

## **Franchise, Restaurant and Hotel Owners Receive Guidance on Paycheck Protection Program**

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### Background

The Paycheck Protection Program (PPP) was established on March 27, 2020 as part of the enacted Coronavirus Aid, Relief, and Economic Security (CARES) Act. The Program will provide much-needed relief to millions of small businesses so they can sustain their businesses and keep their workers employed by securing the capital they need. Businesses are able to apply for the new financing with the banks and have the loan administered by the Small Business Administration (SBA).

Eligible businesses may receive a loan up to \$10 million, subject to certain restrictions including business limited to 500 employees and affiliation rules. Today, the U.S. Department of the Treasury provided the following additional guidance on the loan cap and the affiliation rules to business owners who own multiple franchise locations, restaurants and/or hotels.

**Question:** How do the \$10 million cap and affiliation rules work for franchises?

**Answer:** If a franchise brand is listed on the SBA Franchise Directory, each of its franchisees that meets the applicable size standard can apply for a PPP loan. (The franchisor does not apply on behalf of its franchisees.) The \$10 million cap on PPP loans is a limit per franchisee entity, and each franchisee is limited to one PPP loan.

Franchise brands that have been denied listing on the Directory because of affiliation between franchisor and franchisee may request listing to receive PPP loans. SBA will not apply affiliation rules to a franchise brand requesting listing on the Directory to participate in the PPP, but SBA will confirm that the brand is otherwise eligible for listing on the Directory.

**Question:** How does the \$10 million cap and affiliation rules work for hotels and restaurants (and any business assigned a North American Industry Classification System (NAICS) code beginning with 72)?

**Answer:** Under the CARES Act, any single business entity that is assigned a NAICS code beginning with 72 (including hotels and restaurants) and that employs not more than 500 employees per physical location is eligible to receive a PPP loan.

In addition, SBA's affiliation rules (13 CFR 121.103 and 13 CFR 121.301) do not apply to any business entity that is assigned a NAICS code beginning with 72 and that employs not more than a total of 500 employees. As a result, if each hotel or restaurant location owned by a parent business is a separate legal business entity, each hotel or restaurant location that employs not more than 500 employees is permitted to apply for a separate PPP loan provided it uses its unique EIN.

The \$10 million maximum loan amount limitation applies to each eligible business entity, because individual business entities cannot apply for more than one loan. The following examples illustrate how these principles apply.

## Practical Examples

**Example 1.** Company X directly owns multiple restaurants and has no affiliates.

- Company X may apply for a PPP loan if it employs 500 or fewer employees per location (including at its headquarters), even if the total number of employees employed across all locations is over 500.

**Example 2.** Company X wholly owns Company Y and Company Z (as a result, Companies X, Y, and Z are all affiliates of one another). Company Y and Company Z each own a single restaurant with 500 or fewer employees.

- Company Y and Company Z can each apply for a separate PPP loan, because each has 500 or fewer employees. The affiliation rules do not apply, because Company Y and Company Z each has 500 or fewer employees and is in the food services business (with a NAICS code beginning with 72).

**Example 3.** Company X wholly owns Company Y and Company Z (as a result, Companies X, Y, and Z are all affiliates of one another). Company Y owns a restaurant with 400 employees. Company Z is a construction company with 400 employees.

- Company Y is eligible for a PPP loan because it has 500 or fewer employees. The affiliation rules do not apply to Company Y, because it has 500 or fewer employees and is in the food services business (with a NAICS code beginning with 72).
- The waiver of the affiliation rules does not apply to Company Z, because Company Z is in the construction industry. Under SBA’s affiliation rules, 13 CFR 121.301(f)(1) and (3), Company Y and Company Z are affiliates of one another because they are under the common control of Company X, which wholly owns both companies. This means that the size of Company Z is determined by adding its employees to those of Companies X and Y. Therefore, Company Z is deemed to have more than 500 employees, together with its affiliates. However, Company Z may be eligible to receive a PPP loan as a small business concern if it, together with Companies X and Y, meets SBA’s other applicable size standards”.

The [Dopkins SBA Loan Specialists](#) are ready to assist business owners and their companies in accumulating the specific financial information required to complete an application in order to borrow up to \$10 million. Under the PPP, businesses will receive favorable program terms such as loan forgiveness, a fixed interest rate of 1.0%, no personal guarantees, no pledged collateral and deferral of loan payments for 6 months.

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