The Paycheck Protection Program and Health Care Enhancement Act: Additional Funding Relief for Small Businesses and Nonprofit Organizations Impacted by COVID-19

On April 24, 2020, the Paycheck Protection Program and Health Care Enhancement Act (PPP & HCE Act) was signed into law. The PPP & HCE Act increases the prior appropriations for the Paycheck Protection Program (PPP) and Economic Injury Disaster Loans (EIDL), and includes targeted funding for hospitals and health care providers and for COVID-19 testing. These provisions supplement the emergency assistance implemented last month in the CARES Act, created to provide relief for individuals, families, businesses, and nonprofit organizations affected by the novel coronavirus pandemic. This update provides an overview of the PPP and EIDL programs, including the expansion of funding.

The Paycheck Protection Program

The CARES Act created the PPP to provide forgivable loans to eligible small businesses and nonprofits to cover up to eight weeks of payroll and certain operating expenses. However, the original $349 billion authorized by Congress for the provision of PPP loans was quickly exhausted by qualifying applicants, and the program ran out of funding on April 16, 2020. The PPP & HCE Act adds an additional $310 billion to the PPP, increasing the authorization level for the program from $349 billion to $659 billion. The PPP & HCE Act also directs $60 billion of the new PPP funding to be distributed through small and medium-sized financial institutions, including $30 billion designated for distribution through small banks, community lenders, and credit unions, to better address the needs of underserved businesses and nonprofits. The remaining provisions of the PPP—including eligibility requirements, authorized uses of the loans, and funding limits—are not changed by the new law.

A. Eligibility Requirements

All businesses and nonprofits that were in operation as of February 15, 2020, and that have fewer than 500 employees are eligible to apply for a PPP loan, including 501(c)(19) veterans organizations and tribal businesses. Sole proprietorships, independent contractors, and self-employed persons are also eligible. For certain industries, businesses can have more than 500 employees, if they meet size standards established by the SBA for the industry in which the business operates.[1] Unlike other SBA programs, there are no personal guarantee or collateral requirements and applicants need not establish they are unable to obtain credit elsewhere.

[1] Any business operating within the restaurant and hospitality industries (under a North American Industry Classification System (NAICS) code beginning with 72), and having not more than 500 employees per physical location of the business, are also eligible.

B. Authorized Uses of PPP Loans

The PPP covers up to eight weeks of payroll and other expenses incurred between February 15, 2020 and June 30, 2020, including:

- Employee salaries (not exceeding $100,000 annualized per employee), commission payments, and other payroll costs,[2] including benefits;
- Costs related to group health care benefits and insurance premiums;
- Mortgage interest payments (excluding prepayments);
- Rent and utilities; and
- Interest on any other debt obligations that were incurred before February 15, 2020.

At this time, the regulations preclude employers from including payments made to other independent contractors as payroll because independent contractors can apply for themselves. Employers may not take out PPP, EIDL, or other SBA loans for the same purposes.

C. Maximum Funding Limits

Loan amounts are capped at 2.5 times an employer's average monthly payroll expense from the prior year, up to a total of $10 million. For seasonal employers, average monthly payroll can be calculated using a 12-week period beginning either February 15, 2019 or March 1, 2019, and ending June 30, 2019. Loans are fixed at 1% interest and mature in two years. No payments are due for six months after loan origination.

D. How to Apply for a PPP Loan

Qualified businesses and nonprofits can apply for a PPP loan through an existing SBA lender or through any participating federally insured depository institution, federally insured credit union, and Farm Credit System institution. All applications must be received by June 30, 2020. As part of the PPP application, borrowers are required to certify that (1) the need for the PPP loan is based on the uncertainty of current economic conditions, (2) the funds will be used to retain workers and maintain payroll or make mortgage, lease, and utility payments, and (3) that the applicant has not applied for or received funds under the PPP or other SBA loan program for the same purposes.

Eligible businesses and nonprofits may only apply for one PPP loan. Thus, if an applicant applied for a loan before the original funding exhausted, they should not reapply. Instead, applicants should contact their lenders to determine the status of their existing applications.

[2] The definition of "payroll costs" excludes paid-sick and paid-family leave payments made pursuant to the new Families First Coronavirus Response Act (FFCRA).

Additional instructions and the PPP application are available on the SBA website.

E. How to Request Loan Forgiveness

To request forgiveness of a PPP loan, employers can submit a request directly to the lender that is servicing the loan.

During the eight-week period after the PPP loan is funded, all loan amounts spent on qualified expenses will be forgiven, so long as the employer does not reduce its full-time staff or reduce wages by more than 25%. In the event of layoffs, the amount of eligible loan forgiveness will be reduced in an amount proportionate to the reduction in the number of employees and/or to reductions in wages. However, employers have until June 30, 2020, to restore any changes to their full-time employment and salary levels made between February 15, 2020 and April 26, 2020. All qualified expenses must be adequately documented and the maximum forgiveness amount cannot exceed the principal borrowed. Finally, not more than 25% of the forgiven amount may be used for non-payroll costs, such as mortgage interest, rent or utilities.

The Economic Injury Disaster Loan Program

The PPP & HCE Act also provides for increased funding for the SBA's EIDL program, which provides loans to small businesses, nonprofits, sole proprietorships and independent contractors in amounts up to $2 million. The new law adds an additional $10 billion in available grant funding, and appropriates an additional $50 billion for the Disaster Loans Program Account to administer the program. Additionally, the PPP & HCE Act expands the eligibility requirements to include farmers with not more than 500 employees. Unlike the PPP loans which are accessed through participating lenders, EIDL loans are provided directly by the SBA. EIDL loans are based on an applicant's actual economic injury as determined by the SBA, and may be used for payroll and other increased costs or obligations resulting from business disruption. EIDL applicants can request an advance of up to $10,000 to pay qualified expenses, which the SBA anticipates paying within three days of the application. EIDL advances operate as grants and are generally not required to be repaid, even if the loan application is ultimately denied. However, the amount of the advance will be deducted from any loan forgiveness amounts under a PPP loan.

Additional information and EIDL program applications are available here.

If you have any questions regarding this information, please contact us. Additional COVID-19 resources are available on our website at https://www.pacificalawgroup.com/.

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