

PPP Fact Sheet #3 – A new interim rule, the first round of funding is depleted. What does the future hold?

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It was widely reported on April 15th that the funding for the Paycheck Protection Program (PPP) had been fully obligated. As of the 16th SBA closed the EIDL loans to new applicants. So, if you were planning to apply, but haven't yet what does this mean for you?

Our advice is, **if your lender will still take your application go ahead and apply to the PPP ASAP.** The PPP program is still first come first served, so waiting until Congress puts more money in the program is not to your advantage! We have looked at several lender's PPP application portals and most are continuing to take applications with the assumption that the program will be funded in the future.

Why do we say that with such confidence? There is widespread agreement from both political parties and from federal agencies that direct help is needed to keep small businesses going and that the first round of SBA funding for businesses was just a drop in the bucket given the need. Here is the statement of U.S. Treasury Secretary Steven T. Mnuchin and U.S. Small Business Administration Administrator Jovita Carranza regarding the Paycheck Protection Program and Economic Injury Disaster Loan Program:

"The SBA has processed more than 14 years' worth of loans in less than 14 days. The Paycheck Protection Program is saving millions of jobs and helping America's small businesses make it through this challenging time. The EIDL program is also providing much-needed relief to people and businesses.

By law, the SBA will not be able to issue new loan approvals once the programs experience a lapse in appropriations.

We urge Congress to appropriate additional funds for the Paycheck Protection Program—a critical and overwhelmingly bipartisan program—at which point we will once again be able to process loan applications, issue loan numbers, and protect millions more paychecks.

The high demand we have seen underscores the need for hardworking Americans to have access to relief as soon as possible. We want every eligible small business to participate and get the resources they need."

So, what does the future hold for farms who are in the process of applying for, or are planning to apply for federal disaster assistance and haven't been approved for funding yet? Some changes in the future could be positive. For example, it is possible that the SBA EIDL loan and grant program could become available to farms. There certainly has been a push for this and these funds can be used for a wider array of business funding needs.

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The bad news is that it isn't clear what additional requirements or restrictions there will be for future rounds of funding. There could be more documentation required or more restrictions placed on use of the funding. This is something you should be prepared for. Small businesses in New York State are unlikely, however, to be the primary focus of programmatic scrutiny and belt tightening.

SBA did issue another interim rule on April 15th that clarified how "income" would be calculated for self-employed, sole-proprietors and single owner LLCs who file a Form 1040, Schedule C. Although the rule didn't reference the Schedule F, for ag folks it is likely that the same process for assessing owner income from the Schedule C would be used on the Schedule F so this is a guide – but not 100% certain.

Here are the key points from the interim rule:

If you are self-employed you are eligible for a PPP loan if you were in operation as of **February 15, 2020**. However, if you were not in operation in 2019 (you were a brand-new business in 2020 or had no income in 2019) the SBA does not have guidance for how you will calculate income yet and have indicated that right now a completed 2019 tax return is a requirement for applying. They have indicated that these businesses would be addressed in a future rule, but they are a lower priority.

if you are a partner in a partnership, you may not submit a separate PPP loan application for yourself as a self-employed individual. Instead, the self-employment income of general active partners may be reported as a payroll cost, up to \$100,000 annualized, on a PPP loan application filed by or on behalf of the partnership. Basically partnerships (multi party LLCs for example) will file one application for the entity not separate applications for each owner. This is what we had been advising in the past as it is logical, but the rule makes it clear.

You should be aware that participation in the PPP may affect your eligibility for state-administered unemployment compensation or unemployment assistance programs, including the programs authorized by Title II, Subtitle A of the CARES Act, or CARES Act Employee Retention Credits. For self-employed folks with no employees or for companies with a lot of low wage employees, unemployment or the credits might be a better option. The PPP is not necessarily the best fit for all businesses.

There is more information on what is included in "rent" and "interest" and "utilities" under allowable uses and they include vehicles as well as buildings. Interest can include interest on your mortgage for all buildings used in the business as well as the interest on vehicles you use to perform your business. Rent can include rent for all business buildings, and for business vehicles. Business utility payments include the utilities for buildings as well as the fuel to drive your work vehicles. You must have claimed or be entitled to claim a deduction for such expenses on your 2019 Form 1040 Schedule C for them to be a permissible use during the eight-week period following the first disbursement of the loan (the "covered period"). For example, if you did not claim or are not entitled to claim utilities expenses on your 2019 Form 1040 Schedule C, you cannot use the proceeds for utilities during the covered period. I am assuming that the same would be true of deductions made on the Schedule F.

The new interim final rule can be found at <https://home.treasury.gov/system/files/136/Interim-Final-Rule-Additional-Eligibility-Criteria-and-Requirements-for-Certain-Pledges-of-Loans.pdf>