

Updated Guidance Regarding Multinational Companies and Paycheck Protection Program Loans

Since implementing the [Paycheck Protection Program \(PPP\)](#) more than a month ago, the U.S. Small Business Administration (SBA) has issued confusing guidance that makes multinational companies, particularly foreign-owned U.S. companies, wonder whether they are eligible.

As we previously noted, [the key is the interaction of the affiliate rules and the limit of 500 employees](#). These affiliate rules include both U.S. and foreign affiliates. According to the first Interim Final Rule announced earlier this year, "You are eligible for a PPP loan if you have 500 or fewer employees whose principal place of residence is within the United States." Based on this guidance, a foreign-owned U.S. company that is part of a large worldwide affiliate group should be able to qualify if the U.S. company – the only company that has employees whose principal place of residence is in the United States – has no more than 500 employees.

The SBA has continued to issue guidance in piecemeal fashion by adding to its [Frequently Asked Questions \(FAQ\)](#), the most recent list of which is dated May 6, 2020. For example, FAQ 33 determines the employee's principal place of residence by the IRS regulatory standard of where the employee's workplace is located.

The SBA caused confusion by adding FAQ 44. Without mentioning the rule for employees having a principal place of residence in the United States, that FAQ states the following:

Question: How do SBA's affiliation rules at 13 C.F.R. 121.301(f) apply with regard to counting the employees of foreign and U.S. affiliates?

Answer: For purposes of the PPP's 500 or fewer employee size standard, an applicant must count all of its employees and the employees of its U.S. and foreign affiliates, absent a waiver of or an exception to the affiliation rules. 13 C.F.R. 121.301(f) (6). ...

U.S. multinationals must consider both FAQ 44 and the Interim Final Rule for principal place of residence in the United States. Two different interpretations are possible:

POSTED:

May 8, 2020

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1. FAQ 44 could be viewed as consistent with counting only those employees of all foreign and U.S. affiliates who have a principal place of residence in the United States. Accordingly, under this interpretation, borrowers would consider the employees of all their affiliates before excluding employees that do not have a principal place of residence in the United States.
2. FAQ 44 could be viewed as inconsistent with the Interim Final Rule and, as the latter in time, FAQ 44 trumps the principal place of residence requirement in the Interim Final Rule.

The consistent analysis – counting all employees who have a principal place of residence in the United States – provides more logical reasoning. However, considering the piecemeal fashion in which the SBA has issued guidance, we can expect more guidance before May 14, the date by which borrowers must return loans.

If you have questions about whether or not your business qualifies for a PPP loan, please call [Rob Misey](#) or your Reinhart attorney.

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