

Paycheck Protection Program: Most Recent Developments

07.08.20 | Linda J. Rosenthal, JD



The Paycheck Protection Program (PPP) was a much-heralded part of the CARES Act, the first substantive Congressional response to the COVID-19 outbreak in the United States. Signed into law on March 27, 2020, the PPP was open not only to the business community but also to small- and mid-size 501(c)(3) organizations. See [*Nonprofit Guide to the CARES Act \(Including Those Loans You've Been Hearing About to Cover Payroll and That Don't Need to Be Paid Back\)*](#) (March 31, 2020) Ofer Lion, Esq., Seyfarth Shaw LLP.

Though the original amount of money plunked into the PPP pot was huge, everyone acknowledged (even back then in March) that it would not stretch to fit the needs of all potentially eligible applicants in this period of colossal economic upheaval. It was to be offered immediately – a good move – but on a first come first serve basis – a move almost certain to cause trouble.

Paycheck Protection Encounters Trouble

“The rollout was,” according to Forbes’s tax guru, Peter J. Reilly, CPA, “a source of much tsuris.”

Mr. Reilly – (somewhat unexpectedly) – employed this colorful Yiddish-derived word that is dictionary-defined as “trouble” or “distress” but is best understood from the context and circumstances. Here, applicants for the PPP jammed the government website immediately. It crashed early and often. The lender-banks expected to fund the program were not ready in time. Many banks dealt first and only with their existing customers. No one really understood the program which involves only partially forgivable loans and only if certain ambiguous conditions are met.

Tsuris abounded... and continued through April and May.

Confusion and Disappointment

Congress replenished the funds a few weeks after the original PPP rollout. This second round was also a chaotic mess. And – again – it was not nearly enough for the vast number of increasingly worried small-business owners and nonprofits needing funds to survive. See, for instance, [Despite \\$322 billion in new loans, the Paycheck Protection Program still falls short](#) (April 26, 2020) The Editorial Board, *The Washington Post*; [Bankers Rebuke S.B.A. as Loan System Crashes in Flood of Applications](#) (April 27, 2020) Stacy Cowley, *The New York Times*.

In an effort to answer the many questions and ambiguities in the original PPP, the Small Business Administration issued a series of confusing explanations and guides in the Program's first months. Ruth McCambridge and Steve Dubb, of *The Nonprofit Quarterly*, took the opportunity to sum up the frustration; see [The Rulemaking on PPP Loans Continues: What You Need to Know Today](#) (May 27, 2020):

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We here at NPQ are pretty darned sure that the fourteenth set of Interim Final Rules for the Paycheck Protection Program (PPP)—issued last Friday by the Small Business Administration (SBA) and Treasury Department as a dense, 18-page Memorial Day gift to financial advisors and managers—is no more final than the prior thirteen sets of Interim Final Rules, which weighed in at 26 pages....

Paycheck Protection Program: New Flexibility

In order to meet the increasingly dire needs of American businesses and nonprofit organizations, the House of Representatives passed the HEROES Act by the third week in May. Part of that large legislation would have included fixes to the PPP and extensions of time. But that bill stalled completely as Senate Majority Leader Mitch McConnell refused even to bring it to the floor of the Senate. See [Financial Aid Expected for Struggling Nonprofits: The HEROES Act and Accessing PPP Loans](#) (May 18, 2020) William Powers, Esq., & Anna Tang, Esq., Nossaman LLP.

Bipartisan help arrived, though, in early June in a standalone bill: H.R. 7010, the [Paycheck Protection Program Flexibility Act of 2020](#).

We reported on this development in [UPDATE: Paycheck Protection Program Flexibility Act](#) (June 4, 2020) [“The bill provides borrowers with additional flexibility and time to use PPP loan funds and still have the loan forgiven.”] See also [Senate Unanimously Approves PPP Flexibility Bill: What Does It Include?](#) (June 4, 2020) Ruth McCambridge & Steve Dubb, *The Nonprofit Quarterly*: [Senate adopted it unanimously after House approved it a few days earlier by 417-1 vote].

See as well, [*Paycheck Protection Loan Forgiveness Just Got Easier*](#) (June 3, 2020) Peter J. Reilly, CPA, *Forbes*: [“...[T]here was a lot of concern about how hard forgiveness was going to be, so the passage of this act is a big relief....Among the highlights are: the amount of time borrowers had to spend the money was increased from eight weeks to twenty-four weeks.”]

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Also to achieve full forgiveness a somewhat complicated head-count test had to be met by June 30. That has been extended to December 31, but more significant is relief in the event the borrower is unable to get people back. – How you gonna keep down on the burger grill after they got \$600 per week unemployment?. The other possible source of relief is an inability to get back to the same level of business because of all that social distancing stuff.

Additional PPP Extension

The latest development in the Paycheck Protection Program saga is an extension until August 8, 2020, of the original June 30th deadline for new applicants. This significant change was signed into law over the July 4th weekend. See [*Senate reaches deal to extend Paycheck Protection Program hours before it was set to expire*](#) (June 30, 2020) Jonathan O’Connell, et al, *The Washington Post*; [*Trump signs extension of business relief fund*](#) (July 5, 2020) *The Associated Press*, *The San Diego Union-Tribune*.

Of the total \$660 billion authorized to date for the PPP, some \$130 billion reportedly remains available. And in the next days and weeks, there may be more funds allocated to the PPP as well as to new and different programs that will help nonprofits.

The House-passed HEROES Act is still languishing in the Senate Majority Leader’s inbox. But recent events suggest that Congress can and may move from “no” to “go” in less than sixty seconds. First, consider the quick and almost unanimous support for the Paycheck Protection Protection Flexibility Act of 2020 just days after the HEROES Act House bill was apparently left to wither on the vine in mid-May 2020. Second, on July 7th, Leader McConnell suddenly indicated that he is now open to more emergency COVID-19 financial-aid legislation. Earlier, he said he was not interested in moving forward with any assistance package when the Senate returns from its current two-week recess.

Another interesting development just reported in the media in the last day or so may also have some effect on loosening Congressional purse strings.

This new story is a follow-up to earlier reports that certain well-heeled entities and institutions applied for and received PPP funds while other businesses and nonprofits were denied relief. See, for instance, [*What Did Paycheck Protection Loans Go Toward—and Who Gave Them Back?*](#) (April 20, 2020) Ruth McCambridge, *The Nonprofit Quarterly*; see also [*Lakers pay back \\$4.6 million received from coronavirus rescue loan program*](#) (April 27, 2020) Tania Ganguli, *The Los Angeles*

Times. Some of these recipients were successfully shamed by this media exposure into paying back the money to the U.S. Treasury.

Pressure then grew on the government to come clean about the identities of all PPP recipients. After initial pushback – [see [*Treasury Secretary Steven Mnuchin refuses to disclose recipients of coronavirus aid*](#) (June 14, 2020) Associated Press, *The Los Angeles Times*] – the information is now seeping out. We’re learning the full extent to which the PPP funds were grabbed up by enormously rich and/or politically well-connected companies or institutions. See, for instance, [*PPP Recipient List: Reading between the Lines Reveals Big Holes for Nonprofits*](#) (July 7, 2020) Ruth McCambridge, *The Nonprofit Quarterly*; [*‘McCongressman’ Gets a Large Order of PPP*](#) (July 7, 2020) Timothy L. O’Brien, *Bloomberg*.

Conclusion

In light of these developments as well as the enormous and ongoing need of the nonprofit community, its workers, and its beneficiaries, the National Council of Nonprofits has just revised and reissued an earlier letter to lawmakers that it hopes nonprofits around the nation will sign and submit by close of business on Friday, July 10, 2020. See [*Time to Tell Congress: Include Urgent Nonprofit Policy Priorities in COVID-19 Legislation*](#) (July 7, 2020). According to NCN, “Congress is expected to pass its last piece of COVID-19 legislation this month – July 2020” adding a plea that “nonprofits tell the House and Senate to include nonprofit policy solutions in the final package.”]