

SBA Extends Safe Harbor Deadline to May 18 & Issues New Guidance on Loan Increases

Article

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As discussed here, yesterday in FAQ #46, the SBA stated that “[a]ny 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.”

The SBA published FAQ #46 just a day before the then current safe-harbor repayment deadline, which was already extended from May 7 to May 14. However, in the late afternoon yesterday, the SBA published FAQ #47 further extending the safe-harbor repayment deadline to May 18.

The full text of FAQ #47 is below:

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.

In addition to FAQ #46 and #47, yesterday the SBA published an Interim Final Rule (IFR) on Loan Increases for certain partnerships and seasonal employers. On April 14, the SBA issued an IFR clarifying that self-employment income of general active partners may be reported as payroll costs (up to \$100k annualized). On April 28, the SBA issued an IFR which provided an alternative criterion for calculating PPP maximum loan amounts for seasonal employers.

The latest IFR issued yesterday authorizes PPP lenders to increase loan amounts to partnerships to include partner compensation (per the April 14 IFR) and to seasonal employers who's maximum loan amount calculation is higher using the alternative criterion (per the April 18 IFR). Such borrowers will be eligible for a higher maximum loan amount even if the loan has been fully disbursed, provided that the lender's first SBA form 1502 report to SBA on the PPP loan has not been submitted.