



# Small Business Administration Takes Steps to Initiate the Review of Paycheck Protection Program Loans

## Client Advisories

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Taking an apparent step to begin its review of Paycheck Protection Program (“PPP”) loans of \$2 million or more, the Small Business Administration (“SBA”) has developed questionnaire documents that are anticipated to be required of both for-profit and non-profit PPP loan recipients that obtained large PPP loans. One version will be required of for-profit companies and a second version will be required of non-profit entities.

On October 26th, the SBA posted a notice in the Federal Register announcing its intention to seek approval from the Office of Management and Budget to collect data from certain PPP loan recipients. This action seems to conform with Treasury Secretary Mnuchin’s April statement that the SBA would undertake a “full review” of any PPP loan that exceeds \$2 million.

While the questionnaires have not yet been formally released and are not listed on the SBA’s PPP guidance webpage, the questionnaires do appear on various websites and have been shared by numerous media outlets. The SBA has not, however, issued any press statement on the questionnaires, nor have they confirmed or denied their existence or applicability.

On the questionnaire documents that have circulated online, they read “The purpose of this form is to facilitate the collection of supplemental information that will be used by SBA loan reviewers to evaluate the good-faith certification that you made on your PPP Borrower Application (SBA Form 2483 or Lender’s equivalent form) that economic uncertainty made the loan request necessary.” As such, it is apparent that the SBA is seeking to assess borrowers’ “good-faith” certifications of economic need, including the requirement that “...current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.” Interestingly, the versions of the questionnaires appearing online do not include any questions directed at a borrower’s availability to obtain alternative sources of credit or liquidity - a concern of many applicants when evaluating their participation in the PPP and reviewing Frequently Asked Questions published by the SBA during that process. Language in the document does explicitly state that receipt of a questionnaire does not mean that the SBA is challenging a borrower’s certification.

From information appearing online, any borrower - together with its affiliates - that received \$2 million or more in loan proceeds will have to submit the questionnaire and required supporting documentation to its lender(s) within 10-days of receipt of the questionnaire from the SBA. Lenders will then be required to submit the data to the SBA within 5-days of receipt from the borrower. For borrowers that have already submitted a loan forgiveness application, it is anticipated that the SBA will notify such borrowers and their respective lenders of the requirement to complete a questionnaire.

Totaling twenty-one questions (many in sub-parts and several calling for the submittal of back-up documentation), the questionnaires include a series of questions set forth in two primary sections - Business/Non-profit Activity Assessments and Liquidity Assessments. Through these topics and the underlying questions, the SBA appears to be seeking information relative to items such as revenue by quarter during the pandemic, capital expenditures undertaken, the payment of dividends, salaries of highly compensated personnel and participation in other federal COVID-19 recovery programs.

Links to the unofficial questionnaires appear below:

- **Form 3509** (used by for-profit entities)
- **Form 3510** (used by non-profit entities)

Borrowers are encouraged to review the documents in anticipation of receipt in order to ready the necessary information. Should you have any questions regarding this information, please reach out to your Archer attorney or any member of Archer's **COVID-19 Task Force**.

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