Student Workers and PPP Loan Eligibility

Do student workers count when determining the number of employees for PPP loan eligibility?

Yes, student workers generally count as employees, unless (a) the applicant is an institution of higher education, as defined in the Department of Education’s Federal Work-Study regulations, 34 C.F.R. § 675.2, and (b) the student worker’s services are performed as part of a Federal Work-Study Program (as defined in those regulations) or a substantially similar program of a State or political subdivision thereof. Institutions of higher education must exclude work study students when determining the number of employees for PPP loan eligibility, and must also exclude payroll costs for work study students from the calculation of payroll costs used to determine their PPP loan amount.

The Administrator, in consultation with the Secretary, has determined that this is a reasonable interpretation of section 1102(a) of the CARES Act’s reference to “individuals employed on a full-time, part-time, or other basis.” Such programs generally provide part-time jobs for students with financial need, and their services are incident to and for the purpose of pursuing a course of study. Work study students are excluded from the definition of employees in other areas of federal law. For example, in the regulations implementing the Affordable Care Act, Treasury defined an employee’s “hours of service” to exclude work study hours. Explaining this exclusion, the regulation’s preamble states that “[t]he federal work study program, as a federally subsidized financial aid program, is distinct from traditional employment in that its primary purpose is to advance education.” Similarly, student work is generally exempt from Federal Insurance Contribution Act (FICA) and Federal Unemployment taxes.

For similar reasons, the Administrator, in consultation with the Secretary of the Treasury, has determined that a limited exception for work study is appropriate here. In particular, the Administrator recognizes that requiring institutions of higher education to count work study students towards employee headcount would result in an anomalous outcome in two respects. First, it would prevent some small educational institutions from receiving PPP loans due solely to their provision of financial aid to students in the form of work study. Second, it would result in the exclusion of small educational institutions whose part-time work study headcount dwarfs their full-time faculty and staff headcounts. Educational institutions that filed loan applications prior to the issuance of the regulation are not bound by this interpretation but may rely on it. Lenders may continue to rely on borrower certifications as part of their good faith review process.

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1 The Department of Education’s Federal Work-Study Programs described at 34 CFR Part 675 are (1) the Federal Work-Study Program, (2) the Job Location and Development Program, and (3) Work Colleges Program.

2 26 CFR 54.49800H-1(a)(24) (“Hour of service . . . (ii) Excluded hours . . . (B) Work-study program. The term hour of service does not include any hour for services to the extent those services are performed as part of a Federal Work-Study Program as defined under 34 CFR 675 or a substantially similar program of a State or political subdivision thereof.”).


4 Internal Revenue Code Section 3121(b)(10) excepts from FICA tax “service performed in the employ of—(A) a school, college, university . . . if such service is performed by a student who is enrolled and regularly attending classes at such school, college, university.” Student workers, who are not full time, are excepted where the services are “incident to and for the purposes of pursuing a course of study.” 26 CFR § 31.3121(b)(10)-2(d)(3)(i).