PPP BORROWERS: SBA PROVIDES SAFE HARBOR FOR GOOD-FAITH CERTIFICATION

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 Applicant." The SBA, in consultation with the Treasury, determined that the following safe harbor will apply to the 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 loan request in good faith."

Borrowers with loans greater than $2 million that do not satisfy this safe harbor may still have an adequate basis for making the required good-faith certification. The SBA previously stated that all PPP loans in excess of $2 million, and other PPP loans as appropriate, remain subject to review by the SBA for compliance with the program's requirements. If, upon the SBA's review, a borrower lacks an adequate basis for the required certification, the borrower must repay the loan in full upon notification by the SBA. If the loan is repaid, the SBA will not pursue administrative enforcement with respect to this certification.

In light of the recent guidance and potential scrutiny by the SBA, for loans that do not meet the $2 million safe harbor, we still recommend that borrowers document the facts and circumstances that gave need to the Company applying for the PPP loan. Below is a list of questions for borrowers to consider while documenting their rationale (these should be from the perspective of when the application was originally filed). This list contains suggested items but is not meant to be all-inclusive. Borrowers should retain all relevant support (for example, copies of projections) to supplement the documentation. Borrowers should review their individual circumstances as appropriate and consider discussing with legal counsel.

- Did the borrower believe that economic uncertainty made the loan request necessary to support ongoing operations, based on available guidance?
- Was there uncertainty that the borrower's operations would remain at or return to its normal levels prior to the pandemic?
- Were there industry publications or communications from industry groups regarding future uncertainties as a result of the pandemic?
- Has the borrower prepared projections that indicates the loan would be needed to support operations as a result of the pandemic?

- Did the borrower have sufficient cash and liquidity to fund operations for the foreseeable future in light of the economic impact of the pandemic?
- Did the borrower anticipate a slow down in cash receipts from customers and/or a reduction in revenues?
- Are there customers with high receivable balances with uncertainty about their ability to pay in a timely manner or at all?
- Has the borrower experienced customer cancellations or postponements?
- Is the sales pipeline expected to be severely impacted by the pandemic?
- Will the economic uncertainties inhibit production, sales and marketing activities?
- Does the borrower question the viability of key suppliers and their ability to continue servicing the borrower's needs?
- Did the borrower anticipate a significant adverse impact to net working capital or equity of the business as a result of the pandemic?
- Did the borrower have access to capital with similar or better terms than the PPP?
- Would accessing other forms of financing put the borrower at risk of violating debt covenants or defaulting on a loan?
- Has the borrower experienced difficulties accessing other capital during an economic downturn in the past?
- Does the borrower have other assets that may experience a significant impairment of value, which may result in economic losses or deterioration of collateral?
- Does the borrower have a significant amount of fixed costs that must be maintained?
- Does the borrower's business interruption insurance cover any potential losses experienced as a result of the pandemic?
- In addition to funding operations and maintaining payroll costs, are there additional needs that have arisen as a result of the pandemic? Consider social distancing and other legislative mandates, sanitation requirements and IT needs.
- Did the borrower start reducing the workforce as a result of the economic uncertainties from the pandemic?
- Did the borrower reduce pay rates for employees or begin furloughing employees?

- If the borrower is unable to obtain a PPP, would there be plans in place to reduce the workforce, reduce pay rates or furlough employees?
- If the borrower were to reduce pay rates, furlough employees, lay off part of the workforce or experience high levels of paid or unpaid leave, would this have a material adverse effect on sustainability of the business and the borrower's ability to maintain service/production levels?