



## **BULLETIN #65/2020 MAY 13, 2020**

### **\_CORONAVIRUS UPDATE #51**

#### **JUST ADDED – NADA WEBINAR: SBA CLARIFYING GUIDANCE ON PPP LOANS – THURSDAY, MAY 14, 1PM-2PM ET**

*[This bulletin supplements our previous bulletins #11 and #16 through #64 on this subject matter. These bulletins are intended to be cumulative so we can avoid repeating the same information.]*

#### **New NADA Webinar on SBA Clarifying Guidance on PPP Loan Certification**

This evening NADA made an adjustment to this week's Dealership Lifeline Webinar Series to allow for a new edition for tomorrow.

Thursday's webinar has been moved to Friday, and Friday's moved to Monday, in order to accommodate tomorrow's new webinar addressing today's SBA clarifying guidance on PPP loan necessity certification. We covered the new SBA guidance, spelled out in FAQ #46, in our Bulletin #64 issued earlier today. The webinar will be conducted by NADA attorneys Andy Koblenz and Doug Greenhaus.

The webinar will run tomorrow (Thursday) 1pm-2pm ET. Click [here](#) to register.

#### **From Bulletin #64: SBA Issues PPP Certification Safe Harbor**

*[Compiled from various sources, including NADA and associate members O'Connor & Drew; Albin Randall & Bennett; and Blum Shapiro.]*

The Small Business Administration has altered the ever-shifting sands of Paycheck Protection Program (PPP) regulations once again.

This morning the SBA issued new guidance, via new FAQ #46, regarding the "safe harbor" issue for PPP loan necessity. FAQ #46 can be accessed [here](#); go to page 16 of the document.

First, FAQ #46 removes the May 14, 2020, deadline for loan payback if a borrower wished to avoid scrutiny of the self-certification on the loan application as to the need for the loan. In its place, FAQ #46 sets a categorical safe harbor for borrowers with loans, together with their affiliates, of less than \$2 million. Such a borrower is deemed to have made the required certification in good faith and need not be concerned about their necessity being challenged.

Further, for any loan greater than \$2 million, the borrower will still be subject to SBA review. If the SBA determines that the borrower lacked an adequate basis to make the



review. If the SBA determines that the borrower lacked an adequate basis to make the certification, the borrower will be informed to repay the loan in full and will not be eligible for any forgiveness. However, provided that the borrower makes the repayment once notified, the SBA will not pursue administrative enforcement or referrals to other agencies.

Finally, for dealer groups who used the franchise exception to obtain multiple loans, it now appears that each loan stands on its own as it relates to the \$2 million threshold since the franchise exception effectively means they are not affiliates. Based on footnote #20 to FAQ #46 in which reference is made to the interim final rule on affiliates (85 FR 20817), the law waives the affiliation rules for a franchise that is assigned a franchise identifier code by the SBA. Therefore, it would appear that this safe-harbor applies to dealer groups at the individual dealer group level and not the combined group level.

As we have stated numerous times previously, these guidances are always subject to change.

The detailed analysis from NADA is available [here](#).