



## **SBA/Treasury Affiliation Test for PPP Loans Overview**

*As of April 9, 2020*

The SBA has yet to issue final guidance on how it will treat foreign ownership under affiliation rules that would typically bar an applicant with foreign ownership. As of April 9, however, the SBA guidelines do not appear to preclude the subsidiary of a foreign entity from applying so long as the aggregate employment of all affiliates combined does not exceed 500 employees. Bear in mind, the borrower may not use the loan to pay for salaries for employees whose residence is not the United States.

It appears, as of now, the SBA is primarily using the affiliation test to count employees towards the 500-person limit. Temporary and part-time workers are included in the FTE count for the applicant.

### **Four Affiliation Tests**

The Treasury and SBA have established the use of [four tests](#) when determining affiliation under the PPP:

- Affiliation based on ownership;
- Affiliation arising under stock options, convertible securities, and agreements to merge;
- Affiliation based on management; or
- Affiliation based on identity of interest.

### **Ownership Test**

The most common test likely being ownership, generally, the applicant and entity are “affiliated” when one owns or has the power to control more than 50% of the applicant’s voting equity or both companies are under common control by a third party. This is the majority owner portion of the test.

As to minority ownership affiliation, A minority owner is considered an affiliate if it can prevent a quorum of the board of the company’s directors or stockholders, or

Veto day-to-day operational decisions of the company, including encumbering or selling assets, amending or terminating lease agreements, purchasing equipment, officer or employee compensation decisions, hiring and firing officers and executives, incurring debt, paying distributions or dividends, bringing or defending a lawsuit, approving or changing the budget, changes in strategic direction (aside from entering into a substantially different line of business), or establishing or amending an incentive or employee stock ownership plan.

### **Stock Options**

In determining size, SBA considers stock options, convertible securities, and agreements to merge (including agreements in principle) to have a present effect on the power to control a concern. SBA treats such options, convertible securities, and agreements as though the rights granted have been exercised.

### **Management Test**

Affiliation based on management. Affiliation arises where the CEO or President of the applicant concern (or other officers, managing members, or partners who control the management of the concern) also controls the management of one or more other concerns. Affiliation also arises where a single individual, concern, or entity that controls the Board of Directors or management of one concern also controls the Board of Directors or management of one of more other concerns. Affiliation also arises where a single individual, concern or entity controls the management of the applicant concern through a management agreement.

### **Family Affiliation Test**

Affiliation arises when there is an identity of interest between close relatives, as defined in 13 CFR 120.10, with identical or substantially, identical business or economic interests (such as where the close relatives operate concerns in the same or similar industry in the same geographic area). Where SBA determines that interests should be aggregated, an individual or firm may rebut that determination with evidence showing that the interests deemed to be one are in fact separate.