

April 2, 2020

Jovita Carranza
Administrator
U.S. Small Business Administration
409 3rd Street, S.W.
Washington, DC 20416

Dear Administrator Carranza,

On behalf of our nearly 5,000 member hospitals, health systems and other health care organizations, our clinical partners – including more than 270,000 affiliated physicians, 2 million nurses and other caregivers – and the 43,000 health care leaders who belong to our professional membership groups, the American Hospital Association (AHA) urges you to ensure that small- and mid-size hospitals are allowed to apply for and receive loans under the newly-authorized Small Business Administration (SBA) Paycheck Protection Program (PPP). Specifically, we ask that you (1) issue guidance stating that small- and mid-size hospitals and related health care providers are eligible to apply for and receive PPP loans and are not subject to affiliation requirements, or (2) issue regulations waiving affiliation requirements, as set forth in 13 C.F.R. § 121.103, with respect to eligibility for entities assigned a North American Industry Classification System (NAICS) code beginning with 622, to ensure that such small- and mid-size hospitals and health care providers are eligible to apply for and receive PPP loans.

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security (CARES) Act became law. In addition to other relief, the CARES Act amends the Small Business Act, 15 U.S.C. § 636(a), to create the PPP, which expands eligibility for and provides \$349 billion to fund special new loans, loan forgiveness and other relief to small businesses affected by the COVID-19 crisis. The PPP infuses capital into the private sector on attractive terms, eases qualification requirements and significantly expands the number of businesses eligible to receive loans.

Generally, to be eligible for an SBA business loan, such as a PPP loan, an applicant must be “small” under the size requirements set forth in SBA’s regulations at 13 C.F.R. § 121.301, including affiliates. Under the SBA’s affiliation rules, as set forth in 13 C.F.R. § 121.103, the SBA will aggregate a business concern and all affiliated companies to calculate size under the size standards. The CARES Act expands eligibility to receive a PPP loan beyond small business concerns to include other businesses, certain



nonprofits, veterans' organizations and tribal concerns that employ not more than 500 employees. Business concerns with more than 500 employees are eligible for PPP loans if the covered industry's SBA size standard allows more than 500 employees. The CARES Act includes an explicit waiver of the affiliation rules under 13 C.F.R. § 121.103 with respect to eligibility for a PPP loan for (1) any business concern with not more than 500 employees that, as of the date the PPP loan is disbursed, operates in the accommodation and food service industry; (2) any business concern operating as a franchise and assigned an SBA franchise identifier code; and (3) any business concern that receives financial assistance from a licensed Small Business Investment Company (SBIC).

Without further interpretative guidance, the SBA's affiliation rules therefore may be read to render many hospitals on the frontlines fighting the coronavirus pandemic ineligible to apply for and receive PPP loans. Many small- and mid-size hospitals operate as part of a larger health system, participate in joint ventures between rural hospitals and for-profit health care systems, are managed by larger health systems, or operate under control of a joint operating company with a common board for multiple separately owned facilities. Through these arrangements the hospitals are able to maximize efficiencies, improve economies of scale, improve access to care in the community, and share management services. Because the CARES Act affiliation waiver does not explicitly extend to hospitals, those small- and mid-size hospitals straining to protect the public health and respond to this national emergency may be subject to the 500-employee size standard, including affiliates. Because of the institutional relationships, partnerships, joint venture and other arrangements between hospitals and hospital systems, many hospitals could therefore be deemed "affiliates" of another hospital and/or health system and, thus, exceed the 500 employee size standard for PPP loan eligibility.

AHA appreciates the support provided to hospitals through the CARES Act, yet the need is huge. There is no indication yet as to how quickly funds will be available through the Department of Health and Human Services. Loans under the PPP may be available more rapidly. Small hospitals in particular are in immediate need of financial assistance to sustain their operations in the fight against COVID-19. Many of these smaller hospitals are the only option to residents for inpatient care in rural areas and small towns within several miles.

We ask that you issue guidance as soon as possible stating that the existing SBA size and affiliation rules will not be interpreted to apply to or encompass any potential affiliation between an applicant hospital and larger health systems or with joint ventures between, for example, rural hospitals such as critical access and sole community hospitals and for-profit health care systems, or due to a management agreement or joint operating agreement. Alternatively we ask that the SBA issue regulations amending the SBA's current regulations to waive the size standard affiliation rules for hospitals seeking PPP loans; by congressional mandate, the SBA is required to issue regulations to carry out Title I of the CARES Act, including the PPP, on or before April 11, 2020. We

request that, in determining PPP loan eligibility under the 500 employee size standard, hospitals be considered individually and without regard to any partnership with a larger health system or participation in a joint venture, management agreement or joint operating agreement so that individual hospitals with no more than 500 employees are eligible to receive PPP loans.

Specifically, we propose SBA adopt one of the following:

1. Issue guidance that provides the SBA affiliation rules shall be interpreted so as not to result in affiliation between an applicant hospital and larger health systems or with joint ventures between, for example, rural hospitals and for-profit health care systems, or due to a management agreement, or joint operating agreement; or
2. Issue a regulation amending 13 C.F.R. § 121.103(b) to add after subparagraph (9), a new subparagraph (10) stating “hospitals that are assigned a NAICS code beginning with 622 are evaluated for size standard eligibility on an individual basis and are not affiliates of any hospital or health systems in which they may participate or with which they may form joint ventures”; or
3. If SBA drafts a new Part or Subpart to Title 13 of the Code of Federal Regulations specifically applicable to PPP loans, include in that Part or Subpart a provision stating that, “for purposes of determining eligibility under the size standards applicable to the Paycheck Protection Program, hospitals assigned a NAICS code beginning with 622 shall be considered on an individual basis and shall not be considered affiliated with a larger health or hospital system with which it has a partnership, joint venture agreement, management agreement, joint operating agreement, or other relationship.”

In addition, we ask that you waive regulations that would prevent hospitals and health systems with a prior loss to the government (including bankruptcy) from being eligible for these loans. Some hospitals and health systems may either be in or have previously entered bankruptcy. However, these organizations form the backbone of the health care and workforce infrastructure in many communities, and the PPP could be the difference between solvency and insolvency. It is particularly critical to preserve these vital health care resources as they are the frontline of our COVID-19 defense, and, particularly in smaller and more rural communities, often the sole source of hospital-based care. We therefore urge you to make an exception for hospitals and health systems.

Thank you for considering this request. We appreciate the whole-of-government response to the COVID-19 pandemic and the measures taken to support hospitals during this unprecedented crisis.

Please contact me if you have questions, or feel free to have a member of your team contact Molly Smith, vice president of policy, at (202) 626-4639 or mollysmith@aha.org.

Ms. Jovita Carranza
April 2, 2020
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Sincerely,

/s/

Ashley Thompson
Senior Vice President
Public Policy Analysis & Development