At a Glance: Barriers to the Paycheck Protection Program (“PPP”)  
Based on Arrest or Conviction

- SBA regulations and policy statements for the 7(a) loan program disqualify applicants if certain principals of the business are currently serving a sentence or subject to charges; otherwise, applicants with a past record are subject to a character determination (see below).
- The CARES Act authorizes PPP loans under the 7(a) program and does not impose or require any barriers based on arrest or conviction history. Nonetheless, the SBA has imposed—through a regulation and application form—the following new mandatory disqualifications for PPP:
  - Applicants with an owner of 20% or more equity who was convicted of any felony within the last 5 years (Interim Final Rule); and
  - Applicants with “any owner” who within the last 5 years, for any felony: was convicted, pleaded guilty or no contest, or was placed on pretrial diversion, parole, or probation (Application Form).

Preexisting SBA 7(a) Requirements

- The 7(a) statute authorizes the SBA to “verify the applicant’s criminal background, or lack thereof,” including through an FBI background check.
- An SBA regulation makes ineligible “[b]usinesses with an Associate who is incarcerated, on probation, on parole, or has been indicted for a felony or a crime of moral turpitude.” SBA’s policy statement also makes ineligible businesses with an Associate currently under specified forms of diversionary or conditional dispositions, order of protection, a sex offender registry, or facing any charges in any jurisdiction. This policy statement further provides that various principals of a business “must be of good character.”

New PPP Requirements

- The CARES Act (H.R. 748) authorized PPP loans under the 7(a) program, but does not impose or require any barriers based on arrest or conviction history for PPP loans.
- SBA’s PPP Interim Final Rule makes an applicant ineligible if: “An owner of 20 percent or more of the equity of the applicant is incarcerated, on probation, on parole; presently subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction; or has been convicted of a felony within the last five years”; or if the applicant is ineligible under existing regulation or policy statement.
- The PPP Application Form goes further: it disqualifies all applicants who answer “yes” to any of the following: “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?” or “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)?”

The “good character” determination requires disclosure and documentation of: 1) current charges; 2) arrests in the past 6 months; and 3) any (excluding minor vehicle violations) convictions, guilty and no contest pleas, or placement on pretrial diversion or any form of parole or probation, at any time. Expunged and sealed records must be disclosed. A person may then be approved if they have satisfied all sentencing conditions and do not have a felony conviction, misdemeanor conviction for a crime against a minor, recent misdemeanor conviction, or recent charges. Otherwise, there is an FBI fingerprint background check and individual determination by the SBA. See SBA SOP 50.10.5(K)(B)(2)(III)(A)(13) (eff. April 1, 2019).