

# FARRIS BOBANGO

ATTORNEYS AT LAW

\*This chart has been updated to include new changes and guidance from the Department of Treasury\*

|                                   |   |
|-----------------------------------|---|
| <b>Threshold Requirements</b>     | <ol style="list-style-type: none"> <li>1. Was the business in operation on February 15, 2020?</li> <li>2. Did the business have employees for whom they paid salaries/wages and payroll taxes?</li> <li>3. Has the business been negatively impacted by COVID-19?</li> </ol> <p>→ If your answer is yes to all 3 questions, then the threshold requirements are met.</p>  |
| <b>Eligible Businesses</b>        | <ul style="list-style-type: none"> <li>• Businesses, nonprofit organizations, veterans organizations, or Tribal organizations with not more than 500 employees or the SBA applicable size standard for the industry</li> <li>• Sole proprietors, independent contractors, and self-employed individuals</li> <li>• Employees determined per location for NAICS code beginning with 72 (i.e., restaurants, bars, hotels): This exception to the cap of 500 employees rule applies if the business <ol style="list-style-type: none"> <li>1. Has more than 1 physical location;</li> <li>2. Does not have more than 500 employees per physical location; and</li> <li>3. Is assigned a NAICS code beginning with 72.</li> </ol> </li> </ul> |
| <b>Affiliation Rules</b>          | <p>Affiliation exists when one business controls or has the power to control another or when a third party (or parties) controls or has the power to control both businesses. Control may arise through ownership, management, or other relationships or interactions between the parties.</p> <p>If an owner has more than 20% ownership in multiple businesses but the combined number of employees for the businesses is 500 or less employees, then this will not prevent you from applying for a PPP loan for each of your businesses.</p> <p>See <a href="#">Attachment A</a> for further guidance on Affiliation Rules</p>   |
| <b>Waiver of Affiliation</b>      | <p>Affiliation rules are waived for:</p> <ul style="list-style-type: none"> <li>• Any business that has a NAICS code beginning with 72 (restaurants, bars, hotels)</li> <li>• Franchiser that is assigned a franchise ID by the SBA</li> <li>• Any business receiving financial assistance from an SBIC</li> </ul>  |
| <b>PPP Application Start Date</b> | <p>For small business and sole proprietorships: <b>April 3, 2020</b><br/> For independent contractors and self-employed: <b>April 10, 2020</b></p>  |
| <b>PPP Application End Date</b>   | June 30, 2020 or until funds made available for this purpose are exhausted  |
| <b>PPP Loan Priority</b>          | PPP loans will be administered on a first come, first served basis as provided to the SBA   |
| <b>Where to Apply</b>             | Any existing SBA lender or through any federally insured depository institution, federally insured credit union, and Farm Credit System institution that is participating   |

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| <b>Required Documentation</b>          | <ol style="list-style-type: none"> <li>1. PPP Loan Application (see <a href="#">Attachment B</a>)</li> <li>2. Payroll Documentation <ul style="list-style-type: none"> <li>○ Such as payroll processor records or payroll tax filings</li> <li>○ If business does not have the documentation listed above, the business must provide other supporting documentation, such as bank records, sufficient to demonstrate the qualifying payroll amount</li> </ul> </li> </ol>  |
| <b>PPP Loan Period</b>                 | February 15, 2020 to June 30, 2020   |
| <b>Maximum Loan Amount</b>             | \$10,000,000   |
| <b>Loan Amount Calculation</b>         | <p>250% of an employer’s average monthly Payroll Costs (defined below)</p> <p>See <a href="#">Attachment C</a> for calculating average monthly Payroll Costs</p> <p>See <a href="#">Attachment D</a> for calculating PPP Loan Amount</p>   |
| <b>Payroll Costs Defined</b>           | <p>The sum of compensation to employees that is:</p> <ul style="list-style-type: none"> <li>• Salary, wage, or similar compensation</li> <li>• Cash tip</li> <li>• Payment for vacation, parental, family, medical, or sick leave</li> <li>• Allowance for dismissal or separation</li> <li>• Healthcare benefits, including insurance premiums</li> <li>• Payment of retirement benefits</li> <li>• Payment of state and local taxes on the compensation of employees</li> </ul>  |
| <b>Excluded from Payroll Costs</b>     | <ul style="list-style-type: none"> <li>• Any employee compensation in excess of \$100,000</li> <li>• Any employee whose principal place of residence is outside the U.S.</li> <li>• Independent contractors cannot be included in a business’ Payroll Costs</li> <li>• Federal employment taxes imposed or withheld between February 15, 2020 and June 30, 2020, including the employee’s and employer’s share of FICA (IRC Chapter 21), Railroad Retirement Act taxes (IRC Chapter 22), and income taxes required to be withheld from employees (IRS Chapter 24)</li> <li>• Qualified sick leave wages under FFCRA section 7001</li> <li>• Qualified family leave wages under FFCRA section 7003</li> </ul> |
| <b>Allowable Uses of Loan Proceeds</b> | <ul style="list-style-type: none"> <li>• Payroll Costs</li> <li>• Payments of mortgage interest (but <b>not</b> mortgage prepayments or principal payments)</li> <li>• Rent (including under a lease agreement)</li> <li>• Utilities</li> <li>• Interest on any debt obligation incurred before February 15, 2020</li> <li>• Refinanced SBA EIDL loan made between January 31, 2020 and April 3, 2020</li> </ul>   |
| <b>SBA EIDL Loan and PPP Loan</b>      | <ul style="list-style-type: none"> <li>• If you received an SBA Economic Injury Disaster Loan (EIDL) from January 31, 2020 through April 3, 2020, you are still eligible to apply for a PPP Loan</li> <li>• If your EIDL Loan was used for payroll costs, your PPP Loan must be used to refinance your EIDL Loan</li> <li>• Proceeds from any advance up to \$10,000 on the EIDL Loan will be deducted from the loan forgiveness amount on the PPP Loan</li> </ul>   |
| <b>Interest Rate</b>                   | 1.00% fixed rate   |
| <b>Deferral</b>                        | <p>All payments are deferred for 6 months</p> <p>During the 6 month deferral, interest will accrue but can be forgiven</p>   |

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| <b>Collateral</b>                                      | No required collateral   |
| <b>Guarantees</b>                                      | Government guarantees 100% of loans made through December 31, 2020<br>No personal guarantees   |
| <b>Fee Waiver</b>                                      | No origination fee<br>No application fee   |
| <b>Prepayment Penalty</b>                              | No prepayment penalty or fees  |
| <b>Maturity Schedule</b>                               | Loan is due in 2 years   |
| <b>PPP Loan Forgiveness</b>                            | PPP loan proceeds used during the 8-week period after loan origination may be forgiven   |
| <b>Loan Forgiveness Amount</b>                         | The total forgiveness amount can be up to the full PPP Loan principal amount and any accrued interest.<br><br>For the PPP loan to be forgiven, the PPP loan proceeds must be used on payroll costs, mortgage interest, rent, and utilities.  |
| <b>Determining Loan Forgiveness Amount</b>             | Sum of: <ul style="list-style-type: none"> <li>• Payroll costs</li> <li>• Interest on any covered mortgage</li> <li>• Covered rent payment</li> <li>• Covered utility payments</li> </ul> See <a href="#">Attachment E</a> for calculation of the Loan Forgiveness Amount  |
| <b>Use of PPP Loan Proceeds and Forgiveness Amount</b> | In order to maximize the forgivable amount of the PPP Loan <ul style="list-style-type: none"> <li>• At least 75% of the forgiveness amount must be used on Payroll Costs</li> <li>• Not more than 25% of the forgiveness amount may be used for non-payroll costs, such as mortgage interest, rent, and utilities</li> </ul> |
| <b>Taxability of Forgiveness Amount</b>                | The forgivable amount of the PPP loan <b>is excluded</b> from the taxable income of the business   |
| <b>Reductions in Forgiveness Amount</b>                | The forgivable amount will be reduced by: <ul style="list-style-type: none"> <li>• Reductions in number of employees</li> <li>• Reductions in employee's salary and wages</li> </ul> See <a href="#">Attachment F</a> for calculation of the reductions to the Loan Forgiveness Amount                                       |

**For More Information, Contact:**

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# Attachment A

## **§121.103 How does SBA determine affiliation?**

(a) *General Principles of Affiliation.* (1) Concerns and entities are affiliates of each other when one controls or has the power to control the other, or a third party or parties controls or has the power to control both. It does not matter whether control is exercised, so long as the power to control exists.

(2) SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists.

(3) Control may be affirmative or negative. Negative control includes, but is not limited to, instances where a minority shareholder has the ability, under the concern's charter, by-laws, or shareholder's agreement, to prevent a quorum or otherwise block action by the board of directors or shareholders.

(4) Affiliation may be found where an individual, concern, or entity exercises control indirectly through a third party.

(5) In determining whether affiliation exists, SBA will consider the totality of the circumstances, and may find affiliation even though no single factor is sufficient to constitute affiliation.

(6) In determining the concern's size, SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit.

(7) For SBA's Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs, the bases for affiliation are set forth in §121.702.

(8) For applicants in SBA's Business Loan, Disaster Loan, and Surety Bond Guarantee Programs, the size standards and bases for affiliation are set forth in §121.301.

(b) *Exceptions to affiliation coverage.* (1) Business concerns owned in whole or substantial part by investment companies licensed, or development companies qualifying, under the Small Business Investment Act of 1958, as amended, are not considered affiliates of such investment companies or development companies.

(2)(i) Business concerns owned and controlled by Indian Tribes, Alaska Native Corporations (ANCs) organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), Native Hawaiian Organizations (NHOs), Community Development Corporations (CDCs) authorized by 42 U.S.C. 9805, or wholly-owned entities of Indian Tribes, ANCs, NHOs, or CDCs are not considered affiliates of such entities.

(ii) Business concerns owned and controlled by Indian Tribes, ANCs, NHOs, CDCs, or wholly-owned entities of Indian Tribes, ANCs, NHOs, or CDCs, are not considered to be affiliated with other concerns owned by these entities because of their common ownership or common management. In addition, affiliation will not be found based upon the performance of common administrative services so long as adequate payment is provided for those services. Affiliation may be found for other reasons.

(A) Common administrative services which are subject to the exception to affiliation include, bookkeeping, payroll, recruiting, other human resource support, cleaning services, and other duties which are otherwise unrelated to contract performance or management and can be reasonably pooled or otherwise performed by a holding company, parent entity, or sister business concern without interfering with the control of the subject firm.

(B) Contract administration services include both services that could be considered "common administrative services" under the exception to affiliation and those that could not.

(I) Contract administration services that encompass actual and direct day-to-day oversight and control of the performance of a contract/project are not shared common administrative services, and would include tasks or functions such as negotiating directly with the government agency regarding proposal terms, contract terms, scope and modifications, project scheduling, hiring and firing of employees, and overall responsibility for the day-to-day and overall project and contract completion.

(2) Contract administration services that are administrative in nature may constitute administrative services that can be shared, and would fall within the exception to affiliation. These administrative services include tasks such as record retention not related to a specific contract (*e.g.*, employee time and attendance records), maintenance of databases for awarded contracts, monitoring for regulatory compliance, template development, and assisting accounting with invoice preparation as needed.

(C) Business development may include both services that could be considered “common administrative services” under the exception to affiliation and those that could not. Efforts at the holding company or parent level to identify possible procurement opportunities for specific subsidiary companies may properly be considered “common administrative services” under the exception to affiliation. However, at some point the opportunity identified by the holding company's or parent entity's business development efforts becomes concrete enough to assign to a subsidiary and at that point the subsidiary must be involved in the business development efforts for such opportunity. At the proposal or bid preparation stage of business development, the appropriate subsidiary company for the opportunity has been identified and a representative of that company must be involved in preparing an appropriate offer. This does not mean to imply that one or more representatives of a holding company or parent entity cannot also be involved in preparing an offer. They may be involved in assisting with preparing the generic part of an offer, but the specific subsidiary that intends to ultimately perform the contract must control the technical and contract specific portions of preparing an offer. In addition, once award is made, employee assignments and the logistics for contract performance must be controlled by the specific subsidiary company and should not be performed at a holding company or parent entity level.

(3) Business concerns which are part of an SBA approved pool of concerns for a joint program of research and development or for defense production as authorized by the Small Business Act are not affiliates of one another because of the pool.

(4) Business concerns which lease employees from concerns primarily engaged in leasing employees to other businesses or which enter into a co-employer arrangement with a Professional Employer Organization (PEO) are not affiliated with the leasing company or PEO solely on the basis of a leasing agreement.

(5) For financial, management or technical assistance under the Small Business Investment Act of 1958, as amended, (an applicant is not affiliated with the investors listed in paragraphs (b)(5) (i) through (vi) of this section.

(i) Venture capital operating companies, as defined in the U.S. Department of Labor regulations found at 29 CFR 2510.3-101(d);

(ii) Employee benefit or pension plans established and maintained by the Federal government or any state, or their political subdivisions, or any agency or instrumentality thereof, for the benefit of employees;

(iii) Employee benefit or pension plans within the meaning of the Employee Retirement Income Security Act of 1974, as amended (29 U.S.C. 1001, *et seq.*);

(iv) Charitable trusts, foundations, endowments, or similar organizations exempt from Federal income taxation under section 501(c) of the Internal Revenue Code of 1986, as amended (26 U.S.C. 501(c));

(v) Investment companies registered under the Investment Company Act of 1940, as amended (1940 Act) (15 U.S.C. 80a-1, *et seq.*); and

(vi) Investment companies, as defined under the 1940 Act, which are not registered under the 1940 Act because they are beneficially owned by less than 100 persons, if the company's sales literature or organizational documents indicate that its principal purpose is investment in securities rather than the operation of commercial enterprises.

(6) A firm that has an SBA-approved mentor-protégé agreement authorized under §124.520 or §125.9 of this chapter is not affiliated with its mentor firm solely because the protégé firm receives assistance from the mentor under the agreement. Similarly, a protégé firm is not affiliated with its mentor solely because the protégé firm receives assistance from the mentor under a federal mentor-protégé program where an exception to affiliation is specifically authorized by statute or by SBA under the procedures set forth in §121.903. Affiliation may be found in either case for other reasons as set forth in this section.

(7) The member shareholders of a small agricultural cooperative, as defined in the Agricultural Marketing Act (12 U.S.C. 1141j), are not considered affiliated with the cooperative by virtue of their membership in the cooperative.

(8) These exceptions to affiliation and any others set forth in §121.702 apply for purposes of SBA's SBIR and STTR programs.

(9) In the case of a solicitation for a bundled contract, a small business contractor may enter into a Small Business Teaming Arrangement with one or more small business subcontractors and submit an offer as a small business without regard to affiliation, so long as each team member is small for the size standard assigned to the contract or subcontract. The agency shall evaluate the offer in the same manner as other offers with due consideration of the capabilities of the subcontractors.

(c) *Affiliation based on stock ownership.* (1) A person (including any individual, concern or other entity) that owns, or has the power to control, 50 percent or more of a concern's voting stock, or a block of voting stock which is large compared to other outstanding blocks of voting stock, controls or has the power to control the concern.

(2) If two or more persons (including any individual, concern or other entity) each owns, controls, or has the power to control less than 50 percent of a concern's voting stock, and such minority holdings are equal or approximately equal in size, and the aggregate of these minority holdings is large as compared with any other stock holding, SBA presumes that each such person controls or has the power to control the concern whose size is at issue. This presumption may be rebutted by a showing that such control or power to control does not in fact exist.

(3) If a concern's voting stock is widely held and no single block of stock is large as compared with all other stock holdings, the concern's Board of Directors and CEO or President will be deemed to have the power to control the concern in the absence of evidence to the contrary.

(d) *Affiliation arising under stock options, convertible securities, and agreements to merge.* (1) In determining size, SBA considers stock options, convertible securities, and agreements to merge (including agreements in principle) to have a present effect on the power to control a concern. SBA treats such options, convertible securities, and agreements as though the rights granted have been exercised.

(2) Agreements to open or continue negotiations towards the possibility of a merger or a sale of stock at some later date are not considered "agreements in principle" and are thus not given present effect.

(3) Options, convertible securities, and agreements that are subject to conditions precedent which are incapable of fulfillment, speculative, conjectural, or unenforceable under state or Federal law, or where the probability of the transaction (or exercise of the rights) occurring is shown to be extremely remote, are not given present effect.

(4) An individual, concern or other entity that controls one or more other concerns cannot use options, convertible securities, or agreements to appear to terminate such control before actually doing so. SBA will not give present effect to individuals', concerns' or other entities' ability to divest all or part of their ownership interest in order to avoid a finding of affiliation.

(e) *Affiliation based on common management.* Affiliation arises where one or more officers, directors, managing members, or partners who control the board of directors and/or management of one concern also control the board of directors or management of one or more other concerns.

(f) *Affiliation based on identity of interest.* Affiliation may arise among two or more persons with an identity of interest. Individuals or firms that have identical or substantially identical business or economic interests (such as family members, individuals or firms with common investments, or firms that are economically dependent through contractual or other relationships) may be treated as one party with such interests aggregated. Where SBA determines that such interests should be aggregated, an individual or firm may rebut that determination with evidence showing that the interests deemed to be one are in fact separate.

(1) Firms owned or controlled by married couples, parties to a civil union, parents, children, and siblings are presumed to be affiliated with each other if they conduct business with each other, such as subcontracts or joint ventures or share or provide loans, resources, equipment, locations or employees with one another. This presumption may be overcome by showing a clear

line of fracture between the concerns. Other types of familial relationships are not grounds for affiliation on family relationships.

(2) SBA may presume an identity of interest based upon economic dependence if the concern in question derived 70% or more of its receipts from another concern over the previous three fiscal years.

(i) This presumption may be rebutted by a showing that despite the contractual relations with another concern, the concern at issue is not solely dependent on that other concern, such as where the concern has been in business for a short amount of time and has only been able to secure a limited number of contracts.

(ii) A business concern owned and controlled by an Indian Tribe, ANC, NHO, CDC, or by a wholly-owned entity of an Indian Tribe, ANC, NHO, or CDC, is not considered to be affiliated with another concern owned by that entity based solely on the contractual relations between the two concerns.

*Example 1 to paragraph (f).* Firm A has been in business for 9 months and has two contracts. Contract 1 is with Firm B and is valued at \$900,000 and Contract 2 is with Firm C and is valued at \$200,000. Thus, Firm B accounts for over 70% of Firm A's receipts. Absent other connections between A and B, the presumption of affiliation between A and B is rebutted because A is a new firm.

*Example 2 to paragraph (f).* Firm A has been in business for five years. It has over 200 contracts. Of that 200, 195 are with Firm B, and the value of those contracts is greater than 70% of the revenue over the previous three years. In this case, SBA would most likely find the two firms affiliated unless the firm could provide some other compelling rebuttal to the very strong presumption that it should be considered affiliated with Firm B.

(g) *Affiliation based on the newly organized concern rule.* Affiliation may arise where former officers, directors, principal stockholders, managing members, or key employees of one concern organize a new concern in the same or related industry or field of operation, and serve as the new concern's officers, directors, principal stockholders, managing members, or key employees, and the one concern is furnishing or will furnish the new concern with contracts, financial or technical assistance, indemnification on bid or performance bonds, and/or other facilities, whether for a fee or otherwise. A concern may rebut such an affiliation determination by demonstrating a clear line of fracture between the two concerns. A "key employee" is an employee who, because of his/her position in the concern, has a critical influence in or substantive control over the operations or management of the concern.

(h) *Affiliation based on joint ventures.* A joint venture is an association of individuals and/or concerns with interests in any degree or proportion consorting to engage in and carry out no more than three specific or limited-purpose business ventures for joint profit over a two year period, for which purpose they combine their efforts, property, money, skill, or knowledge, but not on a continuing or permanent basis for conducting business generally. This means that a specific joint venture entity generally may not be awarded more than three contracts over a two year period, starting from the date of the award of the first contract, without the partners to the joint venture being deemed affiliated for all purposes. Once a joint venture receives one contract, SBA will determine compliance with the three awards in two years rule for future awards as of the date of initial offer including price. As such, an individual joint venture may be awarded more than three contracts without SBA finding general affiliation between the joint venture partners where the joint venture had received two or fewer contracts as of the date it submitted one or more additional offers which thereafter result in one or more additional contract awards. The same two (or more) entities may create additional joint ventures, and each new joint venture entity may be awarded up to three contracts in accordance with this section. At some point, however, such a longstanding inter-relationship or contractual dependence between the same joint venture partners will lead to a finding of general affiliation between and among them. For purposes of this provision and in order to facilitate tracking of the number of contract awards made to a joint venture, a joint venture: Must be in writing and must do business under its own name; must be identified as a joint venture in the System for Award Management (SAM); may be in the form of a formal or informal partnership or exist as a separate limited liability company or other separate legal entity; and, if it exists as a formal separate legal entity, may not be populated with individuals intended to perform contracts awarded to the joint venture (*i.e.*, the joint venture may have its own separate employees to perform administrative functions, but may not have its own separate employees to perform contracts awarded to the joint venture). SBA may also determine that the relationship between a prime contractor and its subcontractor is a joint venture, and that affiliation between the two exists, pursuant to paragraph (h)(5) of this section. For purposes of this paragraph (h), contract refers to prime contracts, and any subcontract in which the joint venture is treated as a similarly situated entity as the term is defined in part 125 of this chapter.

*Example 1 to paragraph (h) introductory text.* Joint Venture AB has received two contracts. On April 2, Joint Venture AB submits an offer for Solicitation 1. On June 6, Joint Venture AB submits an offer for Solicitation 2. On July 13, Joint Venture AB submits an offer for Solicitation 3. In September, Joint Venture AB is found to be the apparent successful offeror for all three solicitations. Even though the award of the three contracts would give Joint Venture AB a total of five contract awards, it could receive those awards without causing general affiliation between its joint

venture partners because Joint Venture AB had not yet received three contract awards as of the dates of the offers for each of three solicitations at issue.

*Example 2 to paragraph (h) introductory text.* Joint Venture XY receives a contract on December 19, year 1. It may receive two additional contracts through December 19, year 3. On August 6, year 2, XY receives a second contract. It receives no other contract awards through December 19, year 3 and has submitted no additional offers prior to December 19, year 3. Because two years have passed since the date of the first contract award, after December 19, year 3, XY cannot receive an additional contract award. The individual parties to XY must form a new joint venture if they want to seek and be awarded additional contracts as a joint venture.

*Example 3 to paragraph (h) introductory text.* Joint Venture XY receives a contract on December 19, year 1. On May 22, year 2, XY submits an offer for Solicitation 1. On June 10, year 2, XY submits an offer for Solicitation 2. On June 19, year 2, XY receives a second contract responding to Solicitation 1. XY is not awarded a contract responding to Solicitation 2. On December 15, year 3, XY submits an offer for Solicitation 3. In January, XY is found to be the apparent successful offeror for Solicitation 3. XY is eligible for the contract award because compliance with the three awards in two years rule is determined as of the date of the initial offer including price, XY submitted its offer prior to December 19, year 3, and XY had not received three contract awards prior to its offer on December 15.

(1) Parties to a joint venture are affiliates if any one of them seeks SBA financial assistance for use in connection with the joint venture.

(2) Except as provided in paragraph (h)(3) of this section, concerns submitting offers on a particular procurement or property sale as joint venturers are affiliated with each other with regard to the performance of that contract.

(3) *Exception to affiliation for certain joint ventures.* (i) A joint venture of two or more business concerns may submit an offer as a small business for a Federal procurement, subcontract or sale so long as each concern is small under the size standard corresponding to the NAICS code assigned to the contract.

(ii) Two firms approved by SBA to be a mentor and protégé under §125.9 of this chapter may joint venture as a small business for any Federal government prime contract or subcontract, provided the protégé qualifies as small for the size standard corresponding to the NAICS code assigned to the procurement, and the joint venture meets the requirements of §§124.513 (c) and (d), §§125.8(b) and (c), §§125.18(b)(2) and (3), §§126.616(c) and (d), or §§127.506(c) and (d) of this chapter, as appropriate.

(iii) Two firms approved by SBA to be a mentor and protégé under §124.520 of these regulations may joint venture as a small business for any Federal government prime contract or subcontract, provided the protégé qualifies as small for the size standard corresponding to the NAICS code assigned to the procurement and, for purposes of 8(a) sole source requirements, has not reached the dollar limit set forth in §124.519 of these regulations. If the procurement is to be awarded through the 8(a) BD program, SBA must approve the joint venture pursuant to §124.513. If the procurement is to be awarded other than through the 8(a) BD program (*e.g.*, small business set aside, HUBZone set aside), SBA need not approve the joint venture prior to award, but if the size status of the joint venture is protested, the provisions of §§124.513(c) and (d) will apply. This means that the joint venture must meet the requirements of §§124.513(c) and (d) in order to receive the exception to affiliation authorized by this paragraph. In either case, after contract performance is complete, the 8(a) partner to the joint venture must submit a report to its servicing SBA district office explaining how the applicable performance of work requirements were met for the contract.

(4) A contractor and its ostensible subcontractor are treated as joint venturers for size determination purposes. An ostensible subcontractor is a subcontractor that is not a similarly situated entity, as that term is defined in §125.1 of this chapter, and performs primary and vital requirements of a contract, or of an order, or is a subcontractor upon which the prime contractor is unusually reliant. All aspects of the relationship between the prime and subcontractor are considered, including, but not limited to, the terms of the proposal (such as contract management, technical responsibilities, and the percentage of subcontracted work), agreements between the prime and subcontractor (such as bonding assistance or the teaming agreement), and whether the subcontractor is the incumbent contractor and is ineligible to submit a proposal because it exceeds the applicable size standard for that solicitation.

(5) For size purposes, a concern must include in its receipts its proportionate share of joint venture receipts, and in its total number of employees its proportionate share of joint venture employees.

(i) *Affiliation based on franchise and license agreements.* The restraints imposed on a franchisee or licensee by its franchise or license agreement relating to standardized quality, advertising, accounting format and other similar provisions, generally will not be considered in determining whether the franchisor or licensor is affiliated with the franchisee or licensee provided the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Affiliation may arise, however, through other means, such as common ownership, common management or excessive restrictions upon the sale of the franchise interest.



# Attachment B

## Paycheck Protection Program Borrower Application Form

OMB Control No.: 3245-0407  
Expiration Date: 09/30/2020

|  |                                       |
|--|---------------------------------------|
| <b>Check One:</b> <input type="checkbox"/> Sole proprietor <input type="checkbox"/> Partnership <input type="checkbox"/> C-Corp <input type="checkbox"/> S-Corp <input type="checkbox"/> LLC<br><input type="checkbox"/> Independent contractor <input type="checkbox"/> Eligible self-employed individual<br><input type="checkbox"/> 501(c)(3) nonprofit <input type="checkbox"/> 501(c)(19) veterans organization<br><input type="checkbox"/> Tribal business (sec. 31(b)(2)(C) of Small Business Act) <input type="checkbox"/> Other | <b>DBA or Tradename if Applicable</b> |
| <b>Business Legal Name</b>   |                                       |
|  |                                       |
| <b>Business Address</b>  | <b>Business TIN (EIN, SSN)</b>        |
|  | (   )   -                             |
|  | <b>Primary Contact</b>                |
|  | <b>Email Address</b>                  |

|  |    |  |    |                      |  |
|--|----|--|----|----------------------|--|
| Average Monthly Payroll:   | \$ | x 2.5 + EIDL, Net of Advance (if Applicable)<br>Equals Loan Request: | \$ | Number of Employees: |  |
| Purpose of the loan (select more than one):  |    |  |    |                      |  |
| <input type="checkbox"/> Payroll <input type="checkbox"/> Lease / Mortgage Interest <input type="checkbox"/> Utilities <input type="checkbox"/> Other (explain): _____ |    |  |    |                      |  |

### Applicant Ownership

List all owners of 20% or more of the equity of the Applicant. Attach a separate sheet if necessary.

| Owner Name | Title | Ownership % | TIN (EIN, SSN) | Address |
|------------|-------|-------------|----------------|---------|
|            |       |             |                |         |
|            |       |             |                |         |

*If questions (1) or (2) below are answered "Yes," the loan will not be approved.*

| Question  | Yes                      | No                       |
|---|--------------------------|--------------------------|
| 1. Is the Applicant or any owner of the Applicant presently suspended, debarred, proposed for debarment, declared ineligible, voluntarily excluded from participation in this transaction by any Federal department or agency, or presently involved in any bankruptcy?                     | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Has the Applicant, any owner of the Applicant, or any business owned or controlled by any of them, ever obtained a direct or guaranteed loan from SBA or any other Federal agency that is currently delinquent or has defaulted in the last 7 years and caused a loss to the government? | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Is the Applicant or any owner of the Applicant an owner of any other business, or have common management with, any other business? If yes, list all such businesses and describe the relationship on a separate sheet identified as addendum A.  | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. Has the Applicant received an SBA Economic Injury Disaster Loan between January 31, 2020 and April 3, 2020? If yes, provide details on a separate sheet identified as addendum B.  | <input type="checkbox"/> | <input type="checkbox"/> |

*If questions (5) or (6) are answered "Yes," the loan will not be approved.*

| Question   | Yes                      | No                       |
|--|--------------------------|--------------------------|
| 5. Is the Applicant (if an individual) or any individual owning 20% or more of the equity of the Applicant subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction, or presently incarcerated, or on probation or parole?<br><b>Initial here to confirm your response to question 5 →</b> _____     | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. Within the last 5 years, for any felony, has the Applicant (if an individual) or any owner of the Applicant 1) been convicted; 2) pleaded guilty; 3) pleaded nolo contendere; 4) been placed on pretrial diversion; or 5) been placed on any form of parole or probation (including probation before judgment)?<br><b>Initial here to confirm your response to question 6 →</b> _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 7. Is the United States the principal place of residence for all employees of the Applicant included in the Applicant's payroll calculation above?   | <input type="checkbox"/> | <input type="checkbox"/> |
| 8. Is the Applicant a franchise that is listed in the SBA's Franchise Directory?   | <input type="checkbox"/> | <input type="checkbox"/> |



# Paycheck Protection Program Borrower Application Form

## By Signing Below, You Make the Following Representations, Authorizations, and Certifications

### CERTIFICATIONS AND AUTHORIZATIONS

I certify that:

- I have read the statements included in this form, including the Statements Required by Law and Executive Orders, and I understand them.
- 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).
- The Applicant (1) is an independent contractor, eligible self-employed individual, or sole proprietor or (2) employs no more than the greater of 500 or employees or, if applicable, the size standard in number of employees established by the SBA in 13 C.F.R. 121.201 for the Applicant's industry.
- I will comply, whenever applicable, with the civil rights and other limitations in this form.
- All SBA loan proceeds will be used only for business-related purposes as specified in the loan application and consistent with the Paycheck Protection Program Rule.
- To the extent feasible, I will purchase only American-made equipment and products.
- The Applicant is not engaged in any activity that is illegal under federal, state or local law.
- Any loan received by the Applicant under Section 7(b)(2) of the Small Business Act between January 31, 2020 and April 3, 2020 was for a purpose other than paying payroll costs and other allowable uses loans under the Paycheck Protection Program Rule.

For Applicants who are individuals: I authorize the SBA to request criminal record information about me from criminal justice agencies for the purpose of determining my eligibility for programs authorized by the Small Business Act, as amended.

### CERTIFICATIONS

The authorized representative of the Applicant must certify in good faith to all of the below by **initialing** next to each one:

\_\_\_\_\_ The Applicant was in operation on February 15, 2020 and had employees for whom it paid salaries and payroll taxes or paid independent contractors, as reported on Form(s) 1099-MISC.

\_\_\_\_\_ Current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.

\_\_\_\_\_ The funds will be used to retain workers and maintain payroll or make mortgage interest payments, lease payments, and utility payments, as specified under the Paycheck Protection Program Rule; I understand that if the funds are knowingly used for unauthorized purposes, the federal government may hold me legally liable, such as for charges of fraud.

\_\_\_\_\_ The Applicant will provide to the Lender documentation verifying the number of full-time equivalent employees on the Applicant's payroll as well as the dollar amounts of payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities for the eight-week period following this loan.

\_\_\_\_\_ I understand that loan forgiveness will be provided for the sum of documented payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities, and not more than 25% of the forgiven amount may be for non-payroll costs.

\_\_\_\_\_ During the period beginning on February 15, 2020 and ending on December 31, 2020, the Applicant has not and will not receive another loan under the Paycheck Protection Program.

\_\_\_\_\_ I further certify that the information provided in this application and the information provided in all supporting documents and forms is true and accurate in all material respects. I understand that knowingly making a false statement to obtain a guaranteed loan from SBA is punishable under the law, including under 18 USC 1001 and 3571 by imprisonment of not more than five years and/or a fine of up to \$250,000; under 15 USC 645 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, under 18 USC 1014 by imprisonment of not more than thirty years and/or a fine of not more than \$1,000,000.

\_\_\_\_\_ I acknowledge that the lender will confirm the eligible loan amount using required documents submitted. I understand, acknowledge and agree that the Lender can share any tax information that I have provided with SBA's authorized representatives, including authorized representatives of the SBA Office of Inspector General, for the purpose of compliance with SBA Loan Program Requirements and all SBA reviews.

\_\_\_\_\_  
Signature of Authorized Representative of Applicant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title



## Paycheck Protection Program Borrower Application Form

### **Purpose of this form:**

This form is to be completed by the authorized representative of the Applicant and *submitted to your SBA Participating Lender*. Submission of the requested information is required to make a determination regarding eligibility for financial assistance. Failure to submit the information would affect that determination.

### **Instructions for completing this form:**

With respect to “purpose of the loan,” payroll costs consist of compensation to employees (whose principal place of residence is the United States) in the form of salary, wages, commissions, or similar compensation; cash tips or the equivalent (based on employer records of past tips or, in the absence of such records, a reasonable, good-faith employer estimate of such tips); payment for vacation, parental, family, medical, or sick leave; allowance for separation or dismissal; payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums, and retirement; payment of state and local taxes assessed on compensation of employees; and for an independent contractor or sole proprietor, wage, commissions, income, or net earnings from self-employment or similar compensation.

For purposes of calculating “Average Monthly Payroll,” most Applicants will use the average monthly payroll for 2019, excluding costs over \$100,000 on an annualized basis for each employee. For seasonal businesses, the Applicant may elect to instead use average monthly payroll for the time period between February 15, 2019 and June 30, 2019, excluding costs over \$100,000 on an annualized basis for each employee. For new businesses, average monthly payroll may be calculated using the time period from January 1, 2020 to February 29, 2020, excluding costs over \$100,000 on an annualized basis for each employee.

If Applicant is refinancing an Economic Injury Disaster Loan (EIDL): Add the outstanding amount of an EIDL made between January 31, 2020 and April 3, 2020, less the amount of any “advance” under an EIDL COVID-19 loan, to Loan Request as indicated on the form.

All parties listed below are considered owners of the Applicant as defined in 13 CFR § 120.10, as well as “principals”:

- For a sole proprietorship, the sole proprietor;
- For a partnership, all general partners, and all limited partners owning 20% or more of the equity of the firm;
- For a corporation, all owners of 20% or more of the corporation;
- For limited liability companies, all members owning 20% or more of the company; and
- Any Trustor (if the Applicant is owned by a trust).

**Paperwork Reduction Act** – You are not required to respond to this collection of information unless it displays a currently valid OMB Control Number. The estimated time for completing this application, including gathering data needed, is 8 minutes. Comments about this time or the information requested should be sent to : Small Business Administration, Director, Records Management Division, 409 3rd St., SW, Washington DC 20416., and/or SBA Desk Officer, Office of Management and Budget, New Executive Office Building, Washington DC 20503.

**Privacy Act (5 U.S.C. 552a)** – Under the provisions of the Privacy Act, you are not required to provide your social security number. Failure to provide your social security number may not affect any right, benefit or privilege to which you are entitled. (But see Debt Collection Notice regarding taxpayer identification number below.) Disclosures of name and other personal identifiers are required to provide SBA with sufficient information to make a character determination. When evaluating character, SBA considers the person’s integrity, candor, and disposition toward criminal actions. Additionally, SBA is specifically authorized to verify your criminal history, or lack thereof, pursuant to section 7(a)(1)(B), 15 USC Section 636(a)(1)(B) of the Small Business Act (the Act).

**Disclosure of Information** – Requests for information about another party may be denied unless SBA has the written permission of the individual to release the information to the requestor or unless the information is subject to disclosure under the Freedom of Information Act. The Privacy Act authorizes SBA to make certain “routine uses” of information protected by that Act. One such routine use is the disclosure of information maintained in SBA’s system of records when this information indicates a violation or potential violation of law, whether civil, criminal, or administrative in nature. Specifically, SBA may refer the information to the appropriate agency, whether Federal, State, local or foreign, charged with responsibility for, or otherwise involved in investigation, prosecution, enforcement or prevention of such violations. Another routine use is disclosure to other Federal agencies conducting background checks but only to the extent the information is relevant to the requesting agencies’ function. See, 74 F.R. 14890 (2009), and as amended from time to time for additional background and other routine uses. In addition, the CARES Act, requires SBA to register every loan made under the Paycheck Protection Act using the Taxpayer Identification Number (TIN) assigned to the borrower.

**Debt Collection Act of 1982, Deficit Reduction Act of 1984 (31 U.S.C. 3701 et seq. and other titles)** – SBA must obtain your taxpayer identification number when you apply for a loan. If you receive a loan, and do not make payments as they come due, SBA may: (1) report the status of your loan(s) to credit bureaus, (2) hire a collection agency to collect your loan, (3) offset your income tax refund or other amounts due to you from the Federal Government, (4) suspend or debar you or your company from doing business with the Federal Government, (5) refer your loan to the Department of Justice, or (6) foreclose on collateral or take other action permitted in the loan instruments.

**Right to Financial Privacy Act of 1978 (12 U.S.C. 3401)** – The Right to Financial Privacy Act of 1978, grants SBA access rights to financial records held by financial institutions that are or have been doing business with you or your business including any financial



## Paycheck Protection Program Borrower Application Form

institutions participating in a loan or loan guaranty. SBA is only required provide a certificate of its compliance with the Act to a financial institution in connection with its first request for access to your financial records. SBA's access rights continue for the term of any approved loan guaranty agreement. SBA is also authorized to transfer to another Government authority any financial records concerning an approved loan or loan guarantee, as necessary to process, service or foreclose on a loan guaranty or collect on a defaulted loan guaranty.

**Freedom of Information Act (5 U.S.C. 552)** – Subject to certain exceptions, SBA must supply information reflected in agency files and records to a person requesting it. Information about approved loans that will be automatically released includes, among other things, statistics on our loan programs (individual borrowers are not identified in the statistics) and other information such as the names of the borrowers (and their officers, directors, stockholders or partners), the collateral pledged to secure the loan, the amount of the loan, its purpose in general terms and the maturity. Proprietary data on a borrower would not routinely be made available to third parties. All requests under this Act are to be addressed to the nearest SBA office and be identified as a Freedom of Information request.

**Occupational Safety and Health Act (15 U.S.C. 651 et seq.)** – The Occupational Safety and Health Administration (OSHA) can require businesses to modify facilities and procedures to protect employees. Businesses that do not comply may be fined, forced to cease operations, or prevented from starting operations. Signing this form is certification that the applicant, to the best of its knowledge, is in compliance with the applicable OSHA requirements, and will remain in compliance during the life of the loan.

**Civil Rights (13 C.F.R. 112, 113, 117)** – All businesses receiving SBA financial assistance must agree not to discriminate in any business practice, including employment practices and services to the public on the basis of categories cited in 13 C.F.R., Parts 112, 113, and 117 of SBA Regulations. All borrowers must display the "Equal Employment Opportunity Poster" prescribed by SBA.

**Equal Credit Opportunity Act (15 U.S.C. 1691)** – Creditors are prohibited from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status or age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act.

**Debarment and Suspension Executive Order 12549; (2 CFR Part 180 and Part 2700)** – By submitting this loan application, you certify that neither the Applicant or any owner of the Applicant have within the past three years been: (a) debarred, suspended, declared ineligible or voluntarily excluded from participation in a transaction by any Federal Agency; (b) formally proposed for debarment, with a final determination still pending; (c) indicted, convicted, or had a civil judgment rendered against you for any of the offenses listed in the regulations or (d) delinquent on any amounts owed to the U.S. Government or its instrumentalities as of the date of execution of this certification.

## Attachment C

# FARRIS BOBANGO

ATTORNEYS AT LAW

## Determining Average Monthly Payroll Costs

### Step 1: Calculating Aggregate Payroll Costs

Aggregate  
Payroll Costs

=

#### Sum of Payroll Costs\*

Salary, wage, or similar commission  
+  
Cash tips or equivalent  
[based on employer records of past tips or, in the absence of such records, a reasonable, good-faith employer estimate of such tips]  
+  
Payment of vacation, parental, family, medical, or sick leave  
+  
Allowance for separation or dismissal  
+  
Payment of group healthcare coverage, including insurance premiums  
+  
Payment of retirement benefits  
+  
Payment of state and local taxes assessed on compensation of employees

\*In calculating Payroll Costs, do not include:

- Independent contractors
- Compensation to an employee in excess of an annual salary of \$100,000
- Any employees whose principal place of residence is outside of the U.S.

### Step 2: Calculating Average Monthly Payroll Cost

Aggregate  
Payroll Costs

÷

12

=

Average Monthly  
Payroll Costs

Calculating Loan Amount Under Paycheck Protection Plan (PPP)

Maximum Loan Amount: \$10,000,000

Average monthly Payroll Costs for calendar year 2019

$$\times 2.5 + \left[ \begin{array}{l} \text{Outstanding EIDL Loan made} \\ \text{during the period from January} \\ \text{30, 2020- April 3, 2020} \\ \text{(MINUS)} \\ \text{Amount of advance of the EIDL} \\ \text{COVID-19 Loan [because it} \\ \text{does not have to be repaid]} \end{array} \right] = \begin{array}{l} \text{Loan Amount if} \\ \text{less than} \\ \text{\$10,000,000} \end{array}$$

Calculation for Seasonal Employers (determined by SBA)

Average monthly Payroll Costs incurred for the 12-week period beginning February 15, 2019

Or

Average monthly Payroll Costs incurred from March 1, 2019 to June 30, 2019

$$\times 2.5 + \left[ \begin{array}{l} \text{Outstanding EIDL Loan made} \\ \text{during the period from January} \\ \text{30, 2020- April 3, 2020} \\ \text{(MINUS)} \\ \text{Amount of advance of the EIDL} \\ \text{COVID-19 Loan [because it} \\ \text{does not have to be repaid]} \end{array} \right] = \begin{array}{l} \text{Loan Amount if} \\ \text{less than} \\ \text{\$10,000,000} \end{array}$$

Calculation if not in business during February 15 to June 30, 2019

Average monthly Payroll Costs incurred from January 1, 2020 to February 29, 2020

$$\times 2.5 + \left[ \begin{array}{l} \text{Outstanding EIDL Loan made} \\ \text{during the period from January} \\ \text{30, 2020- April 3, 2020} \\ \text{(MINUS)} \\ \text{Amount of advance of the EIDL} \\ \text{COVID-19 Loan [because it} \\ \text{does not have to be repaid]} \end{array} \right] = \begin{array}{l} \text{Loan Amount if} \\ \text{less than} \\ \text{\$10,000,000} \end{array}$$

Calculating Forgiveness Amount

Payroll  
Costs

+

Interest payments  
on Covered  
Mortgage  
Obligations

+

Covered Rent  
Obligations

+

Covered Utility  
Payments

=

Loan  
Forgiveness  
Amount

“Payroll Costs” is the sum of compensation to employees that is:

- Salary or wages
- Cash tips
- Payment for vacation, family, medical or sick leave
- Healthcare benefits, including insurance premiums
- Retirement benefits

“Covered Mortgage Obligation” is any indebtedness or debt instrument incurred in the ordinary course of business that:

1. Is a liability of the business;
2. Is a mortgage on real or personal property; and
3. Was incurred before February 15, 2020

“Covered Rent Obligation” is any rent obligated under a leasing agreement in force before February 15, 2020

“Covered Utility Payments” are payments for a service for electricity, gas, water, transportation, telephone, or internet access which began before February 15, 2020

The **limitations** on the Loan Forgiveness Amount include:

- Forgiveness amount cannot exceed the PPP principal amount
- Decrease based on reduction in number of employees
- Decrease based on a reduction in salary and wages

**NOTE:** Payments on non-Payroll Costs cannot exceed 25% of forgiveness amount