

INSIGHTS

Mnuchin Warns of Criminal Liability for PPP; Promises to Audit Large Loans

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On April 28, Treasury Secretary Steven Mnuchin announced the SBA would be conducting audits of all businesses that received greater than \$2 million in PPP loans, reiterating his warning from last week that businesses borrowing under the Paycheck Protection Program could face potential criminal liability for improperly seeking funds. Further, he stated that such audits would take place before loans will be forgiven under the program. According to SBA data as of April 16, more than 26,000 small businesses have taken loans over \$2 million. A formal announcement from the Department of the Treasury is expected soon.

As noted in [a previous alert](#), the SBA last week issued [a supplemental Interim Final Rule](#) reminding borrowers to “carefully review the required certification on the Paycheck Protection Program Borrower Application . . . stating that ‘[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.’” In a related [FAQ document](#), the SBA stated that borrowers “must make this certification in good faith, taking into account their current business activity and their ability to access other sources of liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business.”

Given that this guidance was issued weeks after the PPP program went live, with millions of loans already issued, the SBA has provided companies concerned about the accuracy of the certification a safe harbor: if they pay the loan back in full by May 7 the certification will be deemed to have been made in good faith.

Bracewell’s cross-disciplinary COVID-19 task force is actively helping numerous clients navigate the many and evolving issues they are facing, including potential access to stimulus programs. Your Bracewell point of contact can help you learn more.