Benesch COVID-19 Resource Center: SBA Affiliation Rules May Complicate CARES Act Paycheck Protection Program Loan Eligibility for Certain Physicians and Group Practices

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As many health care providers consider applying for CARES Act Paycheck Protection Program (PPP) loans under SBA Section 7(a), we would like these providers to be mindful of SBA's "affiliation rules." These rules may require borrowers, in certain circumstances, to aggregate their employee count with the employee count of their joint venture partner (or a joint venture partner's parent company(ies)) to determine a borrower's eligibility for PPP loans (e.g., the simplest test is that a borrower must have 500 or less employees).

More particularly, a question has arisen whether a physician or group practice applying for PPP loans under SBA Section 7(a), and which has one or more direct or indirect joint venture interests (e.g., joint ventures with dialysis organizations, surgery center companies or health systems, among others) may be required to aggregate all of a joint venture's (and possibly its joint venture partner's direct or indirect employees) for purposes of determining PPP loan eligibility. The rules regarding this issue are complicated and evolving due to the speed with which legislation has passed and guidance is being issued. We are aware that congressional lobbying efforts are under way in an effort to remove the affiliation rules for PPP loans. Benesch attorneys are tracking this potential issue and will follow up as additional guidance becomes available. In the meantime, it is important to understand the facts and circumstances related to each joint venture arrangement to evaluate whether this issue may apply.

Borrowers should be aware of these rules and appropriately disclose their relationships and affiliations in the SBA loan application. To guard against the business risk of PPP loan ineligibility, however, many providers are also attempting to increase capacity under existing lines of credit, apply for Emergency Injury Disaster loans (EIDL) and are working with their advisors to take advantage of tax relief offered under the CARES Act and CMS's expansion of the Accelerated and Advance Payments Program.

Please reach out to one of the authors below if you have questions about the information contained in this Client Alert.

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Please note that this information is current as of the date of this Client Alert, based on the available data. However, because COVID-19’s status and updates related to the same are ongoing, we recommend real-time review of guidance distributed by the CDC and local officials.