



April 2, 2020

The Honorable Steve Mnuchin
Office of the Secretary
U.S. Department of Treasury
1500 Pennsylvania Avenue NW
Washington D.C. 20220

The Honorable Jovita Carranza
Office of the Administrator
Small Business Administration
409 3rd Street SW
Washington D.C. 20416

Dear Secretary Mnuchin and Administrator Carranza,

On behalf of the American Council on Education (ACE) and the National Association of Independent Colleges and Universities (NAICU), we write to you with an urgent request regarding the Paycheck Protection Program (PPP) and COVID-19 Economic Injury Disaster Loans (EIDL) created in the recently passed "Coronavirus Aid, Relief, and Economic Security (CARES) Act." As PPP loans become available tomorrow, there is an immediate need for flexibility around how to count student workers, but we hope this clarification will also apply to other loan programs such as the Mid-Size and Large Business Loan Program currently being developed.

Our small, private institutions are very interested in accessing these funds during this unprecedented economic crisis. However, a challenge, which can be quickly addressed, exists: there is confusion about whether the 500 employee eligibility cap includes all part-time student workers, including those whose jobs are part of financial aid packages. Many small colleges have fewer than 500 employees, exclusive of student workers, but are concerned that Small Business Administration (SBA) standards require them to count student employees. These small institutions, who would qualify if they didn't include student employees, need prompt confirmation that they are eligible for these important and timely loans.

Many of our institutions of higher education employ student workers across campus to provide students with paychecks and work experiences while keeping them close to campus for the purposes of their education. Studies have consistently shown that working on a campus helps to increase retention and graduation rates of these students. In addition, the small amount of money they may earn from working on campus can help provide bridge funds for costs such as books and transportation.

As you know, the majority of our campuses have closed for the spring semester and transitioned to online learning in response to the COVID-19 threat. Thus, all or most of these student employees have left campuses.

There is federal precedence for not including student workers in employee counting. The Department of Education Integrated Postsecondary Education Data System (IPEDS) does not include student employees in an institution's employee count. In the past, IRS and Treasury have acknowledged the unique nature of student employment in the work study program:

“the 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.”¹

Moreover, exclusion of student workers in the employee threshold calculation would be consistent with long-standing interpretation by the Department of Labor’s (DOL) Wage and Hour Division concerning students under the Fair Labor Standards Act (FLSA). DOL has long viewed a range of students engaged in activities related to their academic programs, including student Residential Assistants, graduate researchers, and teaching assistants, as being in an “educational relationship” not an “employment relationship with . . . the school,” and therefore not subject to the FLSA’s wage and hour requirements. This even includes a graduate Ph.D. candidate receiving a stipend subject to federal income taxes and health insurance from a university.²

The Internal Revenue Service also generally exempts student workers from being defined as employees under IRS regulations implementing the Student FICA and the Federal Unemployment tax exceptions. According to those regulations, students working fewer than 40 hours per week will be exempt from “employment” for FICA and Federal Unemployment taxes if they are engaged in paid services to an institution where the educational aspects of the services are “predominant” and “incident to and for the purposes of pursuing a course of study.”³ The regulations cite numerous examples, including an undergraduate student working part-time as a clerk in an administrative office, and a graduate teaching assistant, receiving a stipend and other benefits, who is charged with various instructional related duties (e.g. grading, classroom, and laboratory instruction) normally amounting to 20 hours per week and who works occasional periods in excess of 40 hours, as appropriately exempt from employment taxes.

As you consider guidance and regulations for the PPP and COVID-19 loan programs, we urge you to act quickly to exempt student employees from employee counts for institutions of higher education for the purposes of these programs.

This is an unprecedented time and we appreciate the efforts of Congress and the Administration to help address the financial issues facing many of our small businesses and non-profit institutions. We hope we can be a resource as you work to quickly issue guidance and regulations for these important programs.

Sincerely,



Ted Mitchell, President
ACE



Barbara Mistick, President
NAICU

Cc: The Honorable Betsy DeVos

¹ See: <https://www.treasury.gov/press-center/press-releases/Documents/Fact%20Sheet%20021014.pdf>

² See Department of Labor Wage and Hour Division, “Guidance for Higher Education Institutions on Paying Overtime under the Fair Labor Standards Act,” pp. 8-9 (May 18, 2016).

³ See 26 CFR § 31.3121(b)(10)-2.