

U.S. Small Business Administration (SBA) Issues Supplemental Interim Final Rule For Affiliation Rules Applicable To Paycheck Protection Program (PPP) Loans

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After a rocky start for many on the first day that SBA lenders were able to accept PPP loan applications, on Friday evening, April 3, 2020, the SBA issued its supplemental Interim Final Rule providing guidance to desirous PPP applicants whose affiliate relationships left them wondering whether they qualify to apply for and receive a highly popular and advantageous PPP loan. The link to the supplemental Interim Final Rule on affiliation rules can be [found here](#).

Some Key Observations from the Supplemental Interim Final Rule on the PPP Affiliation Rules:

Applicants for a PPP loan are generally subject to the affiliation rules contained in 13 CFR 121.301. Treasury's overview of the affiliation rules applicable to PPP loans dated April 3, 2020 ([linked here](#)) provides that affiliation found under any of the following four circumstances is sufficient to establish affiliation for applicants for purposes of determining whether the subject applicant qualifies for a PPP loan (most significantly, the "500 employees or below" requirement) (these four categories are set forth in 13 CFR 121.301(1)-(4) [linked here](#)):

- (i) Affiliation based on ownership.
- (ii) Affiliation arising under stock options, convertible securities, and agreements to merge.
- (iii) Affiliation based on management.
- (iv) Affiliation based on identity of interest.

A significant portion of the discussion in the supplemental Interim Final Rule was aimed at nonprofit and veterans organizations (which were previously not permitted to secure SBA loans) and, in most cases, the affiliation rules apply to nonprofits and veterans organizations the same as they do to business concerns. Notably, however, significant discussion is included explaining why the SBA affiliation rules "do not apply to the relationship of any church, convention or association of churches, or other faith-based organization or entity to any person, group, organization, or entity that is based on a sincere religious teaching or belief or otherwise constitutes a part of the exercise of religion."

The supplemental Interim Final Rule confirmed that – in most cases – a borrower will be considered together with its affiliates for purposes of determining eligibility for the PPP (however, the supplemental Interim Final Rule has no effect on the statutory waivers included in the CARES Act for (1) any business concern with not more than 500 employees which has an NAICS code beginning with a 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)).

Like the previously-issued PPP Interim Final Rule, the supplemental Interim Final Rule outlining the applicable affiliation rules is immediately effective, notwithstanding the usual 30 day notice and comment period, and any comments received during the 30 day period after the supplemental Interim Final Rule is published in the Federal Register will be considered in future potential revisions.

For a better understanding of how the SBA affiliation rules may specifically impact your business or organization, please review the resources linked herein and consult with your legal and tax advisors if needed.

As a concluding note, for those interested, the PPP Borrower Application (updated 4-2-20) can be [viewed here](#).

