

New Interim Final Rule Answers Some Questions Concerning the Paycheck Protection Program

Description

On April 28, 2020, the U.S. Small Business Administration released a supplemental Interim Final Rule that answered some of the questions being asked by many Paycheck Protection Program (PPP) loan applicants and stakeholders. Further guidance on the loan program is anticipated, but this interim rule adds some additional clarity to the program's parameters.

One important question that the Rule answers is whether hedge funds and private equity firms are eligible to receive PPP loans. The Rule states that they are not. The SBA reasoned that “[h]edge funds and private equity firms are primarily engaged in investment or speculation,” and the SBA did “not believe that Congress intended for these types of businesses, which are generally ineligible for section 7(a) loans under existing SBA regulations, to obtain PPP financing.”

The Rule went on to say that portfolio companies of a private equity firm must adhere to the affiliation rules that had previously been issued by the SBA. The Rule, however, added the stern warning that, in addition to applying the affiliation rules, which might make an entity ineligible to receive a loan, “all borrowers should carefully review the required certification on the Paycheck Protection Program Borrower Application Form (SBA Form 2483) stating that ‘[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.’” Additional information concerning the SBA’s guidance on this good faith certification can be found [here](#). Although, SBA’s position may not be fully apparent, what is clear is that the SBA is attempting to limit the number of applicants and conserve a limited pool of resources that is quickly diminishing.

The supplemental Rule goes on to provide further guidance for hospitals. The Rule states that a hospital that is otherwise eligible to receive a PPP loan as a business concern or nonprofit organization will still be eligible for a PPP loan even if it is owned by a state or local government if the hospital receives less than 50% of its funding from state or local government sources, exclusive of Medicaid.

In answering a question regarding applicants that receive gaming revenue, the Rule says that if the revenue is from legal gaming, the applicant will not be rendered ineligible to receive a PPP loan. However, businesses that received illegal gaming revenue are “categorically ineligible”.

Finally, the Rule confirms that applicants that are currently in bankruptcy are ineligible to participate in the program. This rule applies “[i]f the applicant or the owner of the applicant is the debtor in a bankruptcy proceeding, either at the time it submits the application or at any time before the loan is disbursed.” Further, the Rule makes clear that if the applicant or its owner becomes the debtor in a bankruptcy proceeding after applying for a PPP loan but before the loan is disbursed, it is the applicant’s obligation to notify the lender and request cancellation of the application. If an applicant fails to do so, the loan proceeds will be deemed used for unauthorized purposes.

Partridge Snow & Hahn’s [Business Law Group](#) is ready to answer questions regarding the PPP loan application process. The contents of this advisory are based on SBA guidance available as of May 5, 2020.

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