



AMERICAN COUNCIL OF ENGINEERING COMPANIES
of North Carolina

SBA publishes clarification of Loans under the PPP Program of the CARES Act:

The Treasury Department and the Small Business Administration released the [Paycheck Protection Program \(PPP\) Loan Forgiveness Application](#) and detailed instructions for the application. Click [here](#) to view the application and instructions.

Treasury and SBA have also added question 46 to the [FAQ document](#) which addresses the issue of whether PPP borrowers made a good faith certification when they applied for the loan. In short -- borrowers with loan amounts of less than \$2 million will be deemed to have made this certification. Borrowers with loan amounts greater than \$2 million still have a basis for making the certification. This appears to be a logical extension from previous guidance, but stops short of providing the additional guidance we need on certification for loans greater than \$2 million, as well as the question of forgiveness. We will circulate new information that addresses these questions as it becomes available.

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

Answer: When submitting a PPP application, all borrowers must certify in good faith that "current economic uncertainty makes this loan request necessary to support the ongoing operations of the Application." 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 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 the 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.

Status of Federal Legislation to expand use of Stimulus funds for State Revenue

Shortfalls:

Learn what measures are pending in Congress that might help with easing restrictions on the use of CARES Act Federal funds for State DOT revenue shortfalls, or new Stimulus funds ([click here](#)).