

COVID-19 Alert

CARES ACT PAYCHECK PROTECTION PROGRAM LOANS
APRIL 16, 2020 UPDATE

APRIL 2020

We have previously posted information on the [Paycheck Protection Program \(PPP\)](#) loan offerings created by the CARES Act and updated that information on [April 3, 2020](#) and [April 9, 2020](#). This continues our effort to provide up-to-date information on the PPP.

IS THE PPP OVER?

The CARES Act authorized \$349 billion for the PPP. The Small Business Administration (SBA), as program overseer, has announced that money is now spoken for: "The SBA is currently unable to accept new applications for the Paycheck Protection Program based on available appropriations funding." For this and other SBA pronouncements on the PPP, please refer to the [SBA's page on the PPP](#).

While no longer accepting new applications, SBA has already approved in excess of one million applications. We understand those approved will continue on to loan closing and funding. Accordingly, if your business has been informed by your lender that SBA approval is in hand, you should expect a continuation of the process through to funding.

It is our understanding that PPP lenders continue to process loan applications previously received, although many had previously suspended accepting new applications while they processed existing backlog. It is unclear whether they will now stop accepting new applications altogether, and given the SBA pronouncement, the ones in hand cannot be pushed on to SBA for final approval. It is unclear from its pronouncement whether SBA continues to process applications previously received by it from lenders, but not yet approved at the time funding was exhausted.

Media reports for the most part assume that additional funding will be appropriated for the PPP. Whether that is correct remains to be seen. Other open questions include the status of the currently unaccepted applications previously submitted. Will those be at the front of the line if new funds are appropriated? How will the PPP be re-shaped,

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given that its forgiveness aspect is based on borrower expenditures during the eight-week period following loan funding, but with the program having a run date only until June 30, 2020? Will successful first round applicants be able to apply for additional loans? We shall see.

HAVE THERE BEEN OTHER CHANGES?

Prior to funding exhaustion, SBA on April 14, 2020 issued an additional Interim Final Rule titled "[Business Loan Program Temporary Changes: Paycheck Protection Program – Additional Eligibility Criteria and Requirements for Certain Pledges of Loans.](#)" In addition, it updated its [FAQs](#) on April, 15, 2020.

The new Interim Final Rule provides detailed guidance for applicant-borrowers who are self-employed individuals filing Form 1040, Schedule C, with or without additional employees. The guidance delves into eligibility questions, documentation requirements, and detail about how loan proceeds can be expended and loans forgiven.

Sprinkled into the discussion of self-employed individuals is guidance for those who file Form 1040, Schedule C due to self-employment income passed through by a partnership (including members of limited liability companies that are taxed as partnerships). Those individuals should not apply for a loan separately. Rather, their self-employment income should be taken into account by their entities in the entities' applications as if cash salary or wages (subject to the \$100,000 per year cap per individual). This is how tax advisors seem to be advising their clients, but it is good to have SBA confirmation on the point.

The FAQs add several new questions since our last update. The most significant for borrowers are questions 23 and 24, providing additional guidance on application of the SBA affiliation rules to franchisees, and to hotel and restaurant operations in NAICs code 72.

WHERE DID THE MONEY GO?

For now, a summary is accessible through the [SBA website](#). This summary was based on loans approved through April 13, 2020, when a bit less than \$250 billion of the funds were spoken for. It breaks things out by numbers of loans and gross dollars, summarizing for different loan sizes, and by state and broad industry sectors. As of that date, more than 95% of loans approved, accounting for more than 70% of amounts approved, were \$1,000,000 or less, with an average loan size of \$239,152.

It will be fascinating to see the final report, and the critiques and political posturing that will follow it.

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FINAL THOUGHTS

It is hard to believe that in 19 days we went from passage of legislation creating and initially funding the PPP, to SBA and Department of Treasury fleshing out the program, to lenders implementing the program, to full approval of \$349 billion of loans. It has certainly not been without problems or controversy, and more of each is sure to follow as additional funding is debated and ultimately approved.

We are interested to hear your experiences with the PPP.

Please contact the Reid and Riege attorney with whom you regularly work, or a member of our Business Services practice listed to the right, for more up to date information, or questions about your unique circumstances.

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