

COVID-19 Alert

CARES ACT PAYCHECK PROTECTION PROGRAM LOANS
APRIL 9, 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](#). The application process for loans under the PPP went live with at least some lenders as scheduled on Friday, April 3, 2020. Here is a further update.

WHAT OFFICIAL RESOURCES ARE AVAILABLE?

The PPP is being run by the Small Business Administration (SBA) in consultation with the Treasury Department. The SBA's website is the best source for official pronouncements, and can be [accessed here](#).

SBA's official rulemaking related to the PPP can be found in its Interim Final Rule, which you can [access here](#). A second Interim Final Rule [accessible here](#) provides guidance on application of affiliation rules to faith-based organizations.

Less official, but of great practical benefit, are [FAQs issued by SBA](#) with the assistance of the Treasury Department. These have been, and likely will continue to be, updated. A second set of FAQs related to faith-based organizations can be [found here](#).

WHAT IS THE PROCESS AND HOW SOON CAN MY BUSINESS GET A LOAN?

The PPP went live on Friday, April 3, 2020. There are many media reports and anecdotes out on how it is going. Here is how we understand the process:

1. Apply to your SBA lender. While the SBA has put out a [loan application form](#), we understand most lenders have customized the form, and are taking applications via on-line portals.
2. The lender forwards the application to the SBA for approval, using an on-line portal.
3. The SBA approves and informs the lender (or sends back for additional information).
4. The lender enters into loan documentation with the applicant business.

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5. The loan is funded.

Each step takes time, and there is no set rule on when funding will occur. In the answer to Question 20 of its general FAQs, the SBA indicates loan funding is to occur (or at least commence) no later than 10 calendar days following loan approval.

We have yet to hear of an applicant actually receiving funds, although media reports indicate that more than \$100 billion of loans have been approved under the PPP through April 8, 2020.

WHERE HAVE THE GLITCHES BEEN?

From what we have heard to date, there have been three general types of glitches or hold-ups, corresponding to the process steps indicated above:

1. The lenders had issues getting their application process going, tied at least in part to waiting to get the SBA's final model application form and other SBA guidance. Anecdotally, we have heard of a number of other lender issues, including crashing portals and requests for applications in whole or part to be re-submitted. While frustrating, this was to be expected given the complexity of getting such a large process started and the volume of applications.
2. The lenders in turn have had their own connectivity issues with SBA, slowing the approval process.
3. Where approvals have been granted, the lenders have had an uncertainty on applicable loan documentation. That was finally clarified on April 8, 2020 when SBA determined that lenders can use either their own or SBA form documentation (see Question 19 in the general FAQs). The SBA also provided a [form of promissory note](#).

Beyond those general observations, we have heard many stories on application difficulties. These range from the difficulties of applicants in finding a lender without a prior relationship, to difficulties with accurately answering lender portal questions, and trying to fight through lender limitations on Payroll Costs, that have no apparent connection to the PPP as outlined in the CARES Act and the SBA guidance now available.

WHAT DO THE FAQs TELL US?

The [general FAQs](#) are relatively short and straightforward. Rather than summarize, we address your attention to them. We do note that Questions 2 through 6 deal with issues on applicant eligibility. Questions 2 and 3 in particular emphasize that the 500 employee cap is a graft-on to traditional SBA guidance on eligible borrowers. So it is possible that larger businesses may be eligible, either based on prior SBC determinations for specific NAICs code businesses or based on a tangible net worth / average net income after Federal tax test. However, Question 5 makes clear that SBA, at least to date, is not providing any additional loosening of affiliation rules. Related, SBA has separately put

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out a [summary of affiliation rules](#). The faith-based Interim Final Rule and FAQs provide guidance on applying the affiliation rules to faith-based organizations.

FINAL THOUGHTS

It seems likely that the PPP will be expanded at some point. How exactly that will occur remains to be seen. Will current applicants be able to apply for additional loans? If yes, will decisions they have made (e.g., limiting Payroll Cost to just wage information to simplify documentation or conform to lender restrictions) come back to haunt them in that process? At present we have no way of knowing.

We are interested to hear your experiences with the PPP.

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