

## New SBA Questionnaire Raises Stakes For Businesses That Borrowed Over \$2 Million In PPP Loans

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The Small Business Administration (SBA) has released loan necessity questionnaires that lenders must issue to over 50,000 borrowers that received \$2 million or more in funds from the Paycheck Protection Program (PPP) – and the questions indicate that borrowers may face a higher hurdle than originally anticipated when it comes to forgiveness. Businesses may need to demonstrate that they suffered actual economic harm as a result of the pandemic in order to be eligible for full forgiveness, which is a change from what many initially believed at the time the applications were submitted. Borrowers only have 10 days from the time they receive the questionnaire to complete it and submit supporting documentation, so those who received \$2 million or more from the PPP should begin preparing to respond to the questionnaire now.

### Why Now?

Many PPP borrowers are familiar with the infamous FAQ #31, released by the SBA in May, which stated a borrower must carefully review the needs certification required when applying for PPP funds. It also established a safe harbor deadline for borrowers to return PPP funds with no questions asked. The SBA later clarified that it would deem any borrower, together with its affiliates, that received PPP loans of less than \$2 million to have made the needs certification “in good faith.” But the government failed to provide any further guidance for borrowers with loans over \$2 million on how they may satisfy the needs certification.

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Now, as many borrowers are preparing their loan forgiveness applications, the SBA has apparently determined the criteria for determining whether borrowers with loans in excess of \$2 million satisfied the needs certification. The questionnaire forms appear to be the SBA's attempt at gathering the information it believes is necessary for determining whether the needs certification was made in good faith.

### Why Should You Take Note Of The Questionnaire?

When applicants applied for a PPP loan, they only needed to certify that “the uncertainty of current economic conditions makes necessary the loan request to support the ongoing operations of the eligible recipient.” **However, the information requested through the questionnaire suggests that the SBA will require that borrowers show actual economic harm caused by the pandemic.**

This is a stark contrast from the original application, which only required a prospective detrimental economic impact. It appears that the SBA is seeking to ignore the common adage “hindsight is always 20/20” and may hold borrowers responsible for lack of economic harm –even if, at the time of the application, economic harm was a strong possibility.

### What Information Is Requested?

The questionnaire seeks supporting documentation and information such as gross revenue in quarter 2 of 2020 compared to quarter 2 of 2019 and the amount of cash on hand. The questionnaire also seeks information regarding the amount of any endowment funds, a clear sign that schools may be a focus of the questionnaire. Borrowers are also given an opportunity to provide additional information that they believe is pertinent to the certification of need.

### Who Does This Affect?

According to the notice published in the *Federal Register*, the SBA estimates that approximately 42,000 for-profit borrowers and approximately 10,000 non-profit borrowers will receive the questionnaire. The SBA is providing the questionnaires to lenders to distribute to any borrower, together with its affiliates, with PPP loans in excess of \$2 million.

### Conclusion

The questionnaire states that it must be completed and submitted to the lender “within ten business days of receipt from your Lender” and that failing to submit the form and supporting documentation could result in “SBA's determination that you were ineligible for either the PPP loan, the PPP loan amount, or any forgiveness amount claimed, and SBA may seek repayment of the loan or pursue other available remedies.”



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Clearly, the questionnaire could have a significant impact on borrowers' ability to seek forgiveness of their PPP loan. Therefore, borrowers who received a loan of \$2 million or more should begin collecting supporting documentation – and should consult with counsel for assistance in preparing the response to ensure you are in the best position to receive full forgiveness of the loan.

For further information and assistance with completing the questionnaire, contact your Fisher Phillips attorney, or any member of our SBA Loan Task Force. You can also review our FP BEYOND THE CURVE: Post-Pandemic Back-To-Business FAQs For Employers and our FP Resource Center For Employers.

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