

May 6, 2020

CLIENT ALERT - CORONAVIRUS (COVID 19)
PPP UPDATE - EXTENSION OF SAFE HARBOR FOR REPAYMENT OF PPP LOANS

Dear Clients and Friends:

As we have previously discussed in prior Client Alerts, the SBA has issued guidance indicating that all borrowers must certify in good faith that “[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant,” 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.

When this guidance was issued, the SBA established a safe harbor for borrowers to reconsider their eligibility for a PPP loan and pay back their PPP loan proceeds without consequence, which safe harbor was originally set to expire on May 7, 2020. The SBA has extended the repayment date for this safe harbor to **May 14, 2020**. Borrowers do not need to apply for this extension. The SBA will be revising its interim final rule that established this safe harbor to extend the repayment date to May 14, 2020. The SBA has also indicated that it intends to provide additional guidance on how it will review borrowers’ certification of need prior to the end of the extended safe harbor period.

Many clients have contacted us regarding this certification and what they should be doing in response to the recent SBA guidance to determine if they can make this certification in good faith. We understand that this guidance and, in particular, the announcement that the SBA and the Treasury Department will be reviewing and/or auditing all loans over \$2 million and other loans as appropriate, has caused a great deal of concern for many borrowers. We are here to help.

If you have any questions or concerns regarding your PPP loan, including considerations of which you should be mindful in assessing your “need” for the PPP loan, your “other sources of liquidity” and related matters, please reach out to your HH&K attorney. A number of our attorneys have spent significant time advising clients regarding these concerns. This extension of the safe harbor period gives you additional time to consider your circumstances in light of recent SBA guidance and, if applicable, to take appropriate steps to document the considerations you took into account in making this certification in good faith. We can assist you with these efforts.

This information is not legal advice and may not be suitable for all client situations. This Client Alert provides general information regarding the PPP program and does not outline all of the important considerations related thereto. We anticipate that the terms of the PPP program will continue to evolve as the SBA releases additional guidance. This Client Alert is not a substitute for legal guidance regarding program details and how those may be applicable to your business. As always, if we can be of assistance during this difficult time, please do not hesitate to contact your HH&K attorney.



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