

April 6, 2020

UPDATE:
CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT
PAYCHECK PROTECTION PROGRAM

Over the weekend, the Small Business Administration (the “Administration”) published a Second Interim Final Rule to provide guidance in applying the affiliation rules under the Small Business Act (the “SBA”) to certain borrowers under the Paycheck Protection Program (the “Program”) set forth in the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”). The Second Interim Final Rule is effective immediately, although the Administration will consider any comments received to the Second Interim Final Rule following its publication.

The Second Interim Final Rule confirms that, subject to the existing exceptions set forth in the CARES Act, a borrower will be considered together with its affiliates (as defined by SBA rules) for purposes of determining eligibility under the Program. Under the SBA affiliation rules, entities may be considered affiliates based on factors including stock ownership, overlapping management, and identity of interest.

The Second Interim Final Rule also exempts otherwise qualified faith-based organizations from the SBA’s affiliation rules, where the application of the SBA affiliation rules “would substantially burden those organizations’ religious exercise.” This is the only additional exception to the SBA affiliation rules created by the Second Interim Final Rule.

Except as modified by the Interim Final Rule, the Second Interim Final Rule, or subsequent guidance provided by the Administration or the Secretary of the Treasury, the provisions of the CARES Act set forth in our Client Notice on the subject dated March 27, 2020 continue to apply to Covered Loans and the Program. The full text of the Second Interim Final Rule can be found at <https://home.treasury.gov/system/files/136/SBA%20IFR%202.pdf>.

The foregoing legislative update is designed to be accurate and authoritative but is not intended to provide and should not be construed as providing legal advice or as creating any attorney-client relationship with the author or Parr Brown Gee & Loveless, P.C. For legal advice regarding the Coronavirus Aid, Relief, and Economic Security Act, you should consult with your legal counsel.