

Fill 'Er Up!: The Paycheck Protection Program and Health Care Enhancement Act

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On April 23, 2020, Congress passed the “Paycheck Protection Program and Health Care Enhancement Act” (the Enhancement Act) and it is expected to be signed into law by President Trump as early as Friday, April 24. Referred to as “Phase 3.5” of Congress’s response to the economic devastation and emergent healthcare needs related to the COVID-19 pandemic, the Enhancement Act replenishes funding for small business aid programs created or expanded by the Coronavirus Aid, Relief, and Economic Security Act (the CARES ACT), including its centerpiece Payroll Protection Program (PPP)^{[1][2][3]}, and appropriates funding for certain healthcare providers and government testing efforts.

SMALL BUSINESS PROGRAMS

The Enhancement Act makes the following changes to the PPP and the Economic Injury Disaster Loan (EIDL) program, both of which are administered by the U.S. Small Business Administration (SBA):

- Appropriates an additional \$310 billion in PPP funding;
- Appropriates an additional \$10 billion in funding for EIDL grants; and
- Sets aside \$60 billion dollars for PPP loans to be made by smaller lenders, such as credit unions and community financial institutions.

The Enhancement Act increases PPP funding and sets aside a significant portion of the new PPP funds to be accessed through institutions that better serve applicants without an existing lending relationship, but otherwise does not make any changes to the program. Accordingly, eligible applicants who submitted a PPP application, but were not approved and/or funded before the initial pool of PPP funds was exhausted, remain eligible to receive a PPP loan. We anticipate that the SBA will be able to resume accepting applications and disbursing funds early next week.

Accordingly, businesses that have already submitted an application should consult with the lender through which their application was submitted to determine the status of their application, when the lender expects to resume processing applications and whether documentation needs to be resubmitted. Businesses that have not yet applied should be ready to submit an application as soon as possible, as the PPP remains “first come, first served” and it is likely that the additional PPP funding added by the Enhancement Act will not last long.

HEALTHCARE FUNDING

In addition to replenishing the PPP, the Enhancement Act’s \$484 billion relief package also includes a \$75 billion allocation for healthcare provider expenses and \$25 billion for a COVID-19 testing program.

Provider Expenses Related to COVID-19. The \$75 billion allocated to the Public Health and Social Services Emergency Fund is to be used for “necessary expenses” related to the prevention, preparation and response to COVID-19.

Healthcare providers may access these funds by submitting requests for reimbursement for healthcare-related expenses or lost revenues attributable to the novel coronavirus. Eligible providers, which include public and private entities, are defined as those involved in the diagnosis, testing and care for individuals with actual or potential cases of COVID-19. Covered expenses include funds expended for the construction of temporary structures, leasing of properties, medical supplies and equipment (including personal protective equipment and testing supplies), increased workforce and workforce training, emergency operation centers, retrofitting facilities and surge capacity.

Importantly, though, healthcare providers may not access these funds if the expense was covered, or is obligated to be covered, by another source. The Secretary of Health and Human Services (HHS) will administer and ensure compliance with this provision. In the application for reimbursement to HHS, the healthcare provider must include a statement justifying the need for the expense.

Testing & Mitigation. The Enhancement Act allocates \$25 billion for COVID-19 testing, which is seen as the key for being able to minimize further spread and re-open the economy. These funds may be used to research, develop, manufacture, purchase, administer and expand capacity for COVID-19 tests. Eligible expenses include testing for both active infection and prior exposure, the manufacturing, procurement and distribution of tests, equipment and supplies (including personal protective equipment needed for administering tests) and the development and validation of rapid, molecular point-of-care tests and other tests. It also includes expenses for surveillance, contact tracing and testing plans.

Out of the \$25 billion allocated, \$11 billion is reserved for states, localities, territories and tribes to develop their own testing, surveillance and contact tracing efforts. These funds will be allocated, in part, based on the relative number of COVID-19 cases. In order to access the funds, governors must submit a plan to the HHS, which includes the number of tests needed, testing capacity and a mitigation strategy.

In addition to the state and local funding, the Enhancement Act allocates funds for COVID-19 testing and mitigation strategies at the national level to various federal agencies, including \$1.8 billion to the National Institutes of Health to be shared among various subdivisions, \$1 billion to the Centers for Disease Control and Prevention and \$1 billion to the Biomedical Advanced Research and Development Authority. This provision also allocates \$1 billion for testing for those without health insurance, \$600 million for community health centers and \$225 million for rural health centers.

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As we continue to monitor the novel coronavirus (COVID-19), White and Williams lawyers are working collaboratively to stay current on developments and counsel clients through the various legal and business issues that may arise across a variety of sectors. Read all of the updates [here](#).

[1] See Better Late Than Never(?): The SBA Issues Second Interim Final Rule on Paycheck Protection Program Implementation (4/20/20)

[2] See Are You Confused Yet? The SBA Issues Supplemental Guidance on Paycheck Protection Program Implementation (4/8/20)

[3] See Start Your Engines: SBA Issues Interim Final Rules Implementing Paycheck Protection Program (4/3/20)

This correspondence should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult a lawyer concerning your own situation and legal questions.