CORPORATE & TRANSACTIONAL ADVISORY

Paycheck Protection Program and Health Care Enhancement Act

On April 24, 2020, President Trump signed another economic stimulus act titled the "Paycheck Protection Program and Health Care Enhancement Act," which is an amendment to the "Coronavirus Aid, Relief, and Economic Security Act" or "CARES Act." This update outlines how the Paycheck Protection Program and Health Care Enhancement Act provides additional money to small businesses seeking disaster relief due to the COVID-19 pandemic through Small Business Administration (SBA) programs.

KEY TAKEAWAYS

The Paycheck Protection Program and Health Care Enhancement Act:

- Allocates additional funding to the SBA Paycheck Protection Program (PPP)
- Sets-aside PPP funding for certain financial institutions
- Allocates additional funding to the SBA Economic Injury Disaster Loan (EIDL) Program

WHAT'S NEXT

As with any new legislation, there may several key details to be filled in by Treasury or SBA regulations. Be sure to check our COVID-19 Resource Hub to stay up-to-date on new regulations and supplemental guidance regarding the Paycheck Protection Program and Health Care Enhancement Act.

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SUMMARY

Additional Funding for the Paycheck Protection Program. The CARES Act created the PPP for the purpose of guarantying loans through the SBA's existing 7(a) loan program to qualified small businesses and non-profits. Read our update on the CARES Act HERE for more details about the PPP. The CARES Act allocated funding to the PPP in the amount of $349 billion. This amount was quickly exhausted due to the PPP's immense popularity. The Paycheck Protection Program and Health Care Enhancement Act increases the funding for the PPP by $310 billion to a total of $659 billion. Given the interest in the PPP and the number of small businesses and non-profits who submitted applications and were not approved with the first funding, we expect the additional $310 billion to go very fast.

Set-Asides in the Paycheck Protection Program for Certain Financial Institutions. Of the new $310 billion allocation for the PPP, $30 billion is set-aside for insured depository institutions and credit unions with assets between $10 billion and $50 billion. An additional $30 billion is set-aside for community financial institutions and insured depository institutions with assets less than $10 billion.

The Small Business Act refers to the Federal Deposit Insurance Act to define an "insured depository institution," which is a bank or savings association whose deposits are FDIC insured. The Paycheck Protection Program and Health Care Enhancement Act amends the Small Business Act to define a "credit union" as a state or federal credit union. Finally, the Paycheck Protection Program and Health Care Enhancement Act also amends the Small Business Act to define a "community financial institution" as a (a) community development financial institution, (b) minority depository institution, as defined in 12 U.S.C. § 1463 note, (c) development company certified under Title V of the Small Business Investment Act (15 US.C. § 695 *et seq.*), or (d) an intermediary, as defined in 15 U.S.C. § 636(m)(11).

Additional Funding and Definition for the Economic Injury Disaster Loan Program. The CARES Act allocated $10 billion to supplement the SBA's EIDL Program. Read our update on the CARES Act HERE for more details about the EIDL Program. The Paycheck Protection Program and Health Care Enhancement Act increases the funding for the EIDL Program by $10 billion to a total of $20 billion.

The Paycheck Protection Program and Health Care Enhancement Act also amends the definition of an "eligible entity" in the EIDL Program to include an agricultural enterprise, as defined in 15 U.S.C. § 647(b), with fewer than 500 employees.

PPP Issues Left Unaddressed. Numerous issues came up associated with the PPP that were left unaddressed in the Paycheck Protection Program and Health Care Enhancement Act. For instance, the Paycheck Protection Program and Health Care Enhancement Act did not address the concern about qualified small businesses and non-profits submitting PPP applications to more than one bank due to a concern about one bank's process for review and submission to the SBA. The Paycheck Protection Program and Health Care Enhancement Act also did not address some banks denying PPP applications based on incorrect applications or interpretations of ineligible businesses pursuant to 13 C.F.R. § 120.110. The Paycheck Protection Program and Health Care Enhancement Act did not specify any preference for women or minority owned businesses, even though there had been an informal preference identified during the passage of the CARES Act. Finally, the Paycheck Protection Program and Health Care Enhancement Act did not address lingering questions associated with the debt forgiveness that is one of the PPP's cornerstones.

While these issues were left unaddressed in the Paycheck Protection Program and Health Care Enhancement Act, we hope they are answered in future regulations or guidance, which will be explained through future client advisories or in our COVID-19 Resource Hub.

QUESTIONS

Please reach out to any member of our team with questions about any of the options or the application processes now available to small businesses dealing with COVID-19 disaster relief.