

## Publication

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### Interim Final Rule on Inclusion of Foreign Employees in Determining PPP Eligibility and Related Safe Harbor

The U.S. Small Business Administration (SBA) recently issued an Interim Final Rule that confirms that when calculating the number of employees of an entity for purposes of determining eligibility for a PPP loan, an entity must include all employees of its domestic and foreign affiliates, except in those limited circumstances where the affiliation rules expressly do not apply to the entity.

Because of conflicting SBA guidance (which was later resolved through a clarifying FAQ on May 5, 2020), the SBA will not find a borrower that applied for a PPP loan prior to May 5 to be ineligible based on the borrower's exclusion of non-U.S. employees from the borrower's calculation of its employee headcount if the borrower (together with its affiliates) had no more than 500 employees whose principal place of residence is in the United States. Such borrowers shall not be deemed to have made an inaccurate certification of eligibility solely on that basis. The Interim Final Rule also provides that under no circumstances may PPP funds be used to support non-U.S. workers or operations.

[Click here to read the SBA's Interim Final Rule.](#)

If you have questions about this guidance or any other matters related to the PPP program, please contact Chadwick Hoyt, Michael Gray, Robert

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