



LOAN NECESSITY QUESTIONNAIRE

Newly issued forms will require any borrower whose loan is greater than \$2 million, together with its affiliates, disclose financial information for the period beginning with the National Emergency Declaration on March 13, 2020. The borrower does so by filling out either Form 3509 or Form 3510 based on their classification as a for-profit or not-for-profit entity, respectively. This questionnaire will be administered by the lending institutions but reviewed by the SBA.

Background

Based on the instructions included, the purpose of the 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... that economic uncertainty made the loan request necessary.” The instructions indicate that this review is to “maximize program integrity and protect taxpayer resources” but goes on further to say that it is not a challenge of the certification and any determination will be based on a totality of circumstances.

The best bet is that this will act as the guide for the SBA to review loans greater than \$2 million. After initially stating that all loans over the threshold would be “audited”, Treasury backed off the ambitious claim and is now expected to review each of the loans of that size. Using the term “review” gives more flexibility to the depth, or lack thereof, by which the loans will be scrutinized. This questionnaire could sort the claims quickly and easily into those that need to be evaluated and those that may not.

Required Information Disclosed

Both forms begin with the standard administrative header, requesting the business name, EIN, contact information, as well as the SBA loan number and further the original principal amount. Following that are three sections covering a business activity assessment, a liquidity assessment, and closes with borrower certifications.

Business Activity Assessment

The business activity section starts with financial information, comparing the second quarter gross revenue for 2020 to the same period in 2019. If the business was not in operation in 2019, then the amount is compared to the first quarter of 2020. The only differentiation in forms relates to questions regarding grant dollars and expenses for not-for-profit entities.

Following the revenue information are three separate questions as to whether the borrower had any mandatory or self-imposed restrictions, closures, or alterations to the business due to the National Emergency. Each question looks for time periods and explanations of disruptions or changes.

Lastly, the questionnaire asks that the borrower disclose if any capital improvement projects began after March 13, 2020. If a capital improvement project did begin, the expected cash outlay for the project must be disclosed. The business activity section concludes with the NAICS code and an optional explanation for any questions the borrower wishes to provide additional commentary on.

Liquidity Assessment

The liquidity section deviates substantially from the for-profit and not-for-profit forms. Generally, they are achieving the same goal of necessary cash flow analysis but take very different routes to get there.

The for-profit Form 3509 requests disclosure of the following items with amounts:

- a. Cash and cash equivalents as of the last quarter close before the loan
- b. Dividend payments or capital distributions other than tax distributions
- c. Prepayment of any outstanding debt
- d. Employee & Owner's annualized compensation over \$250,000 – total number of employees and total compensation for those over that amount
- e. National Securities Exchange Status and concentrated ownership therein
- f. Book value of shareholder equity immediately before the application
- g. Subsidiary status and named parent, including Private Equity, Venture Capital, or Hedge Fund ownership
- h. Other Cares Act Funding other than tax benefit – including program and amount

The not-for-profit Form 3510 requests disclosure of the following items with amounts:

- a. Cash and cash equivalents as of the last quarter close before the loan
- b. Prepayment of any outstanding debt
- c. Employee's annualized compensation over \$250,000 – total number of employees and total compensation for those over that amount
- d. Cash Restrictions and explanations
- e. Endowment Fund Status – direct or indirect asset holdings
- f. Non-cash assets held on the last day of the calendar quarter before the loan
- g. Entity Specific Questions – Educational institution, health care provider
- h. Discounted Services or Programming Provided
- i. Other Cares Act Funding other than tax benefit – including program and amount

Certification

The certification is identical between the two forms. It requires the signer to confirm they have the authority to sign the form, that all information is true and correct without material defect, and finally requires the borrower to certify they understand the consequences of filing false information. The certifications closely mirror those from the original loan application as well as the forgiveness application.

The SBA's expectation is that these forms will be returned within 10 days of the borrower's receipt from the lender. The instructions do not declare if the questionnaire should be delivered following application for forgiveness or if the lender can send at their behest. We will be providing updates as they occur so please continue to monitor

our Economic Relief Resource center (<https://www.peasecpa.com/covid-19-resource-center/>) for the latest developing information.