

CORONAVIRUS INFORMATION & UPDATES

March 22, 2020

SBA Loan Implications For Portfolio Companies

On Sunday afternoon, March 22, 2020, the Senate failed to pass a key procedural vote required to advance the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), commonly referred to as Phase 3 of the federal government's response to the coronavirus outbreak. As of Sunday evening, Senate Republicans were still working with Democratic leaders and the White House to reach a deal.

The proposed CARES Act is expected to, among other things, expand the Small Business Administration's (SBA) loan program to any business with 500 employees or fewer. However, in calculating the 500 employee threshold, the SBA generally includes all employees of affiliated entities (for example, in general, the number of employees in any private equity fund's portfolio company would be calculated by including employees in all other portfolio companies of such private equity fund).

An updated Senate Bill would waive the requirement to include employees of affiliates for purposes of determining eligibility in the SBA loan program only in the following sectors:

- Business concerns that are assigned a North American Industry Classification System Code beginning with 72, which includes establishments that provide customers with lodging and/or meals, snacks, and beverages for immediate consumption
- Franchises assigned an identifier code by the SBA
- Business concerns that receive financial assistance from a Small Business Investment Company

Lodging and meals businesses with more than one physical location and 500 or less employees at each physical location would be eligible to participate in the SBA loan program.

In addition, the updated Senate Bill would waive the collateral and personal guarantee requirements of the SBA loan program.

While the waivers described above may allow business controlled by private equity funds to access the SBA loan program in those targeted sectors, without further amendment to the CARES Act, the affiliate aggregation requirement would preclude most businesses controlled by private equity funds from participating in the SBA loan program.