

Publications

SBA Releases Fourth Interim Final Rule Clarifying PPP Eligibility for Private Equity Firms and Hedge Funds

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CLIENT ALERT | 4.27.2020

On April 24, 2020, the Small Business Administration (SBA) released its fourth Interim Final Rule titled “Business Loan Program Temporary Changes: Paycheck Protection Program – Requirements – Promissory Notes, Authorizations, Affiliation, and Eligibility” (Rule 4) providing additional guidance regarding the Paycheck Protection Program (PPP). Among other items, this guidance clarified questions surrounding the relationship between private equity (PE) firms and the PPP, a relationship we have addressed in a prior client alert.

In Rule 4, the SBA explicitly states that hedge funds and PE firms are not eligible to receive PPP loans. Rule 4 notes that the SBA and the Treasury do not believe that Congress intended for these businesses to obtain PPP financing, since businesses, like these, primarily engaged in investment or speculation are generally ineligible to receive SBA 7(a) loans.

While hedge funds and PE firms are ineligible for PPP loans, Rule 4 further provides that a portfolio company of a PE fund may be eligible for a PPP loan but reiterates that such businesses must meet the general requirements for PPP loans, and further specifically highlights two requirements. First, the business must be eligible for a PPP loan after applying the affiliation rules in the same manner as any other business subject to outside ownership or control. These affiliation rules are discussed in the prior Vorys client alert linked above. Second, the business must be able to certify that “current economic uncertainty makes [the PPP loan] necessary to support the ongoing operations” of the business. The SBA has recently offered additional guidance that clarifies their interpretation of this certification, which we have addressed in a recent client alert.

While the \$349 billion allocated for the PPP to aid small businesses was depleted within weeks, on April 23, Congress allocated an additional \$310 billion to PPP funding. If you have any questions about this recent guidance or about how a PPP loan may help your business, please contact Jeff Fickes, Christopher DePizzo, or your Vorys attorney today.

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VORYS COVID-19 TASK FORCE

Vorys has established a comprehensive COVID-19 Task Force, which includes attorneys with deep experience in the niche disciplines that we have been and expect to continue receiving questions regarding coronavirus. Learn more and see the latest updates from the task force at vorys.com/coronavirus.

