

Alert: Safe Harbor Deadline Extended to May 14

By: Bob Brown on May 6, 2020 on graydon.law

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It's the question of the week: ***Should we return our PPP proceeds?*** Well, PPP borrowers now have been given a little extra time to decide whether to do so. Yesterday the SBA announced it is extending the date by which borrowers can repay their loan to fall into the safe harbor provided under the SBA's interim final rule **from May 7, 2020 to May 14, 2020**.

As you will recall, in late April, the SBA urged borrowers to review their certification regarding economic need on the Borrower Application Form that ***"Current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant."*** This was apparently a direct response to companies such as the Los Angeles Lakers applying for and receiving PPP loan proceeds. Initially the SBA provided that any borrower who applied for a PPP loan prior to April 24, 2020 and repaid the loan in full by May 7, 2020 would be deemed by the SBA to have made the required certification in good faith. That date has now been extended to May 14.

We have had numerous calls over the past few weeks with business clients addressing questions regarding their certification of economic need. The challenge for all has been that the government has not issued any guidelines regarding what constitutes a good faith certification of economic need and the rules governing this issue change on a frequent basis. The only thing that is for certain as of this writing is that there will be audits of all loans of \$2,000,000 and more, along with others below that threshold, and that borrowers have the option of returning the funds by the safe harbor date to avoid scrutiny.

The consequences for failure to make a good faith certification are unclear, but it appears that borrowers who do not return the loan by May 14 and who are found to have not made a good faith certification will be obligated to repay the loan, and perhaps face penalties; borrowers who are found to have made a false or bad faith certification may face fraud and/or criminal charges. As a result, clients are thinking twice.

If you have any questions about this issue or any COVID-19 related benefits issues, please

contact anyone on Graydon's Business Services team.