

Best Practices for Directors / Owners – Documenting SBA PPP Loan Need

By [John J. Koepfel](#)

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On April 23, 2020, the Treasury released updated guidance that a Paycheck Protection Plan (PPP) borrower must show that “[c]urrent 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.”

Any borrowers that have access to other forms of liquidity, be it through cash-on-hand and/or capital and debt markets, that could reasonably be utilized to support the ongoing operations of the business should review their particular facts and circumstances to determine their eligibility for the PPP.

However, access to liquidity should not be the sole consideration, as the guidance indicates that if accessing such liquidity is significantly detrimental to the borrower’s business, they are still eligible for the PPP. When reviewing their certification, a borrower should consider and document several covid-related factors, including, but not limited to:

- Impact on your key customers and suppliers;
- Restrictions on selling your product and/or services;
- Decreases in revenue / profitability;
- Pricing impacts and/or higher expenses;
- Inability for the business to readily tap additional capital;
- Impact of workforce restrictions (production / productivity);
- Employee hardships (wage reductions, furloughs, lay-offs);
- Steps business is taking to protect capital (delaying or cutting expenses, halting dividends, deferring loan / lease payments, etc); and
- Projected impact on upcoming business.

If a borrower can substantiate their certification with any or all of these factors, the likelihood that their certification was made in good faith has certainly increased. As a corporate best practice and as readiness in advance of any potential audit, we recommend that the borrower then memorialize their consideration of these factors by way of a detailed board resolution, or other formal internal corporate documentation.

If you have any questions regarding the above and its implications on your PPP loan, please reach out to the authors or your contact at Lippes Mathias Wexler Friedman.

**Please note – Additional guidance was released by the Department of the Treasury extending the deadline for returning the PPP proceeds from May 7, 2020 to May 14, 2020. This Question 43 also states additional guidance on Question 31 will be released prior to May 14, 2020.*

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