

**Congress of the United States**  
**Washington, DC 20515**

April 30, 2020

The Honorable Jovita Carranza  
Administrator  
U.S. Small Business Administration  
409 3rd Street, SW  
Washington, D.C. 20416

Dear Administrator Carranza:

Thank you for your efforts to swiftly implement the Paycheck Protection Program (PPP) under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). These forgivable loans are critical to help small businesses, nonprofits, and religious organizations keep their workers paid and employed during this crisis. In order to ensure the finite appropriations for the PPP are directed towards the many deserving and eligible entities who need it, we ask for a determination as to whether the nation’s largest abortion provider, Planned Parenthood Federation of America (PPFA), and any of its affiliates are eligible for these loans.

As you know, the CARES Act requires the Small Business Administration (SBA) to apply its affiliation rules for small businesses in determining whether a nonprofit exceeds the PPP’s 500 employee limit.<sup>1</sup> Under these rules, PPFA, and each of its affiliates, should be deemed “affiliated” due to their common management, and thereby disqualified from PPP loans based on their aggregated size of around 16,000 employees nationwide.<sup>2</sup>

In general, SBA regulations consider two or more entities to be affiliated “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”.<sup>3</sup> One of the tests that is “sufficient to establish affiliation” is common management.<sup>4</sup> SBA understands common management to occur “where a single individual, concern, or entity that controls the Board of Directors or management of one concern also controls the Board of Directors or management of one of more other concerns” or “where a

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<sup>1</sup> See Section 7(a)(36)(D)(vi) of the Small Business Act, as added by section 1102(a)(2) of the CARES Act. SBA’s rulemaking and guidance issued on March 3, 2020, indicates that SBA will apply the affiliation rules in 13 C.F.R. 121.301, as in effect prior to the interim final rule promulgated on February 10, 2020, for nonprofits in lieu of the affiliation rules 13 C.F.R. 121.103 that were explicitly referenced in law. This interpretation is incorrect; Congress’ intent, as expressly stated in the legislative text, was to apply the full affiliation standards in 13 C.F.R. 121.103 – which include a more robust identity of interest and totality of circumstances test - to nonprofits (other than religious nonprofits exempted under the Religious Freedom Restoration Act). However, we also believe that the common management test under 13 C.F.R. 121.301 is sufficient to establish affiliation between PPFA and each of its affiliates, as laid out in this letter.

<sup>2</sup> Data obtained on March 25, 2020, by Congressional Research Service from the subscription business database, Mergent Intellect, by using the search term “Planned Parenthood” and summing the columns “Employees this site” (16,389) or “Employees All Sites” (15,911). PPFA reported employing 676 individuals on its 2017 tax return: [https://www.plannedparenthood.org/uploads/filer\\_public/3b/75/3b757e47-db59-4cd7-b9a9-e17bc6c75280/ppfa\\_fy18\\_990\\_-\\_public\\_disclosure.pdf](https://www.plannedparenthood.org/uploads/filer_public/3b/75/3b757e47-db59-4cd7-b9a9-e17bc6c75280/ppfa_fy18_990_-_public_disclosure.pdf).

<sup>3</sup> 13 C.F.R. 121.103(f)

<sup>4</sup> Ibid.

single individual, concern or entity controls the management of the applicant concern through a management agreement”.<sup>5</sup> In interpreting this rule, SBA has recognized that “[c]ommon management affiliation does not require total control of a concern, just critical influence or the ability to exercise substantive control over a concern's operations.”<sup>6</sup> SBA has also held that the “ability to exercise negative control may suffice to support a finding of affiliation based on common management.”<sup>7</sup>

PPFA makes no attempt to hide its control over its affiliates nationwide. PPFA refers to its affiliates as “local offices” despite being separately incorporated.<sup>8</sup> PPFA defines itself as including 55 affiliates, “which along with PPFA directors collectively constitute PPFA’s membership.”<sup>9</sup> Planned Parenthood affiliates “in turn control 110 ancillary entities.”<sup>10</sup>

PPFA’s bylaws describe an affiliate structure in which PPFA management can uniformly and unilaterally impose policies and practices on its affiliates.<sup>11</sup> PPFA’s affiliation requirements constitute a nonprofit equivalent of a “management agreement” for a small business, per SBA regulations. PPFA’s bylaws empower their management, through its officers and Board of Directors, and policy-making committees under their control to limit the operations of affiliates’ and sub-affiliates’ management by prescribing policies and practices of day-to-day operations at the granular level, enforced through the accreditation and renewal process: “[PPFA’s] National Office also administers the standards mandated by the Membership...”.<sup>12</sup> Under its bylaws, a Planned Parenthood affiliate is defined as:

an organization which: (i) conforms to the purposes, written policies and standards of PPFA; (ii) fulfills the requirements set forth in these Standards of Affiliation; ... and (iv) abides by the terms and conditions of such Affiliate status *as established by the Board* (emphasis added)...<sup>13</sup>

The bylaws impose numerous “affiliation mandates” that hand over significant power to the PPFA Board of Directors and PPFA officers to control affiliates, including financial requirements, accreditation requirements, and a requirement that, “[e]ach Affiliate which provides medical services shall provide such services in conformity with the PPFA Medical Standards and Guidelines.”<sup>14</sup> Affiliates are also “responsible for ensuring that all activities, programs, services, and pronouncements of an Affiliate Sub-Unit are in conformity with PPFA Standards of Affiliation and policies.”<sup>15</sup> Affiliates are further required by the PPFA bylaws to

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<sup>5</sup> 13 C.F.R. 121.103(f)(3)

<sup>6</sup> Size Appeal of DMI Educ. Training LLC, SBA No. SIZ-5275 (2011)

<sup>7</sup> Size Appeal of ETI Professionals, Inc., SBA No. SIZ-5403 (2004)

<sup>8</sup> <https://www.plannedparenthood.org/about-us/contact-us>

<sup>9</sup> [https://www.plannedparenthood.org/uploads/filer\\_public/1e/62/1e6275c1-1996-414e-a4ee-5aef1f097ffd/ppfa\\_final\\_fs\\_fy\\_2018.pdf](https://www.plannedparenthood.org/uploads/filer_public/1e/62/1e6275c1-1996-414e-a4ee-5aef1f097ffd/ppfa_final_fs_fy_2018.pdf)

<sup>10</sup> Ibid.

<sup>11</sup> PPFA’s Bylaws, as amended and restated on March 29, 2008, attached to PPFA’s 2007 tax return:

[https://projects.propublica.org/nonprofits/display\\_990/131644147/2009\\_05\\_EO%2F13-1644147\\_990\\_200806](https://projects.propublica.org/nonprofits/display_990/131644147/2009_05_EO%2F13-1644147_990_200806)

Included on PPFA’s registration with the California Registry of Charitable Trusts:

[http://rct.doj.ca.gov/Verification/Web/Download.aspx?saveas=Founding+Documents.pdf&document\\_id=09027b8f80004bd8](http://rct.doj.ca.gov/Verification/Web/Download.aspx?saveas=Founding+Documents.pdf&document_id=09027b8f80004bd8)

<sup>12</sup> Ibid., pg. 29.

<sup>13</sup> Ibid., pg. 18.

<sup>14</sup> Ibid., pg. 19.

<sup>15</sup> Ibid., pg. 21.

“be governed by written bylaws which conform to PPFA policies which establish the composition of the Affiliate Board of Directors and its election process, and which meet all other minimum legal requirements.”<sup>16</sup>

One example of PPFA’s common management over its affiliates is its Manual of Medical Standards and Guidelines (MS&Gs). The MS&Gs, on an ongoing basis of review, provide directives and “core services” that each affiliate must provide as a condition of retaining their status as a Planned Parenthood affiliate. The content of these requirements is ultimately dictated by PPFA management. The MS&Gs state that, “[c]ore services are required per the PPFA Bylaws and some services must be approved by PPFA prior to initiation.”<sup>17</sup> Among these core, required services are first trimester abortions, contraception, well women’s exams, and how these activities should be performed concretely.<sup>18</sup>

The PPFA MS&Gs provide evidence of direct managerial control as envisaged by SBA regulations, including negative control. As an example of negative control, if an affiliate wants to offer any services other than those typically done by Planned Parenthood clinics, the MS&G prescribe that, “[a]ffiliates must seek approval to provide services for which there are no PPFA Medical Standards and Guidelines. In addition to approval by PPFA and ARMS, approval by the NMC and appropriate bodies of the PPFA Board may be necessary.”<sup>19</sup> This kind of veto power by PPFA management over affiliates’ services is clear exercise of control under SBA regulations.

The MS&Gs also detail the ultimate cost non-compliance with PPFA’s management, also spelled out in the bylaws, namely, disaffiliation: “Non-compliance with any Standard found within the PPFA MS&Gs may result in actions that jeopardize the affiliate’s ability to continue to use the Planned Parenthood trademark” and that “compliance with the PPFA MS&Gs is assessed through but not limited to the accreditation process.”<sup>20</sup> On occasion, when an affiliate fails to follow PPFA’s policies or procedures, PPFA has stripped affiliates of their status as such. This happened in 2010, for instance, to then-Planned Parenthood Golden Gate.<sup>21</sup> PPFA also took disaffiliation action against Planned Parenthood of Hawaii in 1998 for failure to meet its medical standards and financial standards.<sup>22</sup>

The CARES Act gives the SBA broad authority in determining eligibility for small businesses and certain nonprofits to receive PPP loans. This fact is recognized by PPFA itself. On March 25, shortly after the CARES Act passed the Senate, Planned Parenthood Action issued a statement that the bill “gives the Small Business Administration broad discretion to exclude

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<sup>16</sup> Ibid., pg. 19.

<sup>17</sup> PPFA MS&Gs, dated June 2014, obtained and published by the Center for Medical Progress: <https://www.centerformedicalprogress.org/wp-content/uploads/2019/01/2014-PPFA-MSGs-Parts-1-3-Archive-with-Errata-NMC-2014-Recommendations.pdf>, pg. 3.

<sup>18</sup> Ibid., pg. 3.

<sup>19</sup> Ibid., pg. 3-12.

<sup>20</sup> Ibid., pg. 12.

<sup>21</sup> <https://www.nytimes.com/2010/08/29/us/29bcparenthood.html>

<sup>22</sup> <http://archives.starbulletin.com/98/01/13/news/story3.html>

Planned Parenthood affiliates... and deny them benefits under the new small business loan program.”<sup>23</sup>

We agree: PPFA’s common management over its affiliates fits squarely within the criteria that SBA currently uses to make a determination of affiliation for small businesses. Again, we ask you to issue a determination as to whether PPFA, and all of its affiliates, are “affiliated” under SBA regulations, and hence whether Planned Parenthood is eligible for Paycheck Protection Program loans.

Thank you for your consideration of this important matter to save innocent lives and protect the American taxpayers from bankrolling Planned Parenthood’s payroll during this period of crisis.

Sincerely,

Steve Daines  
United States Senator

Jodey C. Arrington  
Member of Congress

Marco Rubio  
United States Senator

Mike Johnson  
Member of Congress

Enclosed: PPFA Bylaws (March 29, 2008)

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<sup>23</sup> <https://www.plannedparenthoodaction.org/pressroom/senate-covid-19-response-package-leaves-much-to-be-done-for-our-families-and-public-health-response>

Cindy Hyde-Smith  
United States Senator

Kevin Cramer  
United States Senator

James M. Inhofe  
United States Senator

M. Michael Rounds  
United States Senator

Roger F. Wicker  
United States Senator

Tom Cotton  
United States Senator

John Boozman  
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Josh Hawley  
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Deb Fischer  
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Bill Flores  
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Brett Guthrie  
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W. Gregory Steube  
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Martha Roby  
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K. Michael Conaway  
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