

COVID-19: RENEWED AND UNIQUE OPPORTUNITY FOR FISHING INDUSTRY IN PAYCHECK PROTECTION PROGRAM

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Recent changes in the Paycheck Protection Program (PPP) created by Congress offer additional flexibility for fishing boat owners and their crew members to qualify for PPP loans. The changes came just prior to the 30 June expiration of the program; however, both chambers of Congress have since approved legislation to give loan applicants until 8 August to apply for the aid, and President Trump is expected to sign the bill into law. Fishermen interested in this renewed opportunity for additional PPP flexibility should reach out to any of the authors listed on this alert.

BACKGROUND

The Coronavirus Aid, Relief, and Economic Security Act (“the CARES Act”; Pub. L. 116-136), as amended by the Paycheck Protection Program and Health Care Enhancement Act (Pub. L. 116-139) and the Paycheck Protection Program Flexibility Act of 2020 (Pub. L. 116-142), created a new PPP loan program managed by the Small Business Administration (SBA).

The SBA has provided guidance to program participants through a regularly updated Frequently Asked Questions (FAQs) document and several Interim Final Rules (IFR). On the very date of the program's planned end, 30 June, an IFR was published pertaining to the eligibility of fishing boat owners and their crewmembers to qualify for PPP loans. But on 1 July the U.S. House joined the U.S. Senate in approving a five-week PPP extension that President Trump is expected to sign, thereby providing a renewed opportunity for fishing industry participation. Approximately \$130 billion remains available in the PPP fund.

Specifically, the IFR addresses “payroll costs that may be included on a PPP loan application submitted by certain boat owners or operators that are engaged in catching fish or other forms of aquatic animal life (fishing boat owners) and that have hired one or more crewmembers who are regarded as independent contractors or otherwise self-employed for certain federal tax purposes” This is a very unique situation under the PPP—both the vessel owner and the crew can apply for and receive the loan but only one of these parties can apply for and receive loan forgiveness. There are no other examples of PPP loans wherein both parties qualify. The owner is responsible for coordinating with the crewmember regarding who is going to apply for loan forgiveness. *Importantly, given the uniqueness of the situation, SBA has advised fishing boat owners that they can expect to be subject to a greater level of scrutiny if they apply for loan forgiveness because of concerns about double-dipping.*

The fishing community advocated strongly in Congress and within the Trump administration for these changes. Although the IFR clarifying fishing vessel owners and crewmember eligibility in the PPP was issued late in the

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process, as noted above, both of Congress' two chambers passed an extension to keep the program open to applications until 8 August. Given that President Trump is expected to sign the measure, fishing vessel owners may have a renewed opportunity to participate in the program.

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