

PPP Loan Eligibility: Do You Count Foreign Employees or Just U.S. Employees?

April 9, 2020

The U.S. Small Business Administration ("SBA") has issued new guidance on the new Paycheck Protection Program ("PPP"), which currently makes loans available to applicants that employ fewer than 500 people (or higher amount for businesses in certain industries), that indicates that a business generally is eligible for a PPP loan if it, combined with its foreign and domestic affiliates, has "**500 or fewer employees whose principal place of residence is in the United States.**" Such guidance suggests that the foreign employees of an applicant and its affiliates do not need to be included in the employee count.

It is to be noted that such guidance, which appears in both the Interim Final Rule and a SBA FAQ dated April 8, 2020, conflicts with the way employees are counted under the affiliation rules in 13 CFR Section 121.301, subject to certain statutory waivers. It is unclear whether the SBA will issue further clarification or guidance on this issue.

More details concerning the financial aid programs offered by the U.S. government to U.S. subsidiaries of foreign-owned companies can be **found here**.

This information is based on the facts and guidance available at the time of publication, and may be subject to change.