



Employment Training Panel

Memorandum

To: ETP Policy Committee
Gretchen Newsom, Chairperson
Janice Roberts, Member
Rick Smiles: Member

Date: August 20,
2020

CC: Executive Staff
Peter Cooper, Assistant Director

From: Lis Testa, Policy Manager

Subject: ETP Policy Committee Meeting Agenda Item 3.a.
Report to Policy Committee Re: Affiliates

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- I. Brief Issue Statement: The topic of affiliates was discussed at the February 2020 Policy Committee meeting. The main focus of that discussion involved if it was possible or beneficial to deny a potential applicant if that applicant already has a financial interest or benefit in another ETP contract.

ETP has seen a trend of related entities (for example: co-owned companies, or subsidiaries of larger corporations) applying for separate ETP contracts. Given our high levels of demand and the larger current economic situation, it may be beneficial to have a way to limit this form of 'double dipping' by what could be considered a single entity into ETP's funding source. When affiliates split up this way, and come in for multiple contracts, there is a concern that a single company is attempting to get around the project cap for Single Employers. Also, given ETP's prioritized service for small businesses, for large corporations to hold multiple contracts for different subsidiaries simultaneously brings up a concern of 'corporate welfare', or state funds going to business entities that may not need it. There are, however, many complicated logistical concerns to consider in trying to formulate a policy around this issue.

Topics discussed during the February Committee meeting included: a definition for affiliate, a definition for entity, a definition for commercial relationship, if subsidiary companies are aware of their entire corporate structures or not, how to determine corporate structure, what sort of limitations (if any) to place on affiliates, and how to convey this information to Panel, among other considerations. At that time, the complexity of this issue sparked good discussion, and the general consensus was that it may be too difficult to find a way to implement a policy on this item. However, since Committee and Panel members have expressed further interest in this topic, and since no policy has been developed to date, additional discussion today is appropriate.

- II. Further Background & Analysis: Under the Unity of Enterprise Guidelines (effective 2/2014), an affiliate is loosely defined as “another business that has a commercial relationship with the Single Employer, including a parent or subsidiary. AAU will verify the commercial relationship as part of determining eligibility for the Single Employer.”

Having a stronger definition for affiliate is the first challenge. There are many different types of commercial relationships – companies may be co-owned by an individual or group, but otherwise have nothing in common with each other. Or they can be co-owned and also work closely together. Or they could not be co-owned at all, but each business works on a different step in the process of producing a particular good or service. Or they could be part of a larger umbrella corporation; a smaller subsidiary company that was purchased at some time in the past. The ways in which companies can be commercially related is quite nearly endless.

Even defining an ‘entity’ can be a challenge, given the many ways that a company can be organized.

- We can use the unique California Employer Account Number (CEAN) as a defining characteristic. However, some large corporations give each of their branches, locations, or divisions individual CEANs, even though those branches, locations, and divisions are all part of the same larger company.
- We can use the California Secretary of State Entity Number, which may work better for most companies. However, extremely large corporations often register their different locations or divisions separately with the Secretary of State as well.

Another issue is how to determine corporate structure in the first place, since there is currently no place for an applicant to provide this on the Preliminary Application. Additionally, small subsidiaries may not be aware of their entire corporate structure, especially if they are part of a huge conglomerate.

- We can use the Dun and Bradstreet Hoovers database to look up this information. This is a paid subscription service used for marketing and research purposes which lists vital statistics about companies in their databases. The information in D&B Hoovers includes company locations, alternate names, NAICS codes, and subsidiary and parent company information, among other things.
- If this remains a part of eligibility, which it will if we consider using affiliate status/corporate structure as a way of determining who is eligible for ETP, this task would fall on AAU, who are already understaffed to handle the levels of demand that we are currently facing.
- We can provide this information within the 130 Panel Proposals for Panel each month, rather than using it as part of an eligibility determination. In this case, AAU or the Field Offices could be assigned the task of searching through the D&B Hoovers database. We would need to adjust the 130 templates to accommodate this information, since there is currently no place for it in the existing templates. Once we have the outline

of the corporate structure for an applicant in the 130, we can also determine if any other entity in the corporate structure has held an ETP contract in the past, what their performance level was on those contracts, and include this performance information within the 130 as well. Please note that this will add some time to the development process, but Panel would be able to see the applicant's corporate structure and related financial information this way. Also, some corporate structures are massive – so do we want the entire corporate structure listed or just the main branches?

- Also, please note that D&B Hoovers is a subscription service, so ETP cannot purchase a license for each employee.

If the concern is more around large corporations taking advantage of ETP funding, we could consider placing a limitation on business size – but how to determine size? By number of employees? Yearly earnings? Interstate or international status? Certain types of corporate structures? And, how can ETP logistically easily determine these factors? Additionally, large corporations also pay the Employment Training Tax, a pre-requisite for most companies applying to ETP.

When thinking about affiliates, we also need to consider how they tie into the Repeat Contractor Rule. Affiliates could be considered a type Repeat Contractor, since, as part of a larger corporate structure, any funds going to the affiliate are also benefiting the corporation as a whole. Should this be a consideration for ETP? If so, how do affiliates fit into the Repeat Contractor Rule?

- ETP does still have the substantial contribution requirement that they can enforce, however, this limitation only applies to repeat locations, rather than to companies as a whole.
- Determining definitions for entity and affiliate would be necessary here.

As a smaller but related item, how should affiliates (or even the same Single Employer) be handled if they hold a Single Employer contract and then are also Participating Employers in a MEC contract?

Lastly, when a Single Employer does wish to include an affiliated entity in their project, they are currently determined eligible as a “Single Employer with Affiliate”. The main Single Employer holds all liability for the project, ‘mini’ eligibility determinations are completed for the affiliate (are they active and in good standing – funding source determination is tied to the main Single Employer under the Unity of Enterprise Guidelines), and we do not collect Certification Statements for the affiliates. A more accurate way of determining eligibility for these situations would actually be as a Group of Employers (in other words, as a MEC), with one company holding the contract (and accompanying liability) and all participating entities completing Certification Statements.

- This would give ETP better records on the affiliates.
- The Single Employer still holds sole liability on the contract.

- However, the main Single Employer could not train their own employees in this scenario, which is the reason why the Single with Affiliate category was instituted.

III. Recommendation:

Staff would like to know if Committee or stakeholders have any feedback or desire for more discussion on this item, or if Committee would like a particular approach to this issue further researched.