April 22, 2020

Senate Approves $310 Billion in Additional Funding for the Paycheck Protection Program

Key Takeaways

- On April 21, 2020, the Senate passed the "Paycheck Protection Program and Health Care Enhancement Act"[1] to provide up to $484 billion in additional funding for COVID-19 relief programs, including $310 billion for the Small Business Administration's (SBA) Paycheck Protection Program (PPP), $75 billion for hospitals and healthcare providers, $25 billion for expanded COVID-19 testing, $10 billion for the SBA's Economic Injury Disaster Loan (EIDL) program, $2.1 billion for SBA salaries and expenses and $50 billion for the cost of SBA section 7(b) direct loans.

- The House of Representatives is expected to vote on the bill on Thursday, April 23. Because this bill is the product of weeks of negotiations among Republicans, Democrats and the White House, it is expected to be approved by the House and thereafter signed into law by President Trump.

- Terms of the PPP are otherwise unchanged (including affiliation requirements).

- Separately, the Federal Reserve established the Paycheck Protection Program Lending Facility (PPPLF), which is designed to facilitate PPP lending by providing liquidity to eligible financial institutions making PPP loans.

The Senate Bill

PPP Funding

The PPP exhausted its initial $349 billion funding under the CARES Act on April 15, 2020.[2] Of the $310 billion in new PPP funding, $60 billion is reserved for smaller and more local credit unions, banks and community financial institutions in an effort to direct more PPP loans to "underbanked" small businesses that have been said to struggle to receive loans from traditional banks. Within this $60 billion, $30 billion is allocated to credit unions and banks that have assets between $10 billion and $50 billion, and the remaining $30 billion is allocated to banks and credit unions with assets less than $10 billion and to

1 To see the full text of the Senate bill, please click here.

2 For more information on the CARES Act generally, please click here.

community financial institutions.[3] Aside from the increased funding and these amounts reserved for smaller lenders, the new bill does not modify the PPP's terms and conditions.

With the PPP now poised to receive an injection of additional funding, prospective borrowers that have applied for a PPP loan, but have not yet had their loans approved and funded, may want to contact their lenders to confirm that their applications are complete and ready for submission to the SBA once the SBA begins accepting applications again.

Other Funding

Apart from the PPP funding, the bill also provides: (i) $75 billion in assistance for hospitals and healthcare providers; (ii) $25 billion to expand testing for COVID-19 across the United States; (iii) $10 billion in new funding for the SBA's EIDL program,[4] which exhausted its funding on April 15, 2020; (iv) $2.1 billion for salaries and expenses to the SBA; and (vi) $50 billion for the Disaster Loans Program Account for the cost of SBA section 7(b) direct loans.

PPP Statistics and Guidance

PPP Lending Statistics

According to the SBA, as of April 16, 2020, it had processed over 1,660,000 PPP loan applications from approximately 5,000 lenders and the total net approved dollars was over $342 billion.[5] Approximately 38% of the approved loan amounts have come from the following three North American Industry Classification System (NAICS) subsector descriptions: (i) construction; (ii) professional, scientific and technical services; and (iii) manufacturing.

For more PPP lending statistics from the SBA and U.S. Treasury, please click here.

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[3] The bill defines "Community Financial Institutions" as: (i) community development financial institutions (as defined in section 103 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4702)); (ii) minority depository institutions (as defined in section 308 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1463 note)); (iii) development companies (that are certified under title V of the Small Business Investment Act of 1958 (15 U.S.C. 695 et. seq.)); and (iv) microloan intermediaries (as defined in section 7(m)(11)).

[4] The bill also expands EIDL grants and loans access to agricultural enterprises, as defined by section 18(b) of the Small Business Act (15 U.S.C. 647(b)).

[5] Net approved dollars does not reflect the amount required for reimbursement to lenders (including lender fees) pursuant to the CARES Act.

PPP Regulations & Guidance

Since launching the PPP on April 3, 2020, the SBA has issued interim final rules and frequently asked questions to further clarify the PPP.

- *Interim Final Rules*. The SBA has published three Interim Final Rules (IFR) governing the PPP. The first IFR sets out the framework of the program and addresses borrower and lender eligibility, how to calculate the maximum loan amount, and permitted uses of loan proceeds and criteria for loan amounts for forgiveness, among other matters. The second IFR addresses applicability of the SBA's affiliation rule for purposes of calculating an applicant's number of employees. The third IFR discusses additional eligibility criteria for individuals with self-employment income and requirements for certain pledges of loans by lenders participating in the Federal Reserve's Paycheck Protection Program Liquidity Facility (PPPLF). Further information regarding the PPPLF is provided below.
  - For additional information regarding the first IFR, please click here. For the second IFR, please click here. For the third IFR, please click here.
- *Frequently Asked Questions*. The SBA, in consultation with the U.S. Treasury, has issued ongoing updates to a list of Frequently Asked Questions (FAQs), each of which attempts to clarify previously issued guidance or to supplement prior guidance to address areas of concern to participants. The most recent FAQs were published on April 17, 2020 and are available here.

Paycheck Protection Program Lending Facility

Separately, on April 16, 2020, the Federal Reserve announced that the PPPLF, which is designed to provide liquidity to eligible financial institutions making PPP loans to facilitate PPP lending, was fully operational. The PPPLF has the following key loan terms: (i) an interest rate of 35 bps; (ii) a maturity date contemporaneous with the underlying PPP loan (accelerated if the underlying PPP loan is forgiven or its SBA guaranty is honored); (iii) PPP loans pledged as collateral are valued at par and no additional collateral is required; and (iv) maximum PPPFL loan amount is equal to the principal amount of the underlying PPP loan pledged as collateral.

For the PPPLF Term Sheet, please click here. For additional information on other Federal Reserve lending facilities established in connection with the CARES Act, please click here.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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