

SBA Offers Relief to PPP Recipients with Foreign Affiliates

By Bruce Blasnik, CPA, CGMA, Partner

On May 18, 2020, while most Paycheck Protection Program (PPP) participants were studying the Loan Forgiveness Application released on May 15, 2020, the U.S. Small Business Administration (SBA) issued an Interim Final Rule (IFR) on *Treatment of Entities with Foreign Affiliates*.

This IFR confirms the position taken in Frequently Asked Question (FAQ) No. 44, published on May 3, 2020, which states, "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..." However, it offers relief to borrowers with foreign affiliates who applied for a PPP loan prior to May 5, 2020 and relied on earlier guidance which indicated borrowers only needed to consider their employees whose principal place of residence is the United States.

Specifically, the IFR provides:

[A]s an exercise of enforcement discretion due to reasonable borrower confusion based on SBA guidance (which was later resolved through a clarifying FAQ on May 5, 2020), SBA will not find any borrower that applied for a PPP loan prior to May 5, 2020 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. Under no circumstances may PPP funds be used to support non-U.S. workers or operations.

This is welcome relief, indeed.

Contact Us

As always, we are here to help. While the decision to keep or return any PPP loans received must be yours, we can guide you through the assessment process, helping you to identify and document key considerations and acting as a sounding board along the way. Please reach out to your PKFOD engagement team with questions or for assistance or contact Bruce L. Blasnik, CPA, CGMA, Partner at CLT-SBATEchnical@pkfod.com.

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