

CLIENT ALERT

Government Adds FAQ Demanding Repayment of Paycheck Protection Program Loans from Companies with "Adequate Sources of Liquidity"

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On April 23, 2020, Treasury drastically complicated the landscape for the Paycheck Protection Program (PPP) by updating a [Frequently Asked Questions](#) document with a response to the question: "Do businesses owned by large companies with adequate sources of liquidity to support the business's ongoing operations qualify for a PPP loan?"

The PPP application requires applicants to certify in good faith that "[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant." While the Small Business Administration and Treasury had not previously provided any type of guidance around how to interpret this vague certification, Treasury now via this FAQ document articulates a standard that will likely be applied retroactively to all companies that have previously applied for and received PPP loans. This potential retroactive application is underscored by the warning that PPP loan recipients must "be prepared to demonstrate to SBA, upon request, the basis for its certification" that the PPP loan was "necessary to support the ongoing operations of the Applicant." Importantly, the Treasury FAQ provides that any borrower that cannot defend making this certification in light of its new guidance should repay the PPP loan in full by May 7, 2020.

While recognizing that the CARES Act suspended the ordinary requirement that borrowers must be unable to obtain credit elsewhere, Treasury now advises that applicants must take "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." In the wake of multiple news reports identifying publicly traded companies that had received PPP loans, Treasury notes—as an example—that 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." This FAQ document is not limited in application to publicly traded companies, and it does not provide any additional guidance for PPP loan recipients—such as what companies should do if they could have previously accessed other sources of liquidity but now cannot because they relied on receipt of a PPP loan or how to assess the ability of small businesses "to access other sources of liquidity." The Crowell & Moring Team is closely watching these developments and is standing by to confer with companies about the impact of this new FAQ.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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