

The PPP and Health Care Enhancement Act of 2020: Get Ready for Round 2

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The Paycheck Protection Program ('PPP') and Health Care Enhancement Act of 2020 ('PPP Act') was signed into law on April 24, 2020.

The \$484 billion PPP Act has been enacted with the goal of replenishing the PPP with approximately \$310 billion in additional funds, increasing availability of Emergency Economic Injury Disaster ("EIDL") Grants, and providing federal funding to assist hospitals and healthcare providers. This second round of PPP loans may end up distributed even faster than the first round since thousands of applications had been submitted to lenders by the time the first round of funds had been depleted. Sixty billion dollars of the new PPP funds will be specifically set aside for small, medium, and community lenders to distribute.

Between April 3-16, 2020, nearly 5,000 lenders across the United States approved over 1.6 million loans guaranteed by the Small Business Administration ("SBA") pursuant to the Paycheck Protection Program ("PPP") enacted under the CARES Act, totaling approximately \$350 billion. The maximum loan amount is \$10 million, and the average loan size was \$206,000. Based upon SBA issued statistics:

- 74% of the loans issued were in amounts of \$150,000 or less,
- 13.5% of loans were between \$150,000 - \$350,000,
- 8.5% of the loans were issued in amounts of \$350,000 - \$1 million, and
- the remaining 4% of issued loans were in amounts greater than \$1 million.

The subsectors applying for and receiving the most PPP dollars during the first round of PPP funding included the construction industry; professional, scientific, and technical services, manufacturing; health care and social assistance; accommodation and food services, and retail trade.

For those who have already submitted their loan applications, there is no need to resubmit one to the same lender. In addition to the guidance included in our previously issued articles, you can find the SBA Interim Rules and FAQs here for additional information.

The Interim Rules were updated on April 24, 2020, to touch on the following:

- Hedge Funds and Private Equity Firms are not eligible for PPP Loans

- Some portfolio companies of private equity funds may be eligible for a PPP loan, but applicants should apply the affiliation rules set forth by SBA and should carefully consider whether they can certify that "current economic uncertainty makes the loan request necessary to support the ongoing operations of the Applicant."
- A hospital that is otherwise eligible to receive a PPP loan as a business concern or 501(c)(3) will still be eligible, regardless of ownership by state or local government, if the hospital receives less than 50% of its funding from state or local government sources, *not including Medicaid*.
- A business's participation in an employee stock ownership plan (ESOP) does not result in an affiliation between the business and the ESOP.
- An applicant is not eligible for a PPP loan if it is involved in a bankruptcy proceeding during the time it submits the application or at any time before the loan is disbursed
- Applicants should keep in mind that the Borrower Application Form requires a certification that "current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant." This is consistent with SBA's publication of FAQ #31, which provides that, "although the CARES Act suspends the ordinary requirement that borrowers must be unable to obtain credit elsewhere, borrowers still must certify that their PPP loan request is necessary." It is anticipated that publicly traded companies will find it more difficult, if not impossible, to obtain a PPP loan during this second round of funding.

It is expected that the SBA will issue additional guidance via "FAQs" in the coming days and weeks, and we will continue to advise you as we obtain more information.

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