

Key Considerations for Real Estate Entities on PPP Loan Ineligibility

May 4, 2020

The rush to submit a Paycheck Protection Program (PPP) application has raised concerns as many ineligible companies have been “outed” for improperly accepting PPP funds. As you may recall from our [Anchin Alert sent on April 6, 2020](#), the SBA issued interim rules clarifying the qualifications for businesses that are eligible for PPP loans.

If a business applies for and receives a PPP loan that they are ineligible for, they will be subject to civil or criminal penalties. On April 23rd, the SBA and the treasury stated that if a borrower made a false certification and returns the funds by May 7th, the government will not take any action against the borrower. Many believe that May 7th is a catch-all date to return funds for any reason, including ineligibility, to avoid the government from assessing any penalties, although this has not been stated by the government and therefore we suggest you consult your attorney.

The SBA made reference to Chapter 2, Subpart B of SOP 50 10, to determine an entity’s eligibility. This SOP states that the following entities are **not eligible** for a loan under the Paycheck Protection Program (PPP):

- Passive businesses owned by developers and landlords that do not actively use or occupy the assets acquired or improved with the loan proceeds.
- Businesses primarily engaged in subdividing real property into lots and developing it for resale on its own account
- Businesses that are primarily engaged in owning or purchasing real estate and leasing it for any purpose are not eligible. For example, shopping centers, salon suites, and similar business models that generate income by renting space to accommodate independent businesses that provide services directly to the public are not eligible.
- Business that lease land for the installation of a cell phone tower, solar panels, billboards or wind turbines also are not eligible. However, the

business operating the cell phone tower, solar panel, billboard or wind turbine is eligible.

- Businesses that have entered into management agreement with a third party that gives the management company sole discretion to manage the operations of the business, with no involvement by the owner(s) of the Applicant business, are not eligible.
- Apartment buildings and mobile home parks are not eligible
- Residential facilities that do not provide healthcare and/or medical services are not eligible
- The limited circumstances under which certain businesses engaged in renting or leasing may be eligible are as follows:
 - Hotels, motels, recreational vehicle parks, marinas, campgrounds or similar types of businesses are eligible if more than 50% of the business's revenue for the prior year is derived from transients who stay for 30 days or less at a time and the business complies with all zoning and other legal requirements.
 - Businesses that are licensed as nursing homes or assisted living facilities and provide healthcare and/or medical services are eligible.
 - Business that are engaged in leasing equipment, household goods or other items are eligible.
 - Businesses such as barber shops, hair salons, nail salons and similar types of personal services businesses are eligible, regardless of whether they have employees or contract with individuals to provide the services.

We recommend that you consult with your trusted professionals to best determine your entitlement to the loan.

Please reach out to your Anchin Relationship Partner or a member of our Real Estate Group so that we can personally address your questions and concerns. You can also contact our Anchin COVID-19 Resource Team at COVID19@anchin.com.

Disclaimer: Please note this is based on the information that is currently available and is subject to change.