

UPDATE: Condo and Coop Eligibility for PPP Loans

On April 2, we advised that condo and coop boards would likely be eligible for Paycheck Protection Program (PPP) loans based upon the language of the Coronavirus Aid, Relief and Economic Security Act (CARES Act). Later in the day on April 2, the Small Business Administration (SBA) issued an Interim Final Rule regarding, in part, eligibility for PPP loans, which seems to close the door on condos and coops. The Interim Final Rule sets forth eligibility requirements and states that “[b]usinesses that are not eligible for PPP loans are identified in 13 CFR 120.110 and described further in SBA’s Standard Operating Procedure (SOP) 50 10, Subpart B, Chapter 2.” Included in the SOP chapter is a list of ineligible types of businesses, including, in relevant part, (1) “[p]assive businesses owned by developers and landlords that do not actively use or occupy the assets acquired or improved with the loan proceeds . . .,” and (2) “[a]partment buildings.” The rule does not squarely address the unique characteristics of a condo or coop, but it certainly paints a grim picture for their eligibility. Clarification from the SBA is necessary to provide certainty for condos and coops.

The Interim Final Rule has an immediate effective date, without the opportunity for notice and comment as typically is required by the Administrative Procedure Act. The Interim Final Rule solicits comments and states that the SBA will consider these comments and will consider revisions as a result thereof. Therefore, we expect further clarification in a subsequent amendment.

However, because of the sense of urgency and limit on available funds, condo and coop boards need real-time advice on whether to apply for these coveted PPP loans. Most management companies are deferring to counsel to advise boards on whether to apply. At first glance, practicality would dictate that condos and coops should apply and if they are rejected, so be it — no harm, no foul. However, the application form, as revised on April 2, includes a certification that states:

The Applicant is eligible to receive a loan under the rules in effect at the time this application is submitted that have been issued by the Small Business Administration (SBA) implementing the Paycheck Protection Program under Division A, Title I of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (the Paycheck Protection Program Rule).

Can a board certify that as true given that the board may be considered a passive real estate business or apartment building by SBA? What is the harm in doing so?

The loan application form continues with a warning that knowingly making a false statement to obtain a guaranteed loan from SBA is punishable under the law, including by imprisonment of not more than five years and/or a fine of up to \$250,000; by imprisonment of not more than two years and/or a fine of not more than \$5,000; and, if submitted to a federally insured institution, by imprisonment of not more than 30 years and/or a fine of not more than \$1,000,000.

Given these uncertainties and risk, potential condo and coop board loan applicants should consider waiting to see what added clarification comes from the SBA before submitting an application and certifying as to a condo or coop’s eligibility.



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