

COVID-19 NEWS OF INTEREST

SBA Places \$20 Million Cap on PE Funds and Other “Corporate Groups” Seeking PPP Loans

May 1, 2020

AUTHORS

David Mortlock | Neil Townsend | Bruce C. Herzog | Jeffrey R. Poss
Matthew J. Rizzo | John Joy | Ahmad El-Gamal

On April 30, 2020, the Small Business Administration (“SBA”) issued an [interim final rule](#) limiting the aggregate amount of loans that a corporate group may receive under the Paycheck Protection Program (“PPP”) to \$20 million.

Congress has recently voted for, and the president has approved, an additional \$320 billion in funding for the PPP. The funding from the first run of the PPP ran out quickly and the program was subject to broad criticism due to public perception that loans were made to large corporate entities to the detriment of small businesses.

The SBA has already issued additional guidance limiting the access of private equity firms and hedge funds to PPP loans, and instructing otherwise eligible businesses to consider whether the PPP loans they received were necessary to maintain their ongoing operations. The SBA has been continually issuing interim final rules and FAQs clarifying and changing the scope of the PPP, including this most recent rule.

1. Cap on the Aggregate Amount of PPP Loans that Corporate Groups May Receive

In response to the overwhelming demand and speed at which the PPP ran out of funding in its initial run, the SBA has stated that:

- A single corporate group cannot receive more than \$20 million of PPP loans in the aggregate.
- Businesses are considered to be part of a single corporate group if they are majority owned, directly or indirectly, by a common parent.

SBA Places \$20 Million Cap on PE Funds and Other “Corporate Groups” Seeking PPP Loans

- The limit applies only to PPP loans that have not been fully disbursed as of April 30, 2020.
 - The limit applies regardless of whether the applicant is subject to a waiver of the SBA’s affiliation rules for purposes of judging eligibility for a PPP loan.

Therefore, applicants that are part of corporate groups that have received in the aggregate over \$20 million in PPP loans prior to April 30th will not be required to return those funds. However, companies that have not already received a PPP loan and are part of corporate groups that have aggregately received \$20 million or more in PPP loans will not be permitted to receive a loan due to this interim final rule.

The text of the rule leaves open a number of questions with respect to determining the “single corporate groups” and “common parents” in a private equity fund complex. Interpretations could range from including all companies in which any fund or group of funds controlled by the same general partner holds, in the aggregate, more than half of the equity (the common parent in this version being the general partner and group of funds), to including only the holding company or investment vehicle in which a private equity fund has invested and the group of portfolio companies owned and governed by that same holding company and its Board of Directors or similar governing body (the common parent in this version being only the holding company for each portfolio company or group of portfolio companies). The impact of the rule is significantly greater if the former interpretation is intended. It is possible that the SBA will issue further guidance in the future clarifying this rule.

2. Additional Concerns

The interim final rule also provided guidance for non-bank and non-insured depository institution lenders, clarifying that they are, subject to certain conditions, eligible to participate in the PPP. This addition is likely aimed at increasing the number of potential lenders in order to prevent a situation in which certain lenders are overwhelmed with applications leading to delays and small businesses being unable to get the funds they need as was the case during the first round of PPP funding.

As the SBA continues to provide guidance on, and additional rules for, the PPP, it is essential that businesses stay up to date and ensure that their PPP applications and loans are in compliance with the latest guidance. Treasury Secretary Steven Mnuchin commented on Tuesday April 28th that PPP loans greater than \$2 million will be audited, suggesting that businesses seeking PPP loans should carefully determine their eligibility before applying. Furthermore, members of Congress have stated that they will also be closely monitoring the loans being made under the PPP.

SBA Places \$20 Million Cap on PE Funds and Other “Corporate Groups” Seeking PPP Loans

Willkie has multidisciplinary teams working with clients to address coronavirus-related matters, including, for example, contractual analysis, litigation, restructuring, financing, employee benefits, SEC and other corporate-related matters, and CFTC and bank regulation. Please click [here](#) to access our publications addressing issues raised by the coronavirus. For advice regarding the coronavirus, please do not hesitate to reach out to your primary Willkie contacts.

If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

David Mortlock

202 303 1136

dmortlock@willkie.com

Neil W. Townsend

212 728 8272

ntownsend@willkie.com

Bruce C. Herzog

713 510 1717

bherzog@willkie.com

Jeffrey R. Poss

212 728 8536

jposs@willkie.com

Matthew J. Rizzo

212 728 8454

mrizzo@willkie.com

John Joy

212 728 8713

jjoy@willkie.com

Ahmad El-Gamal

202 303 1142

ael-gamal@willkie.com

Copyright © 2020 Willkie Farr & Gallagher LLP.

This alert is provided by Willkie Farr & Gallagher LLP and its affiliates for educational and informational purposes only and is not intended and should not be construed as legal advice. This alert may be considered advertising under applicable state laws.

Willkie Farr & Gallagher LLP is an international law firm with offices in New York, Washington, Houston, Palo Alto, San Francisco, Chicago, Paris, London, Frankfurt, Brussels, Milan and Rome. The firm is headquartered at 787 Seventh Avenue, New York, NY 10019-6099. Our telephone number is (212) 728-8000 and our fax number is (212) 728-8111. Our website is located at www.willkie.com.