



### **I. Good Faith Certification by PPP Applicant**

- a. "Current economic uncertainty makes this loan request necessary to support the ongoing operations of the applicant."

### **II. PPP Frequently Asked Question 31 issued on April 23, 2020**

- a. "All borrowers must assess their economic need for a PPP loan...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." (emphasis added)

### **III. Fourth PPP Interim Final Rule**

- a. "The PPP is intended to provide economic relief to small businesses nationwide adversely impacted by the Coronavirus Disease 2019 (COVID-19)."
- b. "Any borrower that applied for a PPP loan prior to the issuance of this regulation and repays the loan in full by May 7, 2020 will be deemed by SBA to have made the required certification in good faith."

#### **IV. Factors to Consider in Determining Good Faith Certification**

a. Adverse impacts to business

Applicant should be able to identify specific adverse impacts to the business as a result of COVID-19. If the business is facing uncertainty regarding future operations, the borrower should identify the specific uncertainties causing the concerns and document the reasons for the certification.

b. Cash-flow

Applicant should consider whether it has sufficient cash and receivables to continue to meet operating expenses, particularly the ability to pay employee wages and benefits.

c. Liquidity and access to capital

Businesses should consider whether they have quick access to sources of liquidity. The primary purpose of the PPP is to allow employers to continue to pay employees during the months of government stay-at-home orders; if the borrower cannot quickly access capital, that supports being able to make the good-faith certification as to necessity.

d. Location and Nature of Business

The longer a business is likely to be shut down, the more likely it will be in a position to make the good-faith certification. Certain businesses will reopen sooner than others under the phases to be implemented in Florida.

e. Industry

Some industries have been impacted more than others. For example, the hospitality industry has been devastated by the stay-at-home orders and government-mandated shutdowns. Others, such as the grocery industry and delivery services have flourished as a result of COVID-19. The more an entity's industry has been adversely impacted, the more likely it will be in a position to make the good-faith certification.

This is general information based upon legislative guidance for the PPP loan issued through April 24, 2020.

f. Workforce

Some businesses are facing situations in which their workforce is unable or unwilling to return to work. As such, the borrower may face uncertainty with respect to ramp-up production.

g. Risk tolerance

The FAQs and Fourth PPP Interim Final Rule, together with public statements made by legislators and Treasury Secretary Steven Mnuchin, have made it clear that PPP loans will be subject to legal scrutiny (under the False Claims Act and other laws).

**V. Loan Forgiveness of PPP**

- a. Further guidance will be released in the coming weeks.
- b. Legislators are pushing for additional legislation to limit loan forgiveness under PPP.
- c. Examples of proposed restrictions include:
  - i. No portion of PPP loan would be forgiven if the 2020 taxable income of the business exceeds that of 2019;
  - ii. PPP borrower would only qualify for loan forgiveness if gross receipts for its business for 2020 are less than 60% of its 2019 gross receipts; and
  - iii. Sliding scale for forgiveness for those companies whose gross receipts for 2020 were 60% to 90% of what they were in 2019.