



U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF CAPITAL ACCESS

May 19, 2020

Ruth Lytle-Barnaby
Planned Parenthood of Delaware, Inc.
625 N. Shipley Street
Wilmington, DE 19801

Re: Notice of Investigation and Request for Records

Dear Ms. Lytle-Barnaby:

Planned Parenthood of Delaware, Inc. (“PPD”) applied for a loan through the Paycheck Protection Program. In its loan application, PPD self-certified that it is eligible for a Paycheck Protection Program loan. PPD, however, is a local affiliate of Planned Parenthood Federation of America, Inc. (“PPFA”). We have preliminarily concluded, therefore, that PPD is ineligible for a Paycheck Protection Program loan under the applicable affiliation rules and size standards, consistent with Congressional intent, and that the loan you have received should be returned. If you wish to contest our preliminary conclusion, the Small Business Administration (“SBA”) will conduct an investigation pursuant to Section 5(b)(11) of the Small Business Act¹ to assess PPD’s eligibility for a Paycheck Protection Program loan and the basis for PPD’s eligibility certification.

PPD, which is identified as a PPFA “local office” on PPFA’s website², applied for a \$496,225 Paycheck Protection Program loan. This is one of 38 loans that PPFA local affiliates have applied for through the Paycheck Protection Program. In total, PPFA local affiliates have applied for more than \$80 million in Paycheck Protection Program loans.

To obtain its loan, PPD certified in its Paycheck Protection Program Borrower Application Form that “[t]he 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”³ By making this certification, PPD represented that it, when considered together with all of its affiliates, has 500 or fewer employees.⁴

¹ 15 U.S.C. § 634(b)(11) (authorizing the Administrator of the Small Business Administration (“SBA”) to “make such investigations as he deems necessary to determine whether a recipient of or participant in any assistance under [the Small Business Act] or any other person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of . . . , or of any rule or regulation under [the Small Business Act]”).

² Planned Parenthood Federation of America, Local Offices, Contact Us *available at* <https://www.plannedparenthood.org/about-us/contact-us>.

³ SBA Form 2483.

⁴ Small Business Administration, Business Loan Program Temporary Changes; Paycheck Protection Program, Affiliate Rules for Paycheck Protection Program, 85 Fed. Reg. 20817, 20818-19 (Apr. 15, 2020) (“In most cases, a borrower will be considered together with its affiliates for purposes of determining eligibility for the PPP. . . . An entity generally is eligible for the PPP if it, combined with its affiliates, . . . (1) has 500 or fewer employees whose

To make such a certification properly, PPD was required to apply the affiliation rules applicable to the Paycheck Protection Program⁵ and identify its affiliates.⁶ Those affiliation rules provide, among other things, that: “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.”⁷ For example, affiliation can arise from management:

(3) Affiliation based on management. Affiliation arises where the CEO or President of the applicant concern (or other officers, managing members, or partners who control the management of the concern) also controls the management of one or more other concerns. Affiliation also arises 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. Affiliation also arises where a single individual, concern or entity controls the management of the applicant concern through a management agreement.⁸

PPFA is known to have and to exercise control over its local affiliates, such as PPD. PPFA’s bylaws, a version of which is publicly available, reveal that becoming a PPFA affiliate requires a certification by the PPFA board.⁹ Once certified, “[e]ach Affiliate shall be governed by written bylaws which conform to PPFA policies.”¹⁰ PPFA imposes 17 “affiliation mandates” on local affiliates on topics ranging from medical standards and guidelines to policies regarding inter-affiliate patient transfers.¹¹ To maintain their PPFA affiliation, affiliates must submit to a rigorous PPFA accreditation review every three years.¹² PPFA affiliates that fall short of PPFA’s standards

principal place of residence is in the United States . . . and (2) is a tax-exempt nonprofit organization described in section 501(c)(3) of the Internal Revenue Code (IRC)”)

⁵ See 15 U.S.C. § 636(a)(36)(D)(vi); 13 C.F.R. § 121.103; 85 Fed. Reg. at 2018-19.

⁶ Paycheck Protection Program Loans, Frequently Asked Questions (FAQs), 4-5 (“It is the responsibility of the borrower to determine which entities (if any) are its affiliates and determine the employee headcount of the borrower and its affiliates.”).

⁷ Affiliation Rules Applicable To U.S. Small Business Administration Paycheck Protection Program (Apr. 3, 2020), available at <https://www.sba.gov/sites/default/files/202004/Affiliation%20rules%20overview%20%28for%20public%29%20v2.pdf>.

⁸ *Id.*

⁹ Amended and Restated Bylaws of the Planned Parenthood Federation of America, Inc., As Amended by the Membership at its Meeting on March 29, 2008 [hereinafter PPFA Bylaws], Art. II, § 1(ii) (attached to PPFA’s 2007 tax return), available at https://projects.propublica.org/nonprofits/display_990/131644147/2009_05_EO%2F13-1644147_990_200806.

¹⁰ *Id.* at Art. XI, § 4(i).

¹¹ *Id.* at Art. XI, § 5.

¹² Planned Parenthood Hudson Peconic provided the following description of PPFA’s accreditation program:

Every three years, each Planned Parenthood affiliate undergoes accreditation, which involves a review of all aspects of the organization—from health services to fiscal operations to fundraising to board governance and more. We prepared for this extremely intensive process for months. Experts from PPFA’s offices reviewed all our procedures, interviewed and observed staff members, and toured our health centers. We are happy to report that we obtained full accreditation and remain in excellent standing with our national organization.

Planned Parenthood Hudson Peconic, 2014 Annual Report 1, available at https://www.plannedparenthood.org/files/8714/4200/2638/PPHP_2014_AR_Final_for_website.pdf.

or jeopardize PPFA's trademark are stripped of their affiliation.¹³ PPFA also mandates the services that each local affiliate must provide, including requiring each local affiliate to perform on-site abortions; local affiliates unable or unwilling to comply with this PPFA mandate have been forced to leave the PPFA network.¹⁴ Ultimately, PPFA determines which affiliates become and remain a part of the "Federation," which PPFA defines as itself and the affiliates collectively.¹⁵

Yet, PPD did not identify PPFA or any of PPFA's other local offices as affiliates—despite being identified as an affiliate of PPFA on PPFA's website. Indeed, PPD could not have certified that it was eligible for a Paycheck Protection Program loan if it is affiliated with PPFA or any of PPFA's other local offices. PPFA alone reported employing 676 people in 2017,¹⁶ and presently there are 49 local PPFA affiliates nationwide.¹⁷

On its face, PPD's status as a local affiliate in the nationwide PPFA network subject to direction from PPFA on a number of management issues makes PPD ineligible for a Paycheck Protection Program loan under the applicable affiliation rules and size standards. If you wish to dispute that assessment, then pursuant to the Administrator's investigative authority, SBA requests that PPD demonstrate the basis for its certification that it is eligible for a Paycheck Protection Program loan. SBA also requests that PPD produce documents concerning PPD's eligibility certification within 10 calendar days of receipt of this letter. SBA's specific document requests are set forth in Attachment A to this letter.

Incorrect or false eligibility certifications by borrowers are subject to severe penalties. If SBA determines that a borrower made an eligibility certification that was incorrect or lacked adequate basis, SBA may seek repayment of the Paycheck Protection Program loan, and the borrower may be ineligible for loan forgiveness. If SBA determines that a borrower made a knowingly false certification on an application for a Paycheck Protection Program loan, SBA may refer the borrower for appropriate civil or criminal penalties.

¹³ For example, PPFA disaffiliated Planned Parenthood Golden Gate and reassigned its patients to other Planned Parenthood clinics. Katharine Mieszkowski, *Planned Parenthood Clinics Are Stripped of Affiliation After Complaints*, The New York Times (Aug. 28, 2020), available at <https://www.nytimes.com/2010/08/29/us/29bcparenthood.html>. PPFA also commenced disaffiliation proceedings against Planned Parenthood of Hawaii on the grounds that the local affiliate failed "to meet PPFA's national standards medically and financially." Lori Tighe, *Isle Planned Parenthood Gains Support*, Star-Bulletin (1998), available at <http://archives.starbulletin.com/98/01/13/news/story3.html>.

¹⁴ M. Alex Johnson, *Abortion mandate costs Planned Parenthood a few affiliates*, NBC News (Dec. 6, 2012), available at http://usnews.nbcnews.com/_news/2012/12/06/15702142-abortion-mandate-costs-planned-parenthood-a-few-affiliates.

¹⁵ PPFA Bylaws, Art. II, § 1(vi).

¹⁶ PPFA 2017 tax return (publicly disclosed), available at https://www.plannedparenthood.org/uploads/filer_public/3b/75/3b757e47-db59-4cd7-b9a9-e17bc6c75280/ppfa_fy18_990_-_public_disclosure.pdf.

¹⁷ Planned Parenthood, *Who We Are* (stating that PPFA has 49 local affiliates nationwide), available at <https://www.plannedparenthood.org/about-us/who-we-are>.

Sincerely,

A handwritten signature in blue ink that reads "William Manger". The signature is written in a cursive style with a large, prominent initial "W".

William Manger
Associate Administrator
U.S. Small Business Administration

Attachment A

Document Requests

1. All documents that evidence, reflect, relate to, or describe in any way the relationship between PPD and PPFA, including but not limited to articles of incorporation, bylaws, affiliation standards, management agreements, memoranda of understanding, financial statements, medical standards, policies, procedures, directories, organizational charts, and communications evidencing directions, guidance, or control from PPFA over PPD's management.

2. All documents that evidence, reflect, relate to, or describe in any way the relationship between PPD and other PPFA local affiliates, including but not limited to articles of incorporation, bylaws, affiliation standards, management agreements, memoranda of understanding, financial statements, medical standards, policies, procedures, directories, and organizational charts.

3. All documents that evidence, reflect, relate to, or describe in any way PPFA's "accreditation criteria" for local affiliates.

4. All documents that evidence, reflect, relate to, or describe in any way PPD's accreditation as a PPFA affiliate, including but not limited to PPFA's accreditation of PPD as a new affiliate, PPFA's renewal of PPD's affiliation, and any actions taken by PPFA to discipline PPD, place PPD on probation, or suspend or terminate PPD's affiliation with PPFA.

5. All documents that evidence, reflect, relate to, or describe in any way any contractual agreements between PPFA and PPD.

6. All documents that evidence, reflect, relate to, or describe in any way any payments or other financial transactions between PPFA and PPD within the past two years.

7. All documents that PPD provided to its lender to apply for a Paycheck Protection Program loan, including but not limited to, the Paycheck Protection Program Borrower Application Form and the documentation that PPD provided to the lender to verify the number of full-time equivalent employees on PPD's payroll.

8. All documents relating to the basis for PPD's certification on the Paycheck Protection Program Borrower Application Form that PPD is eligible to receive a Paycheck Protection Program loan.

9. All documents relating to the basis for PPD's certification that PPD applied the affiliation rules applicable to the Paycheck Protection Program and concluded that PPD, when combined with its affiliates, is eligible to receive a Paycheck Protection Program loan. Requested documents include, but are not limited to, all documents reflecting PPD's application of the affiliation rules, which entities PPD concluded are its affiliates, how PPD calculated the combined

employee headcount of PPD and its affiliates, and the combined employee headcount of PPD and its affiliates.

10. All documents that PPD referenced or relied upon when applying the affiliation rules.

11. All communications concerning PPD's application for a Paycheck Protection Program loan. Requested documents include but are not limited to communications between PPD, PPFA, and other PPFA local affiliates.

12. All documents relating to PPD's determination of whether it has common management with any other entity. Requested documents include but are not limited to any documents that PPD referenced or relied upon in answering the following question on the Paycheck Protection Program Borrower Application Form: "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."

13. All documents relating to the basis for PPD's certification on the Paycheck Protection Program Borrower Application Form that "[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of" PPD.

14. All documents relating to the basis for PPD's certification on the Paycheck Protection Program Borrower Application Form that "[t]he 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."

Definitions and Instructions

1. "Communication" means any exchange or transmittal of information by any means of transmission, including without limitation, face-to-face conversation, mail, overnight delivery, Internet, telephone, electronic mail, or facsimile.

2. "Document" is intended to be interpreted in its broadest possible sense and means the complete original or a true, correct, and complete copy and any non-identical copies of any written or graphic manner, no matter how produced, recorded, stored, or reproduced, including but not limited to, any writing, letter, envelope, telegram, electronic mail, message, computer file, meeting minute, memorandum, statement, book, record, survey, map, study, handwritten note, working paper, chart, tabulation, graph, tape, data sheet, data processing card, printout, microfilm, index, appointment book, diary, diary entry, calendar, calendar entry, desk pad, telephone message slip, note of interview or communication or any other data compilation in your possession, custody, or control, including all drafts of all such documents, and documents provided to your counsel.

3. The singular form of a noun or pronoun includes the plural form, and the plural form includes the singular.

4. The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of a Request all documents that otherwise might be construed to be outside of its scope.

5. For purposes of interpreting or construing the scope of these Requests, the terms used shall be given the most expansive and inclusive interpretation, unless otherwise specifically limited in the Request.

6. PPD shall produce responsive documents as they have been kept in the usual course, or shall organize and label the documents to correspond to the enumerated requests. If there is no document responsive to any particular category, PPD shall so state in writing.

7. If PPD withholds any document responsive to a Request under a claim of privilege, they shall, for each such withheld document, provide a description of the document and a statement of the basis upon which the privilege asserted is claimed.

8. In the event that any document called for hereby was formerly in the possession, custody, or control of PPD and has been lost or destroyed, that document is to be identified in writing as follows: (a) addressor, addressee, person who prepared or authorized the document, indicated or blind copies; (b) date of preparation of transmittal; (c) subject matter; (d) number of pages, attachments, or appendices; (e) all persons to whom distributed; (f) date of loss or destruction; and (g) if destroyed, the manner of destruction, reason for destruction, persons authorizing destruction and persons destroying the document.