

SBA Franchise Reviews

THE CHALLENGE

SBA loan applicants that operate under a franchise, license, dealer, jobber or similar agreement present unique challenges to SBA lenders. The SBA requires lenders to make a determination as to whether any affiliation exists as a result of that agreement that would make the borrower too large to be eligible for an SBA loan. Regardless of the title, if the agreement provides the applicant with a product, service or trademark that is critical to its business operation, then the agreement and any related documents must be reviewed to determine whether any impermissible affiliation exists. Where the applicant is one of the many businesses operating under a franchise, license, dealer, or jobber agreement that is not listed on the SBA's official Franchise Registry, lenders participating in the SBA's PLP lending program are responsible for making their own affiliation (and thus eligibility) determination. The highly subjective nature of the franchise affiliation analysis has made it increasingly difficult for lenders to perform their analysis with any confidence that the SBA will concur with their conclusion. "Affiliation", as defined by the SBA's regulations, is a complex and difficult determination for lenders to make, and the stakes are incredibly high – an incorrect eligibility determination will result in a complete denial of the SBA guaranty.

THE SOLUTION

The attorneys at Starfield & Smith know what provisions in franchise agreements are likely to lead to findings of ineligible affiliation. We have years of experience reviewing and analyzing these agreements, providing guidance on whether a franchise agreement raises eligibility issues under the SBA's rules, and advising lenders on how potential affiliation problems can be fixed. We regularly consult with the SBA on these issues and often negotiate with franchisors and licensors to remove or modify terms that may create eligibility and affiliation issues. Although only the SBA can make a franchise eligibility determination that is binding on the agency, the attorneys at Starfield & Smith can assist lenders by bringing our broad experience with these matters to bear in situations where PLP lenders have decided to assume the risk of making the eligibility determination for themselves.

The SBA's guaranty is your most important piece of collateral. Do not risk losing it by lending to an ineligible franchise. Contact us to learn how we can help.