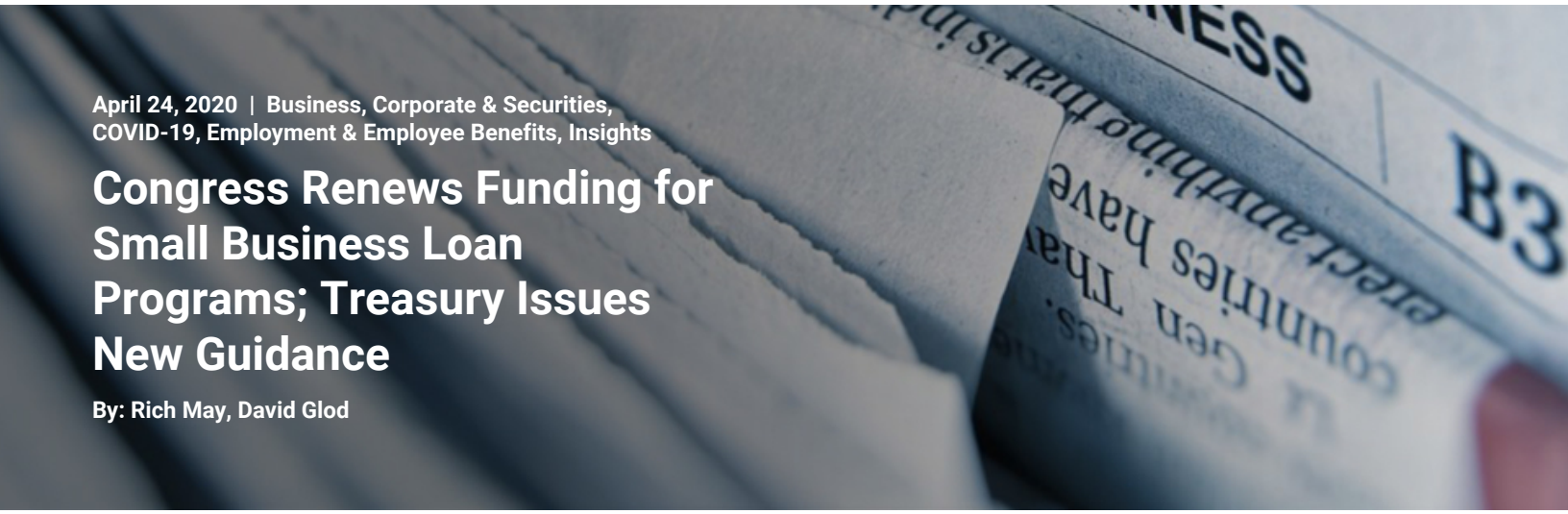

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Congress Renews Funding for Small Business Loan Programs; Treasury Issues New Guidance

By: Rich May, David Glod

Congress has passed a bill appropriating new funding for the small business loan programs that ran out of money last week. Expected to be signed by the President today, the interim legislation will allocate $310 billion to replenish the SBA's Paycheck Protection Program (PPP), and $60 billion for the Economic Injury Disaster Loan (EIDL) program.

Many businesses that had applied for the loans were not approved before the funding dried up. Now lenders should be able to resume processing those applications.

In an effort to make funds more readily available to smaller lenders, which tend to serve smaller businesses, the bill allocates $30 billion in loans for banks and credit unions with $10 to $50 billion in assets and another $30 billion for institutions with less than $10 billion in assets.

Relatedly, and seemingly in response to concerns that well-funded companies had taken disproportionate advantage of the PPP program, the Treasury this week updated its FAQ on the PPP program to address the question: "Do businesses owned by large companies with adequate sources of liquidity to support the business's ongoing operations qualify for a PPP loan?" The Treasury advised that "borrowers should review carefully the required certification that '[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.' Borrowers must make this certification in good faith, taking into account their current business activity and their ability to access other sources of liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business."

While the question focuses on large companies, the answer is broad enough to apply to all borrowers. The guidance states that the SBA may require borrowers to demonstrate the basis for their certification, though it is not clear how the SBA will interpret "access to other sources of liquidity" and "not significantly detrimental to the business." The guidance does give borrowers the option of returning any funds borrowed by May 7, 2020 to avoid such scrutiny.

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