

COVID-19: SBA LOAN PROGRAMS

WEBINAR FAQs

Payroll Related Costs

1. How does salary reduction for highly compensated employees (those making more than \$100,000) impact the loan forgiveness?

Only payroll expense up to \$100,000 for each highly compensated employees is considered in the forgiveness calculation.

2. How to calculate the Average Monthly Payroll using 2019 information?

Take total 2019 payroll or the most recent 12 months as defined and divide by 12 to calculate average monthly payroll. There are additional considerations such as healthcare premiums and reducing wages for those in excess of \$100,000.

3. Is the \$100,000 per employee?

Yes, it is per employee.

4. Is the \$100,000 payroll limitation before HC premiums or after HC premiums?

We interpret the \$100,000 payroll limitation to be based on wages and does not include healthcare premiums paid on behalf of the employee.

5. How do commission payments get taken into account for the salary levels both in balance and any reduction in payroll?

Employee compensation includes commissions paid over the selected period of time when determining the amount in excess of \$100,000, which will be reduced from payroll costs for the loan calculation.

6. LLC owner's compensation?

It is our understanding that income from self-employment for a sole proprietorship up to \$100,000 in 1 year is considered a payroll cost of the company. For a partnership, we believe guaranteed payments are considered a payroll cost of the company.

7. Regarding the cap of \$100k, will this cap apply when calculating wages during the 8 weeks?

Yes, it will apply on a prorated basis.

8. Any guidance on commission-based employees in terms of establishing average salary?

We believe the guidance allowing a lookback for 2019 or over the last twelve months to calculate an average takes this into consideration.

9. Is Health medical only or can dental and vision be included?

We believe health care benefits include both dental and vision, in addition to medical.

10. Can distributions be counted as payroll?

There is not definitive guidance on this issue; however, we do not believe so at this time. Check with your SBA lender.

Payroll Related Costs (continued)

11. Under PPPL program will self-employment income and guaranteed payments for members/shareholders considered to qualify as payroll costs?

There is not definitive guidance on this and firms and banks differ in the interpretation. We believe guaranteed payments are included at this time in the definition of payroll costs.

12. On the PPP loan, you mentioned we can include employer share of insurance premiums - what if you are self-insured? Can you use paid claims offset by any employee withholdings?

We believe you can use paid claims offset by any employee withholdings as it relates to self-insured plans.

EIDL and PPL

13. The \$10,000 advance from the EIDL loan is a grant, correct?

It is an advance on the EIDL and should you not receive an EIDL then it is considered an emergency grant and does need to be repaid; however, the amount received is reduced from the amount to be forgiven under the PPP loan program should you receive a PPP loan.

14. To be clear, you can apply for both EIDL and the PPL loans?

Yes. However, any EIDL loan received after January 31, 2020, used for payroll purposes may be refinanced with the PPP loan which will reduce both the term and the interest rate of the EIDL loan.

15. Does the original SBA cap of \$5mm still hold? Or, is this being waived for this program?

We recommend you ask your SBA lender as this relates to the traditional program in place and not the PPP or EIDL programs being offered currently.

16. Is there pre-payment penalties on EIDL loan?

None.

17. Is GBQ considering a modeling spreadsheet that we can use?

We will be providing a service to assist you with modeling out your expected forgiveness. Please reach out to your GBQ advisor if that is something we can assist you with.

18. Would my company qualify for EIDL or Paycheck Protection loan or any other assistance?

It depends on your type of company and meeting the SBA guidelines for a small business under each of the programs. We would need more details in order to advise. There may be other programs being offered by your state to consider.

19. Does applying for the PPPL loan for payroll preclude a business for applying for the EIDL loan for other purposes, say vendor payables?

A company can apply for both the PPL and EIDL; however, the EIDL may be required to refinance under the PPP which will result in a much shorter term and lower interest rate.

20. What types of non-profits, under IRS code classifications, qualify for a PPPL?

The term non-profit organization means an organization that is described in section 501(c) (3) of the Internal Revenue Code of 1986 and that is exempt from taxation under section 501(a) of such Code.

21. Regarding the PPPL, what if you have current funds to get the company through June, does it make sense to apply for the loan in June and not earlier?

The funds are on a first-come, first service basis. the Treasury Department has indicated the funds are limited to \$349 billion so you run the risk that the funds are depleted and nothing is available for you come June. Each business will have its own unique circumstances to consider.

EIDL and PPL (continued)

22. Are they still maintaining no penalties for early payment on the PPPL?

That is our understanding.

23. For a hotel, would the owner or operator apply for the PPP loan?

We would recommend consulting with your lender. We have heard that lenders are asking the legal entity, which is obligated to pay the payroll, apply for the loan.

24. How is the loan funded? Are total loan proceeds deposited to my checking account?

Please refer to your lender.

25. If I don't have employees laid off due to COVID-19, can I still apply for the loan?

Yes. The purpose of the loan is to retain and maintain payroll to avoid lay-offs.

26. How do the affiliated company rules apply to a PE Fund that may own 80% of 10 companies which may have 60 employees each? Can each company apply for a PPP loan or are they combined and due to combination are over 500 employees and thus do not qualify?

Affiliation rules do apply unless the primary NAICS code begins with 72 or the business is an approved franchise system by the SBA. For those companies, affiliation requirements have been waived. Based on your scenario, we believe each individual company would not be eligible as the controlled affiliation employee count exceeds the size standard allowed by the SBA. It is important to note that the SBA size standard has varying employee count or revenue requirements to be met by industry. Please refer to the following link: https://ecfr.io/title-13/se13.1.121_1201.

Alternatively, a business can qualify if both tests in SBA's "alternative size standard" are met as of March 27, 2020. Those tests are: (1) maximum tangible net worth of the business is not more than \$15 million; and (2) the average net income after federal income taxes (excluding any carry-over losses) of the business for the two full fiscal years before the date of the application is not more than \$5 million. If applying through this method, we advise you review with your bank and attorney first.

1099 Subcontractors

27. Please confirm that contractor costs reported on a 1099 would qualify as payroll costs.

Independent contractor costs cannot be included in payroll costs as independent contractors can apply for a PPP loan for themselves.

General

28. We are an ESOP company, but only a portion of our employees are in the ESOP, the rest are union. We are a C Corp for profit organization. Are we still eligible for the paycheck protection loan?

We would need to evaluate in more detail.

29. Is filing a 990 with the IRS a requirement?

We do not believe this is a requirement.

30. What is the source of your information and how will you make updates available?

The source of our information is the CARES Act legislation. As more information becomes available, we will hold additional webinars to write articles that will be posted to our COVID-19 website.

Debt Forgiveness

31. By my read of the legislation, interest on mortgages and other debt are allowed uses of the loan, but forgiveness is only allowed for mortgage debt, not all debt. Please confirm.

Per the CARES Act, the definition of “covered mortgage obligation” means any indebtedness incurred in the ordinary course of business that is the liability of the borrower; is a mortgage on real or personal property, and was incurred before February 15, 2020. We are waiting on clarification from the SBA as it relates to forgivable interest on debt other than mortgage debt.

32. Are you all seeing any negative reaction from commercial lenders for clients who already have a decent amount of debt outstanding? It seems like this is an unsecured loan, so behind the bank, but wanted to get your thoughts.

Each lender will have its own underwriting protocols on top of what the SBA prescribes.

33. If you could please address salespeople and commission payments in these times. Especially for debt forgiveness measurements.

Average payroll costs include all forms of wages for the calculation up to \$100,000 per employee. As it relates to forgiveness, payroll costs incurred during the 8 week covered period are eligible for forgiveness with employee compensation reviewed on a pro-rata basis when determining wages in excess of \$100,000. For example, you could not pay someone \$95,000 during those 8-weeks and be eligible for forgiveness as it would need to be reviewed on an annualized basis.

34. Do you know how you would seek the amount of forgiveness from the SBA? - This is from a lender's perspective.

Each SBA approved lender will be facilitating this process and will require documentation to support all eligible payments made allowed for forgiveness. Please refer to your lender for the specific process.

35. What is the interplay between the Workforce retention and Salary maintenance reduction factors on forgiveness?

The PPP's purpose is to maintain and retain payroll. As such, these two factors are utilized to prevent a company from significant payroll reductions in dollars and/or reductions in employee count. The amount of payroll paid during the covered 8-week period is the only payroll cost that could potentially be forgiven. If no payroll is paid during that 8-weeks because employees have been laid off, there is no payroll to be forgiven.

36. Is rent paid to a related party (majority owner) an issue or does it still qualify for forgiveness?

Rent paid to a related party is allowed so long as the lease agreement was in force before February 15, 2020.

37. Is rent paid to related party entities eligible given the relaxation of the affiliation rules?

Affiliation rules have only been waived for industries with a NAICS starting with 72 and approved franchise systems. Rent paid to a related party is allowed so long as the lease agreement was in force before February 15, 2020.

FTEE Calculation

38. What does it mean when the program rules indicate that “business in certain industries can have more than 500 employees if they meet applicable SBA employee-based size standards for those industries”?

The SBA defines size standards for a small business either on employee count or revenues. Please see following link for size standards. https://ecfr.io/title-13/se13.1.121_1201.

FTEE Calculation (continued)

39. How is FTE defined?

Pending guidance from the SBA, we believe FTE is defined as employee working more than 30 hours per week consistent with the definition under the Affordable Care Act. Full-time equivalent employees are defined the way it is used under the Affordable Care Act, which converts part-time employees in combination with each other into full-time employees. All employees are incorporated into the calculation under the PPP.

40. Being in the Janitorial Services industry (NAICS code 561720), our employee headcount fluctuates during the month.

- **With regard to the 500 or less employees indicated in the Payroll Protection Program, how and when is that employee count calculated?**
- **Is it active headcount or total active plus terminated headcount?**
- **Is it headcount or FTE?**
- **What is the measurement date?**

Employee calculation: This is the average number of people employed for each pay period over the business's latest 12 calendar months. Any person on the payroll must be included as one employee regardless of hours worked or temporary status. The number of employees of a concern in business less than 12 months is the average for each pay period that it has been in business. The SBA calculates number of employees in accordance with [13 CFR 121.106](#).

41. Is the number of employees on the application equal to average full-time equivalents during the prior year?

It is based on the SBA's definition of employee count and not FTEs (please refer to earlier question).

42. Assuming that if you're paying severance pay to employees that their payroll would be allowable, but they would be excluded from headcounts for forgiveness?

Severance pay would be included in the calculation of payroll costs. Headcount for forgiveness compares the average full-time equivalent employees during the 8-week covered period to either (1) average number of full-time equivalent employees per month employed during the period beginning on February 15, 2019 and ending June 30, 2019 OR period beginning on January 1, 2020 and ending February 29, 2020. If seasonal, other consideration is needed.

Average Payroll Calculation

43. Can BWC premiums be included as payroll for State/Local?

We believe BWC premiums can be included for Ohio-based companies on our interpretation of state and local taxes but some banks are disallowing, check with your bank.

44. Are you including terminated employees in the 2019 calculations?

Yes, the definition of payroll is what was paid and does not discriminate between currently-employed or previously-employed.

45. For fully self-insured employers, how does this factor in for health insurance premiums? Should we use COBRA premium in the calculation?

We believe you can use paid claims offset by any employee withholdings as it relates to self-insured plans. COBRA premiums may be included as it relates to terminated employees. Please consult with your lender.

46. Is slide 10 telling me what I can include in the payroll we use to calculate the average monthly payroll?

Yes; however, Slide 11 is indicating what cannot be included.

Average Payroll Calculation (continued)

47. What happens if we pay multiple locations through a PEO?

The payroll will be attached to the PEO EIN, not the individual location? Same for 941.

48. How should we document payroll per location?

The treasury just released guidance on April 6th, which addresses this question. Please see below.

49. What if an eligible borrower contracts with a third-party payer such as a payroll provider or a Professional Employer Organization (PEO) to process payroll and report payroll taxes?

SBA recognizes that eligible borrowers that use PEOs or similar payroll providers are required under some state registration laws to report wage and other data on the Employer Identification Number (EIN) of the PEO or other payroll provider. In these cases, payroll documentation provided by the payroll provider that indicates the amount of wages and payroll taxes reported to the IRS by the payroll provider for the borrower's employees will be considered acceptable PPP loan payroll documentation. Relevant information from a Schedule R (Form 941), Allocation Schedule for Aggregate Form 941 Filers, attached to the PEO's or other payroll provider's Form 941, Employer's Quarterly Federal Tax Return, should be used if it is available; otherwise, the eligible borrower should obtain a statement from the payroll provider documenting the amount of wages and payroll taxes. In addition, employees of the eligible borrower will not be considered employees of the eligible borrower's payroll provider or PEO.

50. It seems that the intended purpose of the PPP loan is to pay employees, regardless of whether they are working. Is there any reason you see why we should NOT pay employees who are not working?

It depends. The intention of the PPP is to retain and maintain payroll. Each business has unique scenarios and will depend on the liquidity needs and ability to provide services under state-mandated restrictions and what makes the most business and economic sense. A business does have the ability to pay an employee and not require them to work. Self-employment income will depend on what type of legal entity operates. Check with your SBA lender.

51. Can distributions be counted as payroll?

There is no definitive guidance on this issue; however, we do not believe so at this time. Check with your SBA lender.

52. If employees filed for unemployment, can we include them in the loan at full wages?

Payroll costs include payroll paid for the last twelve months prior to loan origination or 2019 and would include all employees during such time.

53. Can commission be used as well?

Commissions are a form of wages and should be included for the calculation of payroll costs.

Material discussed is meant to provide general information and should not be acted upon without first obtaining professional advice appropriately tailored to your individual circumstances. To ensure compliance with Treasury Department regulations, we wish to inform you that any tax advice that may be contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or applicable state or local tax or (ii) promoting, marketing or recommending to another party any tax-related penalties under the Internal Revenue Code or applicable state or local tax law provisions or (iii) promoting, marketing or recommending to another party any tax-related matters addressed herein.