

UPDATE: President Biden to Temporarily Narrow Eligibility for PPP Loans

On Monday, February 22, 2021, President Biden announced his administration, in conjunction with the Small Business Administration (“SBA”), would temporarily restrict access to the federal Paycheck Protection Program (“PPP”) for 14 days, during which time only companies with fewer than 20 employees will be eligible to apply for and receive PPP loans. The new two-week freeze will begin on Wednesday, February 24, and run through March 9.

The President was likely persuaded to act by two factors: (1) the overall demand for PPP loans has been waning, especially over the past six weeks as COVID-19 cases continue a steady decline and many areas of the country have significantly reopened their economies, and (2) during the first round of PPP loans last spring and summer, many of the nation’s small companies and sole-proprietors were unable to timely secure PPP loans and were forced to rely on other sources of funding to stay afloat, including dipping into their own savings or existing credit lines. To the latter point, this two-week period of exclusive access for small companies may remove some of the barriers to obtaining a PPP loan and ensure

their applications are timely processed and loan funds rapidly deployed.

Additionally, the SBA will soon announce new rules to determine the size of PPP loans to businesses without employees—i.e., sole proprietors, independent contractors, and the self-employed. Under the existing PPP rules, the maximum loan amount to these businesses was determined in relation to net taxable income. As a result, businesses who took advantage of tax deductions to minimize or even eliminate their taxable income were ineligible for PPP loans or received only nominal amounts. While details have not been released, the SBA’s new formula will tie the PPP loan to the gross income of the business, prior to taking deductions.

The SBA is also set to announce new guidance regarding PPP eligibility for applicants who are undocumented immigrants, have a criminal history, or are delinquent in their student loan obligations. We will provide further relevant updates as they become available.

This advisory is for information purposes only, and does not constitute legal advice. If you would like to discuss the impact of the Paycheck Protection Program on you or your business, please contact Joe LaFerrera, Aaron Kriss, or Sean Gilligan at (617) 350-6800, or email them at joe.laferrera@gesmer.com, aaron.kriss@gesmer.com, or sean.gilligan@gesmer.com.



Joe LaFerrera



Aaron Kriss



Sean Gilligan