



COVID-19 UPDATE: ADDITIONAL FUNDING FOR SMALL BUSINESSES

By Darryl J. Horowitz

On April 23, 2020, in order to provide additional financial assistance to businesses, Congress enacted a \$484 billion relief package entitled the “Paycheck Protection Program and Health Care Enhancement Act”, which was signed into law by the President on April 24, 2020. This legislation was deemed necessary due to the overwhelming success of the PPP loan program, which quickly exhausted the funds original appropriated. Of significance to businesses in the Act are:

- Congress provided an additional \$310 billion in funding for the Paycheck Protection Program (“PPP”). The original \$394 billion was exhausted within the first two weeks that applications for PPP loans were available. (Information on the PPP program is discussed in Daniel Rudnick’s Alert “*Some Good News: How Businesses Benefit From The Recent Stimulus Legislation*”, which can be found at <https://ch-law.com/covid/>.)
- Amounts appropriated for the Coronavirus Aid, Relief and Economic Security Act (the “CARES Act”) were increased. This provides additional funds for economic injury disaster loans (“EIDL”; loans which can be requested in addition to PPP loans), hospital and other medical providers’ recovery, emergency grants and COVID-19 testing.

On the same date, the SBA issued additional FAQs to guide those who might seek a PPP loan. Generally, before a borrower can obtain a SBA backed loan, the borrower must certify they are unable to obtain financing elsewhere. When PPP loans were created, the legislation eliminated the need for such a certification. Instead, the PPP applications included a certification that “[c]urrent economic uncertainty makes this loan necessary to support the ongoing operations of the Applicant.” This removed the requirement for a bank to investigate whether the certification was or was not true.

In light of the unflattering disclosures that several publicly traded and well-funded companies, as well as other, well-funded privately held companies, obtained millions in PPP loans, the SBA felt it necessary to clarify the meaning of the certification. In doing so, the SBA confirmed that the certification was to be made in good faith. Borrowers were to take into account the current status of their business, the funds that may arise in the future and the ability to secure funds from other sources to allow their business to engage in ongoing operations in such a manner that it would not substantially impact their business. In other words, if you have access to private funds (i.e., venture capital or private financing) or a public company with the ability to obtain financing from banks through traditional avenues, you need not apply.

The FAQs further clarified that if a company obtained a PPP loan and now believes that its certification may not be accurate, it can voluntarily return the funds to the bank by May 7, 2020, and the SBA will deem the certification to have been made in good faith and lenders will not be required to perform any additional research to rely on a borrower's certification. This implies that, if a company does not return the PPP funds it has received by that date, and the SBA later determines that the borrower had other access to capital and did not need PPP funds, that company might be subject to criminal action for submitting a false certification. The SBA may also impose a burden on an issuing bank to conduct a further investigation to determine if a certification was accurate for those companies that received more than \$2 million in PPP loans. In fact, the FAQs indicate that companies that received \$2 million or more may be subject to audit.

PPP loan applications will soon be available. This second round of financing, like the first, will be first-come-first-served. If your company had an application already submitted, check with your bank to determine if your company must reapply. Similarly, if your company qualifies for a PPP loan and did not submit your application in the first round of funding, you should act quickly. Gather your documents. Carefully complete the application so it is ready to submit. Most importantly, evaluate your company's financial condition and avenues for other financing to determine if your company can ethically sign the certification.

The PPP process is anything but clear. The recently issued FAQs did little to fully explain what is and is not acceptable for small businesses that do not have the same access to capital as larger, more established businesses. If you have questions, talk to your banker and accountant. We are also advising companies of their options. If you have any questions, please contact the author at (559) 248-4820, ext. 111 or dhorowitt@ch-law.com.



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