The Small Business Administration (SBA) issued new guidance today, April 23, 2020, intended to prevent larger publicly traded companies from accessing the next round of Paycheck Protection Program (PPP) funding intended for small business relief. The new SBA guidelines require that companies applying for relief certify that the loans are necessary and that they cannot tap other sources of funding.

“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,” the SBA said. A key detail of the SBA’s new position is that larger public companies will be able to avoid future scrutiny by returning the relief loans within the next two weeks should they have already received funds.

The SBA’s newly issued guidance comes after significant public outcry over larger companies and private institutions such as Harvard University receiving hundreds of millions of dollars in loans while untold small businesses have yet to receive funding.

Moving forward, applicants to PPP funds must certify that the loans are necessary and that no other sources of capital are available. By definition, public companies have access to the capital markets and therefore this measure should prevent future abuse of the intention of the PPP.
“Borrowers still must certify in good faith that their PPP loan request is necessary,” the SBA said. The statement went on saying that a company receiving funds “…should be prepared to demonstrate to SBA, upon request, the basis for its certification.”

The guidance change comes as a second round of funding for PPP is set to be approved by lawmakers later today. The initial PPP funding made $350 billion available to small businesses but was depleted within two weeks. This new round of funding is set to provide $310 billion in fresh funds, however, despite this new level of funding the PPP is likely to exhaust its new funding within a matter of days. There is no guarantee that lawmakers will approve more money for the program after that, however, it is thought likely.

While the spirit of the PPP, a key component of the administration’s $2.3 trillion economic response to the COVID-19 pandemic, was to help small businesses, the initial guidance provided during the program’s rollout allowed large restaurant and hotel companies, amongst others, to apply for loans of up to $10 million.

Banks including JPMorgan Chase and Bank of America have borne the brunt of the criticism from various quarters as small business owners argued that larger companies got preferential treatment when applying for the lifeline. JPMorgan Chase has specifically denied that allegation, while also disclosing that clients of its commercial banking division, which caters to larger companies, generally fared better than those of its small business department.

In its latest guidance, the SBA allows banks to rely on borrowers’ certification about the true need for their loans. “Any borrower that applied for a PPP loan prior to the issuance of this guidance and repays the loan in full by May 7, 2020 will be deemed by SBA to have made the required certification in good faith,” the SBA said.

The SBA guidance goes on ... “In addition to reviewing applicable affiliation rules to determine eligibility, 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. Although the CARES Act suspends the ordinary requirement that borrowers must be unable to obtain credit elsewhere (as defined in section 3(h) of the Small Business Act), borrowers still must certify in good faith that their PPP loan request is necessary.

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