

# EXHIBIT – A

Are Real Estate Businesses Eligible to Participate in the Paycheck Protection Program ('PPP Loans')?

## Anchin Alert April 6, 2020

All types of businesses are hoping for relief in the form of loans pursuant to the Paycheck Protection Program (PPP) under the Coronavirus Aid, Relief and Economic Security (CARES) Act.

The PPP Loan Program provides that certain businesses which are not eligible for relief are identified in the Small Business Administration's Standard Operating Procedure 50 10 5 (SOP) (except that Nonprofit organizations authorized under the CARES Act are eligible).

There is a concern that several types of real estate businesses considered "passive" under the SBA rules may not qualify without further clarification from the Treasury. Real estate management companies are not considered passive and are therefore eligible for PPP. It isn't possible to understand if the intention of the Treasury was to exclude the types of real estate firms described below, or if they simply hadn't considered that many of these firms do have employees. We hope that further clarification will be made to support the real estate industry which has already been hurt in so many ways.

We suggest you consider these exclusions in determining your eligibility and discuss this issue with your legal advisors.

The list of Passive Businesses include several descriptions that should concern the real estate industry.

- a. Passive businesses owned by developers and landlords that do not actively use or occupy the assets acquired or improved with the loan proceeds are not eligible.
- b. Businesses primarily engaged in subdividing real property into lots and developing it for resale on its own account are not eligible.
- c. Businesses that are primarily engaged in owning or purchasing real estate and leasing it for any purpose are not eligible. For example, shopping centers, salon suites, and similar business models that generate income by renting space to accommodate independent businesses that provide services directly to the public are not eligible.
- d. Businesses that lease land for the installation of a cell phone tower, solar panels, billboards, or wind turbine also are not eligible. However, the business operating the cell phone tower, solar panel, billboard, or wind turbine is eligible.
- e. Businesses that have entered into a management agreement with a third party that gives the management company sole discretion to manage the operations of the business, including control over the employees, the finances and the bank accounts of the business, with no involvement by the owner(s) of the Applicant business, are not eligible.
- f. Apartment buildings and mobile home parks are not eligible.

g. Residential facilities that do not provide healthcare and/or medical services are not eligible. We will continue to monitor guidance and provide alerts on updates as they become available. Please contact your Anchin Relationship Partner for additional information.

*Disclaimer: Please note this is based on the information that is currently available and is subject to change.*