



"Voice of Louisiana  
Agriculture"

## **Louisiana Farm Bureau Federation, Inc.**

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**To:** LFBF State Board, Executive Committee, Parish Presidents, LFBF Commodity Advisory Committees, Young Farmers and Ranchers Committee, Women's Committee, Labor Committee, Coastal Committee, LFBF Field Staff, LFBF Staff, Advisors

**From:** Brian Breaux – Senior Commodity/Public Policy Director

**Re:** New Interpretation: H2A Wage Eligibility for Workers who worked for 6 months or more for PPP

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Yesterday evening, we received a new interpretation that wages for H-2A workers who were employed under an H-2A contract(s) for over 180 days could establish their U.S. address as their principal residence and include their wages in average payroll for the Payroll Protection Program.

Please read the attached PDF from **American Hort** that is not definitive due to some questions raised in the residence test, but gives a very good argument that H-2A worker wages for workers employed 6 months or more should be included in the average wages for the PPP .

Other producers across the U.S. are following this PPP interpretation and including their 6 month or longer H-2A wages in their average payroll for the PPP.

Since H-2A worker wages comprise the majority of payroll for so many Louisiana farmers, this interpretation is a game changer for many farmers in Louisiana.

Please download the *PPP and H-2 Workers Guidan* attachment and share this with your banker and others and we urge you to consider including in your H-2A wages for workers employed 6 months or more last year in your average payroll for the PPP if you have not yet submitted your SBA-PPP loan application.

Please contact me at [brianb@lfbf.org](mailto:brianb@lfbf.org) or by cell at 225-603-0924 if you have questions.

## Are H-2 Workers Covered Under the Payroll Protection Program (PPP)?

Since the PPP was first announced, employers have been uncertain whether to include H-2A or H-2B workers in determining eligibility and payroll. AmericanHort and others have sought formal guidance from Treasury and SBA on this question. On April 26, the following guidance has been provided:

**33. Question:** Is there existing guidance to help PPP applicants and lenders determine whether an individual employee's principal place of residence is in the United States?

**Answer:** *PPP applicants and lenders may consider IRS regulations (26 CFR § 1.121- 1(b)(2)) when determining whether an individual employee's principal place of residence is in the United States.*

The IRS tax code reference in the answer above reads as follows:

**26 CFR § 1.121- 1(b)(2) Principal residence.** In the case of a taxpayer using more than one property as a residence, whether property is used by the taxpayer as the taxpayer's principal residence depends upon all the facts and circumstances. If a taxpayer alternates between 2 properties, using each as a residence for successive periods of time, the property that the taxpayer uses a majority of the time during the year ordinarily will be considered the taxpayer's principal residence. In addition to the taxpayer's use of the property, relevant factors in determining a taxpayer's principal residence, include, but are not limited to -

- (i) The taxpayer's place of employment;
- (ii) The principal place of abode of the taxpayer's family members;
- (iii) The address listed on the taxpayer's federal and state tax returns, driver's license, automobile registration, and voter registration card;
- (iv) The taxpayer's mailing address for bills and correspondence;
- (v) The location of the taxpayer's banks; and
- (vi) The location of religious organizations and recreational clubs with which the taxpayer is affiliated.

### **Analysis**

We believe that the Treasury/SBA guidance provided in FAQ #33 essentially affirms the ability for an employer of H-2A or H-2B workers who are in residence in the U.S. for more than 6 months (more than 180 days) to include such workers for the purpose of determining PPP eligibility and payroll. Please be aware that this guidance does not constitute a "blanket inclusion" of such workers, but rather, should be considered on a worker-by-worker basis. Employers are encouraged to document multiple factors listed above in the regulation. For H-2A workers, documenting at least several of these factors may not be difficult, since housing is furnished by the employer, and the employer may have payroll records that would document if the employee has a bank in the U.S.

We interpret the guidance stating that PPP applicants and lenders **may consider** the referenced section of the tax code does not compel consideration; rather, it appears to leave the matter to the applicant's discretion. Finally, this general interpretation is not intended to substitute for competent legal/tax advice specific to your circumstances.

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