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_CORONAVIRUS UPDATE #22

NEW GUIDANCE CLARIFIES PPP LOAN APPLICATION

PPP INFORMATION SHEET FOR LENDERS

[This bulletin supplements our previous bulletins #11 and #16 through #35 on this subject matter. These bulletins are intended to be cumulative so we can avoid repeating the same information.]

New Guidance Clarifies PPP Application and Affiliation Rules

Late on Friday, April 3, 2020, the Small Business Administration issued an interim final rule ([Affiliation IFR](#)) addressing the application of the SBA's affiliation rules to loan applications under the Paycheck Protection Program (PPP). (The Affiliation IFR supplements the general PPP interim final rule issued on April 2, 2020.) In addition to the Affiliation IFR, the SBA issued on April 3 a summary overview of its affiliation rules ([Affiliation Overview](#)).

Together, the Affiliation IFR and Affiliation Overview provide helpful clarification of how the SBA's affiliation rules apply to dealers applying for loans under the PPP.

(1) Affiliation guidance for dealers in the Affiliation IFR. Importantly, the following question and answer appears on page 5 of the Affiliation IFR:

“How do SBA's affiliation rules affect my eligibility and apply to me under the PPP?”

An entity generally is eligible for the PPP if it, combined with its affiliates, is a small business as defined in section 3 of the Small Business Act (15 U.S.C. 632), or (1) has 500 or fewer employees whose principal place of residence is in the United States or is a business that operates in a certain industry and meets applicable SBA employee-based size standards for that industry, and (2) is a tax-exempt nonprofit organization described in section 501(c)(3) of the Internal Revenue Code (IRC), a tax-exempt veterans organization described in section 501(c)(19) of the IRC, a Tribal business concern described in section 31(b)(2)(C) of the Small Business Act, or any other business concern. (Emphasis added.)

With the removal of the non-highlighted language (which is unrelated to business concerns with no more than 500 employees), the Affiliation IFR provides the following important guidance for dealers: ***“An entity generally is eligible for the PPP if it, combined with its affiliates, . . . (1) has 500 or fewer employees whose principal place of residence is in the United States . . . and (2) is . . . any other business concern.”***



In addition to the foregoing, footnote 1 of the Affiliation IFR directly states that (1) the PPP provisions of the CARES Act “waive the [SBA] affiliation rules for . . . any business concern operating as a franchise that is assigned a franchise identifier code by the [SBA]” and that those statutory waivers “remain in full force and effect.” Footnote 1 concludes by stating that “[a]s a result, the [SBA] affiliation rules . . . do not apply to” a business concern operating as a franchise that has been issued a franchise identifier code (FIC).

(2) Affiliation guidance for dealers in the Affiliation Overview. Consistent with the Affiliation IFR, the Affiliation Overview includes the following language:

“Waiver. The affiliation rules described above are waived for (1) any business concern with not more than 500 employees that, as of the date on which the loan is disbursed, is assigned a North American Industry Classification System code beginning with 72; (2) any business concern operating as a franchise that is assigned a franchise identifier code by the SBA; and (3) any business concern that receives financial assistance from a company licensed under section 301 of the Small Business Investment Act of 1958 (15 U.S.C. 681).” (Emphasis added.)

With the removal of the non-highlighted language (which is unrelated to business concerns with no more than 500 employees), the Affiliation Overview provides the following guidance for dealers: **“Waiver. The affiliation rules . . . are waived for . . . any business concern operating as a franchise that is assigned a franchise identifier code by the SBA.”**

Taken together, the Affiliation IFR and the Affiliation Overview provide important clarity for both dealers and lenders. The Affiliation IFR provides an unequivocal regulatory standard that any business concern (not just small business concerns) with no more than 500 employees, as a threshold test, is eligible to apply for a PPP loan. Moreover, the Affiliation IFR and the accompanying Affiliation Overview both expressly state that the affiliation rules that apply to small business concerns under existing SBA rules are waived for any business concern (not just small business concerns) operating as a franchise that is assigned an FIC by the SBA. Thus, any dealer with fewer than 500 employees will be eligible to apply for a PPP loan. Moreover, dealers operating business concerns with FICs will not have to apply the affiliation rules to those business concerns. However, dealers without FICs, while clearly eligible to apply for a PPP loan, will still be subject to the SBA affiliation rules. (A list of the franchises that, as of the date stated, have been issued FICs by the SBA and those that have FIC applications pending with the SBA can be found [here](#).)

Paycheck Protection Program (PPP) Information Sheet for Lenders

Just so you know exactly what the SBA is telling the lenders so you can be sure the actual SBA info is consistent with what the lenders may be telling you, please see the following information on PPP from the SBA to lenders.

Who is eligible to lend? All existing SBA-certified lenders will be given delegated authority to speedily process PPP loans. All federally insured depository institutions,



federally insured credit unions, and Farm Credit System institutions are eligible to participate in this program. A broad set of additional lenders can begin making loans as soon as they are approved and enrolled in the program. New lenders will need to submit their application to DelegatedAuthority@sba.gov to apply with the SBA.

Are these loans guaranteed by the SBA? Yes, the SBA guarantees 100% of the outstanding balance, and that guarantee is backed by the full faith and credit of the United States.

Are there guarantee fees? The SBA waives all SBA guaranty fees, including the upfront and annual servicing fees.

What underwriting is required? You will need to verify that a borrower was in operation on February 15, 2020. You will need to verify that a borrower had employees for whom the borrower paid salaries and payroll taxes. You will need to verify the dollar amount of average monthly payroll costs. You will need to follow applicable Bank Secrecy Act requirements.

How will lenders be compensated? Lenders may NOT collect any fees from the applicant. Processing fees will be based on the balance of the financing outstanding at the time of final disbursement:

- Loans \$350,000 and under: 5.00%
- Loans greater than \$350,000 to \$2 million: 3.00%
- Loans greater than \$2 million: 1.00%

Who can be an agent? An agent is an authorized representative and can be:

- An attorney;
- An accountant;
- A consultant;
- Someone who prepares an applicant's application for financial assistance and is employed and compensated by the applicant;
- Someone who assists a lender with originating, disbursing, servicing, liquidating, or litigating SBA loans;
- A loan broker; or
- Any other individual or entity representing an applicant by conducting business with the SBA.

How will agents be compensated? Agent fees will be paid out of lender fees. The lender will pay the agent. Agents may NOT collect any fees from the applicant.

- Loans \$350,000 and under: 1.00%
- Loans greater than \$350,000 to \$2 million: 0.50%
- Loans greater than \$2 million: 0.25%

Can these loans be sold in the secondary market? PPP loans can be sold in the secondary market. The SBA will not collect any fee for any guarantee sold into the secondary market.