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# Will Congressional Amendments to the CARES Act Actually Help 'Mom and Pop' - Sized, and Women and Minority-Owned, Small Businesses?

## COVID-19 Resource

With the launch of the federal government's second wave of funding for the depleted Coronavirus Aid, Relief, and Economic Security Act (CARES Act), a multi-billion dollar question remains: just how much relief will it provide to the small businesses truly in need? The CARES Act, passed in March, set aside \$349 billion for the Paycheck Protection Program (PPP) and expanded funding of the Small Business Administration's Economic Injury Disaster Relief Loan (EIDL). (See our previous summary [here](#).)

Through its sequel, the Paycheck Protection Program and Health Care Enhancement Act (PPPHCEA), Congress now has allocated an additional \$310 billion to aid small businesses after droves of first wave applicants failed to obtain relief because funding ran out. (Read our discussion on funding allocation [here](#).)

With PPPHCEA, Congress claims to have addressed certain shortcomings in the CARES Act. Some small business applicants — “mom and pop”-sized shops — claimed that PPP funding was unfairly redirected to larger borrowers. Others raised questions about lack of access to funding for

women and minority-owned businesses or truly “small” businesses. One might think that Congress addressed these concerns by earmarking funding for those groups, but the legislation is not that direct.

**Instead, PPPHCEA seeks to help women and minority-owned and truly “small” businesses, by redirecting funds to financial institutions geared toward community development.**

Of the \$310 billion that is allocated for small businesses, \$30 billion is allocated specifically to insured depository institutions and credit unions with consolidated assets of not less than \$10 billion and not more than \$50 billion. Another \$30 billion is allocated to community financial institutions and insured depository institutions and credit unions with consolidated assets of less than \$10 billion.

## **What is a “Community Financial Institution”?**

PPPHCEA amends section 7(a)(36) of the Small Business Act (15 U.S.C. § 636(a)(36)) to expand the number of PPP lenders to include a sector of lenders, called “community financial institutions.” The meaning of this term is drawn from several other preexisting laws recognizing entities focused on community development, including the following:

### **Community Development Financial Institutions**

These entities:

- Have a primary mission of promoting community development;
- Serve an investment area or targeted population;
- Provide development services in conjunction with equity investments or loans, directly or through a subsidiary or affiliate;
- Maintain, through representation on its governing board or otherwise, accountability to residents of its investment area or targeted population; and
- Are not an agency or instrumentality of the U.S. or of any state or political subdivision of a state.

See generally, 12 U.S.C. § 4702(5).

## Minority Depository Institutions

These entities are any depository institution where 51 percent of the institution is owned by one or more “socially and economically disadvantaged individuals and in the case of a mutual institution, where the majority of the Board of Directors, account holders, and the community which it services, is predominantly minority.” 12 U.S.C. §1463 Note (b). “Minority” means black, Native, Asian, or Hispanic American. *Id.*

## Development Companies Certified Under Title V of the Small Business Investment Act

A certified development company’s mission is specially geared toward:

- Job creation within two years completion of a project;
- Improving or stabilizing the local economy; *or*
- Achieving one or more of the following policy objectives:
  - Business district revitalization;
  - Expansion of exports;
  - Expansion of minority business development or women-owned business development;
  - Rural development;
  - Expansion of small business concerns owned and controlled by veterans, especially service-disabled veterans;
  - Enhanced economic competition, including the advancement of technology, plan retooling, conversion to robotics, or competition with imports;

- Changes necessitated by federal budget cutbacks, including defense related industries;
- Business restructuring arising from federally mandated standards or policies affecting the environment or the safety and health of employees;
- Reduction of energy consumption by at least 10 percent;
- Increased use of sustainable design, including designs that reduce the use of greenhouse gas emitting fossil fuels, or low-impact design to produce buildings that reduce the use of non-renewable resources and minimize environmental impact; and
- Plant, equipment and process upgrades of renewable energy sources, such as the small-scale production of energy for individual buildings or communities consumption, commonly known as micropower, or renewable fuels producers, including biodiesel and ethanol producers, or reduction of rates of unemployment in labor surplus areas, as such areas are determined by the Secretary of Labor.

*See generally* 15 U.S.C. § 695.

## **“Microloan” Intermediaries as Defined by the Small Business Act**

Microloans are specifically designed to help women, low-income, veteran and minority entrepreneurs and business owners. They are also designed to assist small business concerns in those areas suffering from a lack of credit due to economic downturns, and to establish welfare-to-work assistance. The SBA administers the Microloan Program through qualified intermediaries<sup>‡</sup> who can provide small-scale loans (typically \$10,000) to startup, newly established or growing small business concerns for working capital or acquisition of materials, supplies or equipment. The SBA can also provide grants that, together with non-federal matching funds, will enable intermediaries to provide intensive marketing, management and technical assistance to microloan borrowers. 15 U.S.C. 636(m), as amended by PL 116-139, April 24, 2020, 134 Stat. 620. Find Microloan Intermediaries in your state [here](#).

## State and Federal Credit Unions

Credit unions are financial institutions that are owned by members of a credit union. A credit union can be a federal credit union in which a cooperative association is organized “for the purpose of promoting thrift among its members and creating a source of credit for provident or productive purposes[.]” 12 U.S.C. § 1752.(1). A credit union can be a state credit union that is “organized and operated according to the laws of any State [ \* \* \* ] which laws provide for the organization of credit unions similar in principle and objectives to Federal credit unions[.]” 12 U.S.C. § 1752.(1).

With these revisions, PPPHCEA seeks to ensure that stimulus actually reaches some of the hardest hit businesses. Only time will reveal whether this added funding will reach those already in line, and those vitally in need.

## **Lenders Are Set to Process Applications on Monday, April 27, But Applicants Who Previously Applied Should Not Apply Again**

While these new lenders are opening their doors to applications Monday, April 27, applicants who have previously applied should bear in mind that the SBA’s interim rule prohibits multiple applications. (See the [Interim Final Rule](#) at page 3 ¶ k.)

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<sup>1</sup> “[I]ntermediary” is broadly defined to include nonprofit entities, community development corporations, certain quasi-governmental economic development agencies, and agencies of or nonprofit entities established by a Native American Government. Such intermediaries must be approved by the SBA to make microloans to small business concerns under Section 7(m). 15 U.S.C. § 636(11), as amended.