

# CARES Act & PPP Round 2 Q&A



By Susan J. Markey | May 6, 2020

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Question Asked	Answer Provided
The 8 weeks begin the day you were funded...Our payroll periods don't align with funding. If we track the 8 weeks to be paid, but the actual funding of the final payroll falls a couple days after the 8 weeks, is that OK? Or do we need to fund that final payroll early, prior to the end of the 8 weeks?	It is unclear at this point but it is a best practice to err on the side of caution and make the payroll during the 8 week period.
Guidance on calculating FTE's? Is it the 30 hours threshold?	CARES Act Section 2301(c)(3) defines a full-time person by referencing IRC Section 4980H which defines a full-time employee is an individual who works an average of at least 30 hours per week. Thus, most commentators agree that 30 hours per month is an FTE.
What if your health plan is self-funded? Do the claims count?	The Act references premiums paid for the provision of group health care benefits, which makes it seem unlikely that claims would count, but it is unclear at this time.
What if landlord deferred rent for the 8 wk period but is to be paid back later	The expense needs to be incurred and paid during the period. Since this amount would not be paid during the period, it is unlikely to qualify.

What date the utility bills based on cash date or due date?	It is not clear, but the conservative approach is that amounts paid during the period would qualify. Prepayments are unlikely to qualify.
What if pay period crosses Jun 30,2020, can you report the payroll costs for the timeframe in June?	If it is paid during the period, likely you can report the costs for the portion incurred in June.
What if you business is still closed due to mandates, and you got a PPP loan. When does the 8 period begin for us?	Under current law, 8-week period begins when funds hit your account.
When do the 8-week period begin? Is it the 8 weeks following my business's loan funding or loan docs signing?	8 Weeks beginning on the date the funds are disbursed.
Has the SBA given more specific guidance on when the 8-week period starts?	It begins on the date the funds are disbursed.
Is an annual Safe Harbor contribution to the 401K by the employer included in Payroll Costs?	The CARES Act provides that payment of a retirement benefit count as payroll. Most commentators have interpreted this as including employer contributions to 401K.
Can you pay some employees 100% of wages and pay other employees a lesser percentage of wages? Assumes that some of the employees will be unable to work because of a state shutdown.	The salary reduction test is calculated on a per employee basis. So, if any employee who earns less than \$100k has their salary reduced by more than 25%, forgiveness is reduced, unless the salary is increased by June 30, 2020.
For the PPP loan forgiveness, when do the # of FTE employees start? Exp - we had a new employee start 2 days before we received our PPP loan, but they were not paid for almost 2 weeks after that. Since they weren't paid with the 1st payroll after we received our loan funds, would we still be able to count them as a FTE employee?	The calculation looks at average FTEs per month during the covered period, so you include the hours worked by all employees and divide that by 30 to calculate your FTE number.
What happens if we have a FTE employee leave on the last of our 8 week payroll, & we aren't able to find a suitable replacement by June 30th? Would we still be able to 'count' them? Or do we have to count our FTE employees on June 30th? (or the payroll just before 6/30/20, or the payroll just after 6/30/20 - since we do not have a scheduled payroll on 6/30/20?	Payroll costs include amount paid for leave. It is not clear at this point how employees on leave will be counted, but if their payroll is included, presumably they would be included in the FTE count but the SBA has not yet clarified how employee leave impacts the FTE count.

<p>I have a small business client of two Partners owning a General Partnership. They applied for a PPP Loan through the business and provide the Partnerships 2019 tax return, showing the Self Employment Earnings on their K-1s. PNC Bank is their Bank who keeps asking for "a full year of payroll information". Partnerships do not issue W-2s since they cannot have employees. As self-employed owners, is there other information besides K-1 you suggest providing the bank to help them obtain a PPP?</p>	<p>The Company is likely ineligible if they have not paid any payroll taxes. The business must have been operation as of February 15, 2020, had employees, and paid payroll taxes. If the Company paid payroll taxes, submit evidence of payment of such taxes.</p>
<p>I thought that the FFCRA tax credits were mutually exclusive with the PPP Loans from the CARES Act. Can you please discuss this further?</p>	<p>The CARES Act excludes qualified sick and family leave wages for which a credit is allowed under Section 7001 and 7003 of the FFCRA.</p>
<p>If you pay off the entire remaining loan amount that isn't forgiven before the end of the 6-month grace period, do you owe any interest?</p>	<p>Yes. Interest accrues during the 6-month period, even though payments are not required.</p>
<p>Those expenses paid with forgiven funds, are those expenses "Non Tax Deductible"?</p>	<p>The IRS issued a notice indicating that expenses paid with forgiven funds are not deductible. Many politicians have indicated they disagree with this interpretation so it is expected that Congress may address this issue in the next stimulus package.</p>
<p>What about payments to temporary employees?</p>	<p>If you are paying them directly, they are an includable employee.</p>
<p>My wife has a home business running a single-person LLC, with help from some contractors, no employees. Is she eligible to apply for the PPP Loan to cover her own wage (she has not been able to pay herself at all since Feb. 1 because the international educational consulting business has come to a halt now. All of the offline educational programs till this summer have been cancelled due to the uncertainty of the COVID-19 situation. Would you offer some advice? THANK YOU!</p>	<p>Since the business has not paid payroll taxes, it does not qualify. A business must have paid wages and payroll taxes in order to apply for a PPP loan.</p>
<p>Our service agreement with our electric provider expired recently. Will we be able to use PPP funds if we sign a new agreement with them?</p>	<p>Since is expense existed as of February 15, 2020, it likely qualifies. While it is clear that payments to independent contractors are not payroll, the SBA has</p>

<p>We use contract labor on a regular basis. Are we able to use PPP funds on these workers?</p>	<p>not clarified whether employees paid through a temporary agency may be included in payroll.</p>
<p>does transportation include companywide fuel for employees?</p>	<p>The SBA has not given any guidance as to what "transportation" covers at this point.</p>
<p>what if the office had to close 1 day a week, therefore the employees are working 32 hours vs 40</p>	<p>Your number of FTEs is calculated by dividing hours worked by 30, so this reduction in hours could reduce your number of FTEs during the 8-week period, thereby reducing your forgiveness eligibility.</p>
<p>When seeking forgiveness, how would a bank know if some of the payroll you paid to an employee covered paid sick leave that the employer can get a payroll-tax-credit for under the CARES act?</p>	<p>You will likely be required to provide tax returns, so the IRS could cross check these items, or it may be discovered upon SBA audit.</p>
<p>If full-time hours were available and employees chose to stay home unpaid, does that count as reduced wages?</p>	<p>It reduces your FTE count, to the extent that FTEs are calculated on the basis of 30 hours of work per week. At this point, the de minimis rule only prevents the reduction of forgiveness if a written offer of re-hire was made and rejected by the employee. It is not clear if the SBA will extend this rule to other circumstances.</p>
<p>One of my main concerns is that i may not spend the total amount of the loan will the SBA forgive the percentage I was able to spend. I do not see any information on that it appears to me is that is all or nothing.</p>	<p>The SBA will forgive the portion spent on eligible expenses in the 8 week period, provided that 75% of expenses in the 8 week period are payroll expenses. No need to use the entire loan proceeds.</p>
<p>Are we able to pay employees if they cannot come in to work?</p>	<p>Yes, you are free to pay employees for not working with PPP funds.</p>
<p>Is new hire's pay eligible if they are hired and paid during the 8-week period?</p>	<p>Yes, it is based on hours worked.</p>
<p>Is an owner of company's salary eligible? (obvi 100k or less)</p>	<p>Yes, employee compensation and partnership draws up to \$100K are included in the calculation of payroll.</p>
<p>what is the 8-week period? 8 weeks after loan funds received, or a specific date range?</p>	<p>8 Weeks beginning on the date the funds are disbursed.</p>

what does FTE stand for?	Full time equivalent.
Is Aflac considered a "Group Health Care" premium, and thus excluded from loan expense consideration?	It depends on the product. A group health insurance premium would qualify whereas a life insurance premium does not.
Could you please review the \$100,000 cap for employees who earn more than that amount during the year? For example, I have an employee who has already hit the \$100,000 cap, how much of her compensation is allowed to be covered under the loan forgiveness guidance?	You cannot include more than \$15,385 for the 8-week period.
Have you found that clergy housing allowances are included in salary/wages/etc.?	Payroll costs include housing stipend or allowance provided to an employee.
When it comes to the 75/25 ratio, is it based on the full amount received from the loan, or the amount of the loan spent? For instance, if I received a loan for \$100,000 my rent and utilities side of the ratio should be less than \$25,000. But does it depend on the amount we spent on payroll?	It is based on the amount of the loan spent in the 8-week period on eligible expenses. So, if your total spend is \$20,000 during the 8 week period, no more than \$5,000 can be spent on non-payroll eligible expenses like mortgage interest, rent, or utilities.
Are private equity companies still excluded from the PPP?	Due to the SBA's affiliation rules, many companies owned by private equity investors are deemed affiliated with other companies in which the PE firm invests due to the common ownership and control factors, which means that the companies are viewed as one group with more than 500 employees are not eligible for a PPP loan.