

The Paycheck Protection Program and Health Care Enhancement Act

by Joseph Lynyak and Troy M. Keller

On April 24, 2020, President Trump signed the Paycheck Protection Program and Health Care Enhancement Act (the “Enhancement Act”), which extends the availability of the several Small Business Administration (“SBA”) loan programs originally contained in the CARES Act. In addition, the Enhancement Act provides for a variety of federal assistance for hospitals, other health care entities and for national testing. Importantly, the Enhancement Act appropriates an additional \$310 billion in loans under the Paycheck Protection Program (the “PPP”), as well as smaller dollar amount loans available under other SBA loan programs. (The total relief package, including small business stimulus and health care assistance, totals approximately \$484 billion.)

The following is an initial summary of significant provisions of the Enhancement Act, including a discussion of how the SBA may implement a second round of lending under the PPP.

PPP and EIDL Grants and Loans

The appropriation for the PPP has been increased by \$310 billion, and includes several new tranches of loan funds (accounting for \$60 billion of the \$310 billion increase in the PPP appropriation) that may only be originated by smaller-sized financial institutions and “community financial institutions.”

Specifically, the Enhancement Act sets aside \$30 billion in new PPP funds for loans made by:

- Community financial institutions;
- FDIC-insured banks with consolidated assets of less than \$10 billion; and
- Credit unions with consolidated assets of less than \$10 billion.

A “community financial institution” includes: (a) a “community development financial institution” (a “CDFI”); (b) a defined minority depository institution; (c) an SBA-certified development company under Title V of the Small Business Act of 1953 (the “SBA Act”);

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and (d) an SBA “intermediary” as defined in Section 7(m)(11) of the SBA Act.

The Enhancement Act also sets aside \$30 billion for PPP loans made by:

- FDIC-insured banks with consolidated assets of not less than \$10 billion and not more than \$50 billion; and
- Credit unions with consolidated assets of not less than \$10 billion and not more than \$50 billion.

The foregoing tranches for PPP lending do not appear to place a ceiling on smaller institutions above their respective set-asides; rather, larger institutions (and non-bank lenders) would not have access to these categories for PPP lending.

In regard to the SBA’s Economic Injury Disaster Loan (EIDL) program, the Enhancement Act increases the appropriation by an additional \$10 billion dollars for grants under the program and an additional \$50 billion for loans.

The Enhancement Act does not make structural changes to the PPP or the EIDL (except for the set-asides for smaller banks and credit unions). Although the Enhancement Act clarifies that agricultural enterprises such as agricultural cooperatives with 500 or fewer employees are eligible for PPP loans, the intent of this legislation is to provide eligible small businesses that were unable to access the PPP or EIDL, before those programs ran out of funds, with salary and operating assistance in the same manner as contemplated by the CARES Act.

Health Care Emergency Funds

In addition to the appropriation of new funds for SBA lending, the Enhancement Act also appropriates \$75 billion “to prevent, prepare for, and respond to coronavirus, domestically or internationally, for necessary expenses to reimburse, through grants or other mechanisms, eligible health care providers for health care-related expenses or lost revenues that are attributable to coronavirus.” Further, the Enhancement Act appropriates \$25 billion for COVID-19 testing.