

April 30, 2020

TO: ALL MEMBERS OF THE
PENN-DEL-JERSEY CHAPTER, NECA

FROM: AARON R. KELLEY,
GOVERNMENT AFFAIRS COORDINATOR

RE: PPP LOAN “NECESSITY CERTIFICATION” & AUDITS

Please note that the U.S. Treasury has released Paycheck Protection Program (PPP) guidance retroactively updating the borrower’s required “necessity certification”, announcing audits of all loans of \$2 million or more, and establishing a May 7 safe harbor repayment deadline.

Necessity Certification & New Clarification

If you applied for a PPP loan, you made a “necessity certification” that “[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.”

New guidance on this certification ([April 28 Treasury PPP FAQ, #31](#)) states:

“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.”

All PPP loan recipients will be retroactively considered to have certified that they took the factors above into consideration when they made this “necessity certification”.

Audits of Loans of \$2 Million or More

The Treasury also announced that every PPP loan of \$2 million or more will be audited for program compliance prior to determining the amount of loan forgiveness.

These audits will interpret borrower “necessity certifications” in the manner outlined above. A focus of these audits will be on other liquidity available to PPP borrowers when applying.

Borrowers could face criminal liability if their “necessity certification” is deemed untrue.

Loans of less than \$2 million may or may not be audited.

Return of PPP Funds: May 7 “Safe Harbor” Deadline

Borrowers who return PPP loan funds no later than May 7, 2020 will be automatically deemed to have made the “necessity certification” in good faith, thus avoiding any consequences for certification due to a misunderstanding of certification requirements.

- If you received a PPP loan and feel you cannot make the updated “necessity certification” in good faith considering the newly released guidance, you may choose to repay your PPP loan no later than May 7 to avoid any negative consequences.
- If you received a PPP loan and feel you can make the updated “necessity certification” in good faith, then you do not need to take further action. However, it would be appropriate to document your analysis leading to this determination in order to protect yourself in the event of future audits.

The Chapter recommends that all PPP loan recipients discuss this issue with their legal counsel to determine the most appropriate course of action.

If you have any questions about this update, please contact Ken MacDougall at kmacdougall@neca-pdj.org or me at akelley@neca-pdj.org.

Very Respectfully,

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