

INSIGHTS

New Guidance: SBA Clarifies That Foreign Employees Must Be Counted for PPP

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The Small Business Administration has clarified through [newly-issued guidance](#) that employees of foreign affiliates must be counted when determining the size of a business for eligibility under the Paycheck Protection Program. This new guidance, which is part of a steady stream of recent updates to the PPP rules, puts to rest some debate as to whether the SBA's prior rules and guidance could be interpreted to permit the exclusion of foreign employees from the calculation.

As described in [prior alerts](#), PPP loan eligibility generally requires that a business have 500 or fewer employees, with some exceptions based on the SBA's alternative size standards for certain industries, as well as different rules for restaurants and hotels. In determining the number of employees, the PPP rules require that the employees of all affiliated entities – whether such affiliation arises by virtue of common ownership or control – be counted together when determining an entity's size. Today's guidance confirms that “an applicant must count all of its employees and the employees of U.S. and foreign affiliates, absent a waiver of or an exception to the affiliation rules.”

This guidance follows a series of new or updated rules and guidance recently issued by the SBA that, among other things:

- Extends the “safe harbor” related to the PPP's necessity certification until May 14, 2020 ([FAQ 43](#));
- Treats nonprofit hospitals exempt from taxation under section 115 of the Internal Revenue Code as meeting the definition of “nonprofit organization” under section 1102 of the CARES Act, so long as the hospital determines, in writing, that it is an organization described in section 501(c)(3) of the Internal Revenue Code ([FAQ 42](#));

- Modifies a rule related to loan forgiveness to provide that where a borrower offers to rehire an employee, but the employee declines the offer, the loan forgiveness amount will not be reduced based on that employee reduction ([FAQ 40](#));
- Clarifies through a supplemental [Interim Final Rule](#) that a corporate group, defined as businesses majority owned by a common parent, shall not receive more than an aggregate of \$20 million of PPP loans; and that
- If a business had a change in ownership after February 15, 2020 it could still be eligible for a PPP loan, despite the CARES Act's provision that PPP loans are available only to business in operation on February 15, 2020 ([FAQ 38](#)).

Bracewell has established a task force to help firms navigate the uncertainty surrounding the impact of COVID-19, including helping to ensure that clients have access to the benefits that Congress has provided. Your Bracewell point of contact can help you learn more.