

LEGAL UPDATES

PUBLISHED: APRIL 27, 2020

Service

Banking & Finance

Professionals

LAUREN M. HAWKINS
SPRINGFIELD:
417.268.4034
LAUREN.HAWKINS@
HUSCHBLACKWELL.COM

CHRISTOPHER W.
PETERSON
SPRINGFIELD:
417.268.4057
CHRIS.PETERSON@
HUSCHBLACKWELL.COM

President Authorizes Additional PPP and EIDL Funding; Treasury and SBA Provide Additional Guidance

On April 24, 2020, President Trump signed into law an amendment to the CARES Act providing additional funding for the Paycheck Protection Program (PPP) and Emergency Economic Injury Disaster (EIDL) grants and loans. The amendment increased the appropriation level for PPP by \$321.335 billion (which includes an additional \$310 billion for PPP loans and \$11.335 billion for administrative fees) and authorized an additional \$10 billion for emergency EIDL grants and \$50 billion for EIDL loans. As before, both the PPP and EIDL funds are available on a first-come, first serve-basis. Consequently, eligible businesses that are interested in benefiting from these programs are encouraged to apply as soon as possible, as funds from this second round are also expected to be exhausted quickly. Information regarding eligibility for these programs can be found on our Frequently Asked Questions.

Agricultural enterprises now eligible for EIDL grants and loans

The CARES Act amendment also makes certain agricultural enterprises (as defined in section 18(b) of the Small Business Act) with not more than 500 employees eligible for EIDL grants and loans.

Set-asides for guaranteeing PPP loans made by smaller lenders

The amendment also provides funding for \$30 billion in loans made by banks and credit unions, including minority depository institutions, with \$10 billion to \$50 billion in assets, and an additional \$30 billion for loans made by banks, credit unions and Community Financial Institutions (including minority depository institutions, certified development companies, and microloan intermediaries) with less than \$10 billion in assets.

Additional funding for COVID-19 response

Finally, the CARES Act amendment also provides additional funding for certain other COVID-19 response efforts. Such funding includes (1) \$75 billion in grants or other funding mechanisms for eligible health care providers “to prevent, prepare for, and respond to coronavirus” and (2) \$25 billion for research and development of COVID-19 tests.

Additional Treasury and SBA guidance

The Treasury issued additional guidance that provided some insight into the required PPP application certification that “[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.” Specifically, FAQ 31 of the Treasury’s April 23, 2020 update to its Frequently Asked Questions addresses whether “large companies” with “adequate sources of liquidity to support the business’s ongoing operations” qualify for a PPP loan. The Treasury advised that they likely do not, and specifically that 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.” The Treasury reminded borrowers that the necessity certification must be made 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.” The guidance further provides that any borrower that “applied for a PPP loan prior to April 23, 2020 and repays the loan in full by May 7, 2020 will be deemed by SBA to have made the required certification in good faith.”

The SBA also issued an additional Interim Final Rule on April 24, 2020, which sets forth the following rules and clarifications relating to borrowers under the Cares Act:

Clarification Regarding Eligible Businesses:

Hedge funds and private equity firms are ineligible to receive PPP loans

Portfolio companies of private equity funds are potentially eligible, but they must apply the affiliation rules that appear in 13 CFR 121.301(f) and should “carefully review” the required PPP loan certification regarding the necessity of the loan to support ongoing operations

Businesses are not rendered ineligible from PPP loans due to their receipt of legal gaming revenues

Participation in an employee stock ownership plan does not trigger application of the affiliation rules

Debtors in bankruptcy proceedings are not eligible for PPP loans

HUSCH BLACKWELL

The Interim Final Rule reiterates the statement in Treasury FAQ 31 issued on April 23, 2020 (specifically, that any borrower that applied for a PPP loan prior to the issuance of the April 24, 2020 Interim Final Rule and repays such loan in full prior to May 7, 2020 will be deemed by the SBA to have made the required “necessity” certification in good faith)

Contact us

If you have additional questions regarding the Paycheck Protection Program, the CARES Act or other government initiatives to combat the COVID-19 crisis, please contact your Husch Blackwell attorney.

Comprehensive CARES Act and COVID-19 guidance

Husch Blackwell’s CARES Act resource team helps clients identify available assistance using industry-specific updates on changing agency rulemakings. Our COVID-19 response team provides clients with an online legal Toolkit to address challenges presented by the coronavirus outbreak, including rapidly changing orders on a state-by-state basis. Contact these legal teams or your Husch Blackwell attorney to plan a way through and beyond the pandemic.