

ALERT

How to Prepare for Replenishment of Paycheck Protection Program Funds and EIDL Expected this Week

April 23, 2020

On April 21, 2020, the U.S. Senate approved new funding for two Small Business Administration (SBA) programs that were implemented as part of the CARES Act to help support small businesses in response to the coronavirus pandemic: the Paycheck Protection Program (PPP) and Economic Injury Disaster Loans (EIDL). The initial funding for these programs was exhausted on April 16, and businesses were not able to apply for these relief funds while Congress negotiated the terms of the new bill. The U.S. House of Representatives is expected to approve the bill on April 23, and President Trump has indicated that he will sign it as soon as it hits his desk. If all goes as planned, the SBA could begin accepting and approving new applications for these two important programs this week.

The replenishment of these programs should come as relief to the many small businesses that were unable to acquire funds in the first round.

In the new legislation, an additional \$310 billion is allocated to the PPP and an additional \$10 billion is allocated to the \$10,000 forgivable grants that a borrower can obtain through the EIDL. In addition, set-asides have been made for certain lenders, as discussed below.

What should I do now to prepare?

Authors

Thomas W. Antonucci
Partner
202.719.7558
tantonucci@wiley.law

Jessica N. Rosenthal
Partner
202.719.7478
jrosenthal@wiley.law

Duane C. Pozza
Partner
202.719.4533
dpozza@wiley.law

Practice Areas

Corporate

The program will still be on a first come-first serve basis, so once again businesses will need to move quickly to obtain funds. It is expected that these new funds will be depleted quickly.

Here is what you can do now:

If your business received SBA approval of a PPP loan but did not receive funds:

- Contact your lender to check status. The lender has 10 days after receipt of SBA approval to fund a PPP loan. Any holdup at this stage is on the lender's end, not the government.

If your business submitted a PPP application to a lender but did not yet get SBA approval:

- Contact your lender now to make sure they have your application and confirm that they have all of the documentation that they need to submit it to the SBA for approval as soon as the window opens. Your lender should be able to process and finalize the application up to the point where it gets submitted to the SBA.

If your business is eligible for a PPP loan but has not yet submitted a PPP application to a lender:

- Gather your payroll cost documentation and familiarize yourself with the PPP application and required borrower certifications, including the requirement that your business needs the PPP funding to support ongoing operations.
- Reach out to your regular bank and consider reaching out to multiple other lenders to determine which lender is best positioned to accept and process your application quickly. Keep in mind, however, that a business may submit only one PPP loan application.

What does the certification mean when it says that the PPP loan funds are needed to support ongoing operations?

- This has been a question that many borrowers have asked since the CARES Act was passed. The Treasury issued an updated FAQ on April 23 that was intended to provide some clarity. In that guidance, Treasury stated that all borrowers must assess their "economic need" and "tak[e] into account their current business activity and their ability to access other sources of liquidity ... in a manner that is not significantly detrimental to the business." The Treasury clarified that it is unlikely that a large public company "with substantial market value and access to capital markets" will be able to satisfy this requirement, and thus will be ineligible to obtain a PPP loan. The guidance provided that any such company that had previously applied for a loan will need to repay the loan in full by May 7, 2020.

What lenders can I reach out to for a PPP loan?

If your regular bank is not accepting new PPP loan applications, or has been slow to process PPP applications, another option to consider is a non-bank financial technology company (or "fintech", e.g., PayPal, Quickbooks, Square, etc.). A number of fintechs have been approved by the SBA as PPP lenders or are working with partner banks to provide PPP loans.

Of the new \$310 billion in funds allocated to the PPP, \$60 billion has been set aside for small and midsize lending institutions:

- \$30 billion is allocated for loans to be made by banks and credit unions with assets between \$10 billion and \$50 billion, and
- \$30 billion is allocated for loans to be made by banks and credit unions with assets of less than \$10 billion, and for small community lenders.

If you have any questions regarding the PPP program, please reach out to Thomas Antonucci or Jessica Rosenthal or your regular Wiley attorney.

Visit our COVID-19 Resource Center