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# SBA's Alternative Size Standard Applicable to PPP Loans

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The Treasury Department continues to roll out new guidance on the CARES Act and the Paycheck Protection Program. In a recent update regarding PPP loan eligibility, the Department explained that a business can qualify for a loan even if it has more than 500 employees whose principal place of residence is in the United States if it meets the SBA employee-based or revenue-based size standard corresponding to its primary industry. This was expected and comes straight from the text of the CARES Act and SBA regulations.

The most interesting guidance is the Department's reminder of the SBA's "alternative size standard" for determining whether an applicant is a "small business concern" for PPP loan eligibility. Under the alternative size standard, a business can qualify for a PPP loan as a small business if as of March 27, 2020, it (1) had a maximum tangible net worth of not more than \$15 million, and (2) had an average net income after Federal income taxes (excluding any carry-over losses) of not more than \$5 million for the last two fiscal years before the date of the application. This alternative standard comes from the 2010 Small Business Jobs Act (Jobs Act), for which the SBA has never finalized implementing regulations, even after 10 years. However, Congress included language in the Jobs Act to provide for a temporary standard pending adoption of regulations.

Although the guidance is a good reminder of the alternative size standard, the guidance leaves open questions on how other SBA concepts, such as business affiliation, apply to businesses when attempting to qualify under the alternative size standard. It is also worth mentioning that the guidance appears to set up two conflicting measuring periods for the alternative size standard, as of March 27, 2020, or the date of application.

The Treasury Department's guidance is amended and expanded daily or more, and we will continue to provide updates as they become available.