

# CARES Act Deep Dive webinar Q&A



By Susan J. Markey | APR 20, 2020

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## CAREs Act Deep Dive Questions & Answers:

**If additional funds are approved will we have to reapply, or will our original application remain in line?**

**It is expected that your bank could resubmit your completed application they have on file, but this may vary by lender.**

**Are the forgiveness funds based on costs incurred or costs paid during the 8 week period? example paying Feb and Mar utility bills during the period.**

**The statutory language says that "costs incurred and paid" during the 8 week period are forgiven. You can interpret this two ways: i) expenses have to be both incurred and paid during the period; or ii) both expenses incurred and expenses paid during the period are covered. The hope is that the to-be-released SBA guidelines (which must be released by April 26) on the calculation of forgiveness will give some clarity on this issue.**

**Can we pay a bonus to staff by using the PPL loan?**

**The Act permits payment of salary, wages, commissions, or similar compensation (including the employee's share of federal payroll taxes). It seems likely that bonuses will fall under "similar compensation."**

**Can you clarify the \$100,000 maximum for a single employee? So if an employee made in excess of \$100K in 2019, does that mean their wages cannot be included or they can be for the 8 week period so long as they don't exceed \$100K during that time?**

**You can include their salary, during the period, up to \$100K on an annualized basis (i.e. \$15,385 maximum.)**

**Do we have to use the funds right after they are funded?**

**You have to use the funds on eligible expenses during the 8 week period following funding.**

**What I have run into is 1 of my employees cannot return due to child care issues and one responded that she wished to part ways with our company. I am sure I can**

replace the latter employee who quit. Can I replace the employee who can not return due to child care?

**Under the FFCRA an employee may use paid sick leave, with payment at two-thirds of the employee's regular rate of pay, if the employee is caring for a child whose school or childcare has been closed or is unavailable. Employees using this time cannot be laid off because they are using it. They can be furloughed or laid off because there is not enough work for them. However, a reduction in FTE may result in the reduction of forgiveness under the PPP.**

Regarding reduction in staff, do we need to replace an employee that quits?

**Any reduction in FTEs is counted, even if the employee quits or is fired for non-performance. To maximize forgiveness, you need the same number of FTEs as you had during the base period.**

In preparation to document and prepare for loan forgiveness, are utility bills that have an invoice date in the 8 week period after loan origination eligible, or does the billing period need to be in the 8 week period?

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Payment date in the 8 weeks or invoice date in the 8 weeks?

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Do you think interest on a Line of Credit would be forgiven?

**Interest and principal incurred during the eligible period is forgivable.**

Will we be given advance notice from the SBA that they will be disbursing the loan? And, if they do give advance notice, how many days beforehand?

**Most recipients have received advance notices from their bankers, but the loans have to be funded within ten days after approval.**

Are long term disability premium payments included in employee benefits?

**This is not entirely clear at this time. Hopefully, it will be addressed in the guidelines.**

Concerning forgivable portion, is group health insurance included in the 75% of loan proceeds used for payroll costs. Also, what portion of payroll taxes are included in the 75% calc.

**Yes, payments required for the provision of the group health insurance are considered forgivable "payroll."**

What is the process to obtain forgiveness on the loan proceeds? How and when?

**This process will be defined by each lender. All we know at this point is that you will need to apply to your lender.**

Clarify \$100K per employee limit.

We have 2 employees that make exactly \$100K salary. Are they excluded completely?

**They are not excluded. You just include their pay at the annualized \$100,000 (i.e. \$15,385) level during the eligible period.**

If I terminate someone with severance during the 8 week period, can this expense be forgiven as part of my payroll expenses?

**An allowance for dismissal or separation is permitted, so yes.**

Is the average monthly payroll cost calculated using all twelve months or specific quarters?

**For a non-seasonal employer, the average number of full-time equivalent employees ("FTEs") per month, calculated by the average number of FTEs for each pay period within a month, for the period between February 15, 2020, through June 30, 2020, divided by either, at the election of the employer: i) the average number of FTEs per month employed from February 15, 2019, to June 30, 2019; or**

**ii) the average number of FTEs per month employed from January 1, 2020, to February 29, 2020.**

We received funds on 4/15. Our pay date was 4/16 for the period 3/30-4-10. Would the pay on 4/16 count in the 8 weeks?

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So the costs must be incurred during the 8 weeks? How do you adjust your payroll if you are a monthly depositor/payer? Say period ending the last day of each month?

**Pay the portion of the month that occurred during the 8 weeks eligibility period if possible.**

We are a federal government contractor that has been operating as an essential employer with all our employees reporting. Will we qualify for the loan and forgiveness?

**Yes, if you meet all of the other tests. You only need to certify that the uncertainty of the current economic conditions makes the loan necessary.**

If we make our profit sharing and cash balance plan contributions to our 401k recipients for the 2019 plan year with this money would it be forgiven as a payroll expense?

**Yes, we believe that will be considered payment of a "retirement expense."**

Do we know whether the forgivable expenditures during the 8-week period will be calculated on a cash or accrual basis?

**Unclear. The statutory language says that "costs incurred and paid" during the 8 week period are forgiven. You can interpret this two ways: i) expenses have to be both incurred and paid during the period; or ii) both expenses incurred and**

expenses paid during the period are covered. The hope is that the to-be-released SBA guidelines (which must be released by April 26) on the calculation of forgiveness will give some clarity on this issue.

If employees make more than \$100k, how do you figure how much to put in for 8 weeks? Does it include the employee or employer share of the federal taxes?

1. You include their pay at the annualized \$100,000 (i.e. \$15,385) level during the eligible period.
2. Per the April 17 FAQ, states that "payroll costs are not reduced by taxes imposed on an employee and required to be withheld by an employer, but payroll costs do not include the employer's share of taxes."

Would you explain what this means: "The borrower's share of federal payroll taxes"?

Per the April 17 FAQ, states that "payroll costs are not reduced by taxes imposed on an employee and required to be withheld by an employer, but payroll costs do not include the employer's share of taxes."

Does "rent" include equipment too, or just facility?

Unclear at this point. The statute just refers to payment under a "lease agreement." Hopefully, the SBA guidelines will clarify.

Do Union Employees (in construction) qualify?

There is no language saying that union employee payroll is not covered, so if you meet all of the other tests, most likely.

For employers that are not experiencing any loss of revenue or employee layoffs, how is the government vetting that they do not receive funds?

Each employer makes a certification that the uncertainty of the current economic conditions makes the loan necessary. The SBA is also entitled to audit applicants, but the extent to which that will actually happen is unclear.

What payroll taxes can be included in the calculation of payroll expenses?

Per the April 17 FAQ, states that "payroll costs are not reduced by taxes imposed on an employee and required to be withheld by an employer, but payroll costs do not include the employer's share of taxes."

We are paying our employees through bank pay bill option since we are working remotely. Can I use the bank statement to support this proof if a separate account is used?

Yes, I do not see why this would not be accepted, so long as the amounts being paid are clear.

Is there a special provision for an employee voluntarily leaving for another job?

No, the calculation simply compares the number of FTEs.

Are the payroll costs based on when they are earned (the pay period) or the date on the paycheck/stub?

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Are the qualified expenses (utilities, insurance, rent, etc.) counted on the date they are paid or on the date of the bill?

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Can you use 100% for payroll expenses?

Yes.

Do expenses have to be incurred and paid during the eight weeks? Does rent have to be prorated?

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Forgiveness will not be taxable. Will the expenses paid from those funds be deductible?

Not clear at this point. There is not currently any guidance indicating they would not be deductible under the otherwise applicable rules.

Would you use partial payrolls from the funding date and pay the last payroll early? Or include the payrolls paid during the eight weeks?

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Is workers comp a state tax?

Commentators are split about whether workers compensation will be included. Hopefully, the SBA guidance will clarify whether it is a state tax.

Actually, the note shows an 18-month amortization starting after a 6-month deferment.

Good point, I was not clear on that. It is a two-year total term, including the 6-month deferral.

Is it paid within the 8 weeks? Or accrued within the 8 weeks?

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released SBA guidelines (which must be released by April 26) on the calculation of forgiveness will give some clarity on this issue.

We are a non-profit with more than 500 employees. Do we qualify for PPP Loan? We have employees on 8 different locations but the total is 500.

If you have more than 500 employees, you are unlikely to qualify.

So is payroll deduction on check payment date or pay period ending date?

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How do you calculate forgiveness if the employee is over \$100,000 for the year?

You just include their pay at the annualized \$100,000 (i.e. \$15,385) level during the eligible period. Amounts in excess of \$100,000 are not forgiven.

Do you have to do payroll weekly or can you do bi-monthly?

You can use whatever payroll frequency you use already.

So with payroll, if paying bi-month you can pay 4/15 to 4/30 and get loan 4/22 you could include the whole payroll?

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Once you receive the PPP from the bank- is that when the 8 weeks for payroll begins or can you start it when the state reopens and we can bring our employees back?

You begin counting the 8 weeks from when the loan is funded to your bank account.

Guidelines for sole proprietors?

<https://home.treasury.gov/system/files/136/Interim-Final-Rule-Additional-Eligibility-Criteria-and-Requirements-for-Certain-Pledges-of-Loans.pdf>

We applied for the PPP and the Lender has received the application but the money ran out. Do I need to reapply to the Lender when the government releases more funds?

It depends on your lender.

Does real estate taxes count as eligible expenses if you own the building?

This is unlikely to qualify as it is not mortgage interest or lease payment.

Group health care premiums, is that the total amount that is paid for premiums, or just the employer portion of the premium (i.e.. does not include the employee deductions for premium)?

It is unclear at this point. Hopefully, the SBA forgiveness guidelines clarify.

Employee share or employer share? Typo?

**Per the April 17 FAQ, states that "payroll costs are not reduced by taxes imposed on an employee and required to be withheld by an employer, but payroll costs do not include the employer's share of taxes."**

Is there a chance the 6/30/20 deadline could be extended?

**It could happen, but unlikely.**

I applied with 33 FT but I have 1 PT. For Aprils, I will hire 4 new employees. The forgiveness is only for reductions of employees, so I will be fine?

**If you are at the same number of FTEs as the base period, your forgiveness will not be reduced.**

If we are a seasonal business that has 1 employee 12 months out of the year and hires 4-5 employees during June, July, and Aug would we still qualify for the program? We are a summer camp.

**You may qualify, you would determine average monthly payroll using the 12-week time period starting from February 15, 2019 or March 1, 2019.**

Can you put the money in an interest bearing account? Is the interest earned UBIT for a non-profit?

**There is no limitation on where you place the funds at this time. UBIT is complicated and depends on the facts and circumstances but generally, nominal amounts of passive income, like interest, are not UBTI. It seems unlikely to be UBTI because it is specifically excluded from income.**

The more than \$100k means per pay period? or Total salary?

**Annualized salary.**

How is the interest calculated?

**1% fixed annual interest. Interest will accrue during the 6 month deferral period.**

Does the employee's social security tax, medicare tax, and federal withholding tax come out of the PPP loan?

**Per the April 17 FAQ, states that "payroll costs are not reduced by taxes imposed on an employee and required to be withheld by an employer, but payroll costs do not include the employer's share of taxes."**

For the loan to be forgiven 100% is it only the 8 weeks after the funding for the payroll to be used, what if they hourly employees just had no work?

**If the amounts are not spent 75% on payroll and 25% in the 8 week period, it is not forgiven, regardless of whether there was work available for employees.**

Will the application have to be resubmitted?

**It depends on your lender.**

Do you have a detailed example of how to calculate the alternative size standard for an LLC?

**The language in the PowerPoint is the calculation as outlined in the statute at this time. No additional details are available.**

Specifically, can employer taxes like matching FICA, Medicare, SUTA, FUTA be used for the paycheck protection?

**The employer's share of federal taxes cannot be included in the payroll calculation.**

**Is payroll counted as when paid or when earned? I have a two-week payroll that will be earned out of funding time and paid during 8 week time.**

**Unclear. The statutory language says that "costs incurred and paid" during the 8 week period are forgiven. You can interpret this two ways: i) expenses have to be both incurred and paid during the period; or ii) both expenses incurred and expenses paid during the period are covered. The hope is that the to-be-released SBA guidelines (which must be released by April 26) on the calculation of forgiveness will give some clarity on this issue.**

**If the loan originates in the middle of a pay period, can you use the forgivable funds to pay an employee for the whole pay period, even the days worked prior to the origination date?**

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**If you apply and are approved for a PPP loan, can you specify when funding occurs?**

**No.**

**Are workers comp expenses associated with any given payroll considered PR expenses? What about union benefits?**

**Most commentators are split about whether workers compensation will be included. Hopefully the SBA guidance will clarify whether it is a state tax. Union benefits have not yet been addressed.**

**Is there a good definition of utilities available yet?**

**Proceeds used to pay for electricity, gas, water, transportation, telephone, or internet access are covered. That is all we know at this point.**

**Can PPP employees also apply for unemployment?**

**If an employee meets the other criteria for unemployment, the fact that an employer received a PPP loan does not preclude application for unemployment. However, the employer should be aware that their potential forgiveness will be reduced if there is a reduction in FTEs.**

**A business with outstanding success like a Liquor shop, will there be loan forgiveness?**

**If the business can certify that the uncertainty of the current economic conditions makes the loan necessary, the business is eligible to apply.**

**Is there any tax credit for a business that did not receive any loan?**

**If you do not qualify for the loan, you may be eligible for the employee retention tax credit or one of the other loan programs under the CARES Act.**

**I heard that the PPP funding has been exhausted and new applications are not be accepted. Now what?**

**An additional \$310 billion has been approved! Contact your lenders asap!**

How long is it taking for most companies to receive their loan? It's been 14 days today that we applied.

**Once you have been approved, the lender has 10 days to fund. The approval time period has varied widely by lender.**

If your business is deemed an essential service, are you still eligible for PPP?

**If you can certify that the uncertainty of the current economic conditions makes the loan necessary, you are eligible to apply.**

When you say to be sure not to exceed the 25% non-payroll spend, are you saying that it is a problem to spend your own money on the non-payroll items?

**No. In order to maximize forgiveness, no more than 25% of spend from PPP loan proceeds in the 8 week period should be on non-payroll eligible expenses.**

Can you choose either period for the FTE employee calculations, or do you need to stay with the period that you used to apply for the loan?

**A non-seasonal employer is allowed to select either period.**

PR includes employers' share of PR taxes but not borrowers share of PR taxes? What is the distinction?

**The logic is that the employee's share of the taxes is included as payroll but the employers' share is not because the employer's share is an employer expense and not truly paid to the employee.**

If you have a rental lease from a company that is owned by the same people who are owners of the corporation, can you only include interest in the forgivable expenses?

**It is unclear whether interest on related party leases would be forgiven.**

If an employee retired during the comparison period, how do we handle their wages for the 25% reduction test? Hire them back or replace them?

**To maximize forgiveness, you should rehire to same the number of FTEs at a salary of no less than 25% less by June 30, 2020.**

When I applied I said I would use exclusively for payroll..if approved, can I also use them for rent and utilities?

**75% of your expenditures in the 8 week covered period must be on payroll; the remaining 25% can be on eligible non-payroll expenses.**

Am I losing all forgiveness qualifications if I lose an employee and cannot find someone to rehire by June 30th, 2020?

**Your forgiveness would be reduced by your percentage of reduction in employees.**

Would dental insurance paid by the employer be included by PPP?

**Yes.**

Has the issue of Work Comp premiums being included in Payroll Expenses been addressed?

**Not expressly. Commentators are split as to if it may be deemed a state and local tax.**

Slide 10 states forgiving employee's share of payroll costs - everything I've seen so far states employer. If it is Employee - does that mean those taxes do not get deducted from employee pay?

**The taxes are still deducted from the employee's pay for payroll purposes but can be left in for calculation of forgivable payroll.**

Are payroll costs calculated from the date the payroll is paid out, or from the date that the payroll cost is incurred?

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Please clarify...are the EMPLOYER'S portion of payroll taxes included for eligible payroll costs/expenses. (Thought I saw a note on one slide that said 'borrower's portion of federal payroll taxes' are not to be included.)

**Per the April 17 FAQ, states that "payroll costs are not reduced by taxes imposed on an employee and required to be withheld by an employer, but payroll costs do not include the employer's share of taxes."**

If you have an existing personal loan to your corporation does the interest payment qualify as forgivable?

**Only interest payments on secured debt would be covered. Even if a personal loan is secured, the regulations may disallow personal loans. It is not clear at this point.**

Our loan was deposited into our account on 4/16. 8 weeks from that date is 6/18. We brought employees back today 4/20. We pay bi-weekly so our last payroll of the 8 week period will be 6/19 (for the pay period 5/30 to 6/12). Will that still fall into the 8 week period even though the pay period ends 6/12 and the actual payroll date is 6/19?

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Can PPO loans be used for Workers Comp Insurance premiums or Liability Insurance premiums?

**It is not clear at this point. Most commentators are saying the liability insurance premiums are unlikely to be forgiven and commentators are split about whether workers compensation will be included. Hopefully, the SBA guidance will clarify.**

Are bonuses limited by anything other than the \$100K ceiling?

**It is unclear at this point. Hopefully, the SBA forgiveness guidelines clarify.**

Are condominium homeowner associations eligible for a loan even though they do not have any employees?

The business must have been i) operational as of February 15, 2020; ii) had employees; iii) paid wages and payroll taxes. Since the association paid no wages or payroll taxes, it is not eligible.

My understanding is that Affiliates must be included when determining the size of your business. For example, if my company's majority owner also is the majority owner of several other businesses then all these businesses' employees must be consolidated when measuring size versus the less than 500 employee criteria for a small business. Is that correct?

How does Shake Shack qualify for \$10M if my understanding of the above is correct?

Yes, the SBA's traditional affiliation rules apply to PPP loan recipients but those rules are waived under the CARES Act for certain industries including businesses in the accommodation and food industries with fewer than 500 employees per location, which is how I suspect Shake Shack qualified for the credit.

If my business is exempt from Government Shutdown could we still be eligible for Employee Retention Credit because most are working from home due to social distancing requirements?

The employee retention credit is available if (1) operations were shut-down or partially suspended due to a COVID-19 related shutdown order, or (2) gross receipts fell more than 50% when compared to the same quarter in the previous year. So, if you meet the gross receipts test, you remain eligible.

Are the Employee Retention Credit and Payroll Tax Deferral programs dependent upon program funds availability? The benefit is deferring payment of ER payroll taxes rather than receiving funds so I would think not.

These credits are not dependent on PPP funding.

Can a company still qualify for a PPP loan if they are using a temp agency to staff their business?

The rules currently do not make it clear whether temporary or leased employees that are paid through a staffing company can be included in payroll costs. Hopefully, the SBA's forgiveness regulations will clarify this issue.

If you are 100% federally funded and are paying employees. Are you exempt from FFCRA?

Most federal government employees are covered by Title II of FMLA, which was not amended by the CARES Act, and are therefore not covered by the FFCRA. However, federal employees covered by Title II of the FMLA are covered by the paid sick leave provision.

Our company was incorporated in the USA and employs 4 FTE's in the USA but is 100% owned by a foreign company. Are we eligible for the PPP?

Although the earlier version of the PPP application form indicated that companies with foreign owners could not apply, the more updated version makes it appear that they can apply. I have been hearing that some banks are still refusing to accept otherwise qualifying companies with foreign owners, but it appears to depend on the interpretation used by your lender. Also, based on your scenario, you should carefully review the SBA affiliation rules to determine whether you meet the other tests (i.e. 500 employees).

Since PPP program includes Sole Proprietors who do not receive paychecks, how do we determine payroll for this section of the program for loan forgiveness?

**If this is a business applicant, payments to sole proprietors cannot be included in the forgiven payroll amount. For an independent contractor or sole proprietor who is the applicant for the loan, payroll includes wage, commissions, income, or net earnings from self-employment or similar compensation.**

Are administrative costs associated with retirement plans a covered expense? (Aka fees for our third-party administrator)

**The Act simply refers to "payment of any retirement benefit." It seems unlikely that this would cover.**