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**SBA Paycheck Protection Program Updates**

Over the last several days, there have been some developments and clarifications related to the Paycheck Protection Program (PPP).

The PPP program loan funds were increased by $310 billion to a total of $659 billion on Friday, April 24, 2020, when the President signed the Paycheck Protection and Healthcare Enhancement Act (PPHE). The PPP program has faced an immense amount of scrutiny and has been wrought with delays, changes, and a lack of clarity. Most small businesses did not receive funding in the initial round. While we have diligently supported our clients in their efforts, the Lenders have generally struggled with the massive amount of applications being submitted. While the law extends the funds, realistically, it will not be enough to fund every small business. Below, we outline some critical provisions from the most recent Act and changes as well as suggestions on what else you could do if you don’t anticipate receiving the PPP or have not applied yet.

**PPP Program Changes**

* The PPHE act carves out $60 billion of the additional funding for smaller lenders with $30 billion going to FDIC-deposit institutions and credit unions with assets between $10 and $50 billion, and another $30 billion going to ‘community financial institutions’ and FDIC-deposit institutions and credit unions with assets below $10 billion.
* The SBA began processing applications on April 27 at 10:30 am ET. The SBA has indicated they will begin with applications already submitted. It’s unclear if any priority will be given at this time for smaller lending institutions.

**PPP Forgiveness**

For many businesses that have or will receive PPP funds, the forgiveness part of the loan program creates a lot of questions. There are still more questions than answers, and we anticipate the coming days will provide some clarity. The treasury published additional guidance on Thursday related to who qualifies after many large businesses with access to liquidity received PPP funds.

*Do businesses owned by large companies with adequate sources of liquidity to support the business’s ongoing operations qualify for a PPP loan?*

**Answer:** All borrowers must assess their economic need for a PPP loan under the standard established by the CARES Act and the PPP regulations at the time of the loan application. Although the CARES Act suspends the ordinary requirement that borrowers must be unable to obtain credit elsewhere (as defined in section 3(h) of the Small Business Act), borrowers still must certify in good faith that their PPP loan request is necessary. Specifically, before submitting a PPP application, all borrowers should review the required certification carefully that “current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.” Borrowers must make this certification in good faith, taking into account their current business activity and their ability to access other sources of liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business. For example, it is unlikely that a public company with substantial market value and access to capital markets will be able to make the required certification in good faith, and such a company should be prepared to demonstrate to SBA, upon request, the basis for its certification. Lenders may rely on a borrower’s certification regarding the necessity of the loan request. **Any borrower that applied for a PPP loan prior to the issuance of this guidance and repays the loan in full by May 7, 2020, will be deemed by SBA to have made the required certification in good faith.**

There is still a lot of unknown about how exactly the lenders will evaluate loan forgiveness around the forgiven uses versus approved uses.

**What should business owners do now?**

Start by evaluating whether you meet the conditions that certify you for the PPP loan in light of the additional guidance issued. This is a decision each business will need to make based on your facts and circumstances. If you don’t feel like you meet the conditions, you should return any funds received by May 7, 2020. If you have already submitted your PPP application, you may contact your lender to rescind your application.

For anyone that has received their PPP loan funds and plans on keeping those funds, you should be focused on documenting your use of funds based on guidance provided by your lender.

**Other Sources of Liquidity**

For those that don’t qualify for the PPP, there are other options for creating liquidity available. The PPHE act also increased the SBA Economic Injury Disaster Loans (EIDL) funding by $10 billion and also added am additional $50 billion in funding for EIDL loans related to COVID-19.

There are also many other considerations companies can explore, such as tax credits, small business loans, and other local grants.

We continue to monitor the PPP and EIDL. All information contained in this article is based on information currently available and is subject to change. Please contact your team at VSH with any questions about the PPP loan as well as other alternatives.