



Navigating SBA’s Guidance on Certifying Need As of May 14, 2020

On May 5th, the SBA announced a “Safe Harbor” period through May 14th for organizations to return their PPP loan in full with no penalties if they felt unable to meet a new good-faith requirement that there was an economic need for the PPP Loan. On May 13th in its [FAQs](#) the SBA extended the “Safe Harbor” period through May 18th and clarified that loan size is a key factor in determining whether organizations will be deemed to have met the good-faith requirement. In addition, organizations who do not meet the good-faith requirement will have the opportunity to return the money without penalty after the SBA notifies them to do so. Specifically:

- **Organizations who received loans under \$2 million:**
If your organization, together with any affiliates, received a PPP loan for less than \$2 million, you are automatically deemed to have made the required certification concerning the necessity of the loan request in good faith. **No further action needed.**

- **Organizations who received loans of greater than \$2 million:**
The SBA confirmed their earlier announcement that all PPP loans in excess of \$2 million will be subject to an SBA audit after you submit your forgiveness paperwork to your lender. If during the course of that audit, the SBA determines that your organization lacked an adequate basis for requesting the loan, you will not be eligible for loan forgiveness and be required to repay the loan in full. If you do repay the loan after receiving notification from the SBA, you will not be subjected to any punitive actions from the SBA. There are no details yet on what the repayment timeline would be or how the audit itself will work. Read the full FAQs from the SBA [here](#).

For organizations who received loans of greater than \$2 million, we are sharing our previous guidance on how to document your need and analysis specific to your organization:

1. Review what the SBA has said to date:

- The language of the certification borrowers made at the time of application: “the current economic uncertainty makes this loan necessary to support our ongoing operations” – with the SBA stating on April 23rd that “all borrowers” should review this certification carefully.
- The good-faith requirement that was added: “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.”
- The single example provided by the SBA of an organization unlikely to be able to meet the good-faith requirement: a public company with substantial market value and access to capital markets

This information is provided for general informational and educational purposes only and does not constitute legal advice. Please note guidance is changing regularly and we encourage you to check with the SBA and your lender for updated information.



2. Document your specific need

The additional SBA guidance provided to date has not been focused on the specifics of nonprofit organizations. There are currently no specific dollar amounts, ratios or calculations to help applicants assess their need. Start by answering a few questions about the possible impact on your revenue, expenses and access to operating cash; these can help you to describe what you are worried about:

- How might your fundraising be impacted, including funds raised from individual donors, foundations, government?
- If you receive fees for service or other earned revenue, how might your customers be affected? What will that mean for your revenue?
- How might your programs and services and/or business model need to change?
- What are your cash flow needs? How will you pay for unexpected expenses?
- Are your reserves or endowment restricted for specific purposes?

Each organization should review their own balance sheet for liquidity today and ability to generate funds in the near term to in order to understand if a further conversation with their board or attorney would be helpful to document their statement of need, understanding that context is important.

3. Do a final gut check.

Do you think that the PPP loan is necessary? If that feels too abstract, one way to consider this is if an investigative reporter contacted you and said they wanted to do a story about your organization and the PPP loan, would you be excited about the publicity or deeply worried about what people might think if they found out?

Final Thoughts

We stand with our friends at Jewish Federations of North America who originally [summarized this issue](#) up well: “We believe that organizations acting in good faith in seeking and securing a PPP loan because they are impacted financially because of the crisis, and maintaining proper documentation on how they determine that need, should not have a problem with accepting and using the loan. As always, we recommend that organizations consult with their outside legal and financial advisors on this good faith certification requirement.”

Questions?

Please reach out to the FMA team at FMACARES@fmaonline.net for further support. As we learn more, we will be sure to share it out as quickly as possible.

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