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**PAYCHECK PROTECTION PROGRAM ADDITIONAL GUIDANCE:
CERTIFICATION REQUIREMENTS FOR LOAN; INELIGIBLE PPP FUNDS RECEIVED
MUST BE RETURNED BY MAY 7 TO AVOID PENALTIES; COMPANIES BORROWING
IN EXCESS OF \$2 MILLION TO BE AUDITED**

On April 23, 2020, the U.S. Small Business Administration (the “SBA”) issued new guidance regarding the economic need certification required of borrowers under the popular Paycheck Protection Program (“PPP”), which could render some companies ineligible even if they were previously approved for the PPP. This guidance was reinforced by comments made on April 28, 2020 by Treasury Secretary Steven T. Mnuchin in a CNBC interview, during which he also announced that any company receiving more than \$2 million through the PPP would be audited.

Based on this new information, as detailed below, all companies that have received PPP loans—as well as those who have applied but not yet received funding—must immediately review whether they are, in fact, eligible. Companies determined to be ineligible have until May 7, 2020 to return the funds without penalty.

Certification Requirement

Under the PPP program, as part of the application process, a borrower is required to certify that its *“current economic uncertainty makes this loan request necessary to support the ongoing operations of the [borrower].”* Given the vague nature of the original wording, many companies, even publicly held ones with access to significant amounts of capital to fund operations, were applying for and receiving PPP loans.

But that condition appears to have changed with new SBA guidance issued on April 23, 2020 through the “Frequently Asked Questions (FAQs),” item #31, as follows:

“Question: Do businesses owned by large companies with adequate sources of liquidity to support the business’s ongoing operations qualify for a PPP loan?”

“Answer: ...all borrowers must assess their economic need for a PPP loan under the standard established by the CARES Act and the PPP regulations at the time of the loan application.... Specifically, before submitting a PPP application, all borrowers should carefully review the required certification that ‘current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.’ *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.* For example, it is unlikely that a public company with substantial market value and access to capital markets will be able to make the required certification in good faith, and such a company should be prepared to demonstrate to SBA, upon request, the basis for its certification” (emphasis added).



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Although this FAQ is still vague and it will be challenging for companies to determine—with any degree of certainty—whether they are eligible, it is clear that the standard for eligibility is more stringent than originally stated. Many companies are, in fact, returning PPP funds that they previously received. To avoid false certification penalties, companies that appear to be ineligible under the new guidance have until May 7, 2020 to return any PPP funds that they have received.

Additionally, as noted above, any company receiving more than \$2 million through the PPP will be audited. Ingram is available to assist in determining the best course of action under the current conditions.

Please contact:

Warren Friss, Managing Partner
Ingram Yuzek Gainen Carroll & Bertolotti LLP
wfriss@ingramllp.com | (212) 907-9660

Sheila Di Gasper, Partner
Ingram Yuzek Gainen Carroll & Bertolotti LLP
sdigasper@ingramllp.com | (212) 907-9657