

Unnecessary Necessity Questionnaires and PPP2

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There is never a dull moment in PPP-land.

Lenders are being required by SBA to send Loan Necessity Questionnaires to borrowers with Paycheck Protection Program (PPP) loans of \$2 million or more. The questionnaires, [Form 3509](#) for for-profit borrowers and [Form 3510](#) for non-profit borrowers, are sent to borrowers after they apply for forgiveness. Borrowers must return the completed questionnaire to their lender within 10 business days of receipt.

In [FAQ #53](#), issued Wednesday, December 9, 2020, SBA says a request to complete the Loan Necessity Questionnaire does not mean that SBA is challenging the borrower's "good-faith certification" that "the uncertainty of current economic conditions make necessary the loan request to support the ongoing operations of the eligible recipient." Instead, SBA maintains its assessment will be based on "the totality of the borrower's circumstances." The questionnaires are to be used to "facilitate the collection of supplemental information that will be used by SBA loan reviewers."

The problem, however, is borrowers were asked to certify that economic uncertainty made the loan necessary **at the time of the borrower's application for the loan**. But, the questions asked throughout the questionnaires focus on activities and times *after* the application date. Events subsequent to the certification date should have no bearing on evaluating the borrower's earlier representations. With nearly nothing known about COVID-19 at the time of completing the application, no one could predict what the rest of 2020 would look like.

Despite ongoing opposition to the necessity questionnaires, as evidenced by [the AICPA](#) and numerous other trade organizations, in addition to a recently filed [lawsuit](#) from the Associated General Contractors of America, the necessity questionnaires appear to be a requirement (for now).

When completing the questionnaire, borrowers should include, as part of their documentation, a narrative statement that supports the basis for their good-faith certification. While there may be additional opportunities to make the case to SBA, as the saying goes, "You only get one chance to make a good first impression."

PPP2, really?

If Congressional leaders can find their way to an economic relief bill before leaving Washington for the holidays, all indications are the bill will include a second round of PPP loans. While even the outlines of "PPP2" are mere speculation, that speculation includes:

- Second loans for the hardest hit borrowers (defined generally as those having a 30 percent revenue loss in any quarter in 2020)
- First time loans for those eligible in the first round that did not receive funds, and some 501(c)(6) organizations (subject to a lobbying threshold)
- A maximum loan amount of \$2,000,000 and eligible costs to include:
 - Costs permitted in Round 1
 - Covered worker protection expenditures
 - Facility modification costs
 - Supplier costs
- A 60/40 cost allocation between payroll and non-payroll

If a second round of PPP loans is approved, it is anticipated the roll-out will be fast and furious, as with the first round. Most believe that a relief bill also will include a provision for the deductibility of expenses paid with PPP loan funds on tax returns, and a simplified forgiveness process for loans less than \$150,000 for both rounds of loans.