

Guidance from the SBA on PPP Funds and Additional Funding Appropriated
(4/24/2020)

On Thursday April 23, 2020, the U.S. Small Business Administration issued guidance in response to outcry following revelations that some businesses owned by large public companies and institutions had applied for and in some cases received loans under the Paycheck Protection Program, which is intended to principally support small businesses. A new entry to the SBA's ongoing Frequently Asked Questions guidance clarifies that large companies will have to prove they actually need the funds, and that doing so might prove difficult. Specifically, before submitting a PPP application, borrowers should review carefully the required certification that current economic uncertainty makes the loan necessary to support the ongoing operations of the borrower. This certification must be made in good faith, taking into account the borrower's current business activity and ability to access other sources of liquidity sufficient to support its ongoing operations in a manner that is not significantly detrimental to the business. The SBA notes 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. Borrowers that have already received funds and are concerned that they might not have been able to make this certification in good faith can return the funds by May 7 without penalty.

On Friday April 24, 2020, President Trump signed legislation providing an additional \$484 billion in funds to bolster the federal government's efforts to combat the COVID-19 pandemic. The bill adds another \$310 billion in appropriations to the popular Paycheck Protection Program, \$60 billion of which will be set aside for issuance of PPP loans by community development lenders, credit unions, and other smaller lenders. Funds initially appropriated for the PPP had been exhausted, so these additional funds will allow more businesses to obtain loans. The legislation also includes \$75 billion for hospitals, \$25 billion to support testing efforts, and \$60 billion for emergency disaster loans and grants.