that the certification lacks an adequate basis, the SBA will seek repayment and disqualify the borrower for forgiveness.
* **Of particular significance:** If a borrower is notified by the SBA of such disqualification, it may repay the loan without further SBA administrative enforcement or referrals to other agencies.

NECA will continue to lobby for the industry on this issue and we will keep you informed of all relevant developments.