

May 6, 2020

PPP Loans

New Guidance on Eligibility Effect of Foreign Affiliates / Extended Deadline for Returning Loans

This email is being sent to all of our clients to point out two new developments that are of critical importance regarding PPP loan applications. As we have pointed out before, **borrowers who made false certifications can face criminal and civil consequences.**

Eligibility Certifications: Counting Employees of Foreign Affiliates

Late yesterday evening, the SBA added Question 44 to its FAQ, specifying how the number of employees are counted where an applicant has domestic and/or foreign affiliates:

“For purposes of the PPP’s 500 or fewer size standard, an applicant must count all of its employees and the employees of U.S. **and foreign affiliates**, absent a waiver of or an exception to the affiliation rules.” [Emphasis added]

We suggest that any potential borrower consult us if they have U.S. and/or foreign affiliates whose eligibility might be denied if the number of employees of all affiliates (regardless of their country of residence) exceeds 500.

Necessity Certification: New Safe Harbor Date

Also among yesterday’s updates to the FAQ is an extension for the repayment of loans under the safe harbor, from May 7 to **May 14, 2020.**

On May 4, 2020, we sent out an email update, reminding our clients of SBA guidance from April 23, 2020, that some PPP loan applicants may not be considered to have made their certification in good faith as to the necessity for a PPP loan if they had other sources of liquidity.

In that April 23, 2020 update, the SBA had established a safe harbor that any applicants who applied for a PPP loan prior to the issuance of that guidance and who repaid the loan in full by May 7, 2020, will be

deemed to have made their certification in good faith. Though the deadline has now been extended, the substantive and strategic considerations to be weighed when determining necessity have not changed.

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About Pavia & Harcourt LLP

Established in 1951, Pavia & Harcourt LLP is a business law firm concentrating in international commercial and corporate transactions, banking, media and entertainment, real estate, litigation and arbitration, intellectual property, estate planning and administration, and matrimonial law. We are based in New York City.

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