

**CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT/
KEEPING AMERICAN WORKERS PAID AND EMPLOYED ACT
SBA LOAN PROGRAM FREQUENTLY ASKED QUESTIONS
Internal Use Only**

ELIGIBILITY

Q. *How do I determine if I my business has 500 employees? What if my employee count fluctuates above or below 500 after I apply for the loan?*

A. Employee count is determined on the day the loan is funded/disbursed.

Q. *Are non-profits eligible?*

A. 501(c)(3) non-profits that are also tax exempt under 501(a) the Internal Revenue Code of 1986 (“IRC”) are eligible, provided they meet the CARES Act’s other criteria. Organizations operating under 501(c)(19) of the IRC and that are tax exempt under section 501(a) of IRC are also eligible under the CARES Act provided they meet the Act’s other criteria.

Q. *How does this work with the emergency sick leave wages I have to pay under the Families First Coronavirus Response Act (FFCRA)?*

A. Employers who are covered by the FFCRA are still required to pay Emergency Paid Sick Leave and Emergency Family and Medical Leave wages are also eligible for a Paycheck Protection Loan. However, employers may not also claim the FFCRA qualified wages as a tax credit.

Q. *What if I pay FFCRA wages for two months and then get a Paycheck Protection Loan? Do I get credit for the qualified wages paid under the FFCRA before I get the loan?*

A. You may claim the FFCRA qualified wages as a tax credit, if they were paid prior to receiving a Paycheck Protection Loan.

Q. *What if my business already applied for an Economic Injury Disaster Loan? Can I also get a Paycheck Protection Loan?*

A. Businesses cannot get both EIDL and PP loans at the same time. You can apply for the EIDL loan now and the PP loan when it becomes available. If you qualify and accept the EIDL loan, and you subsequently qualify for the PP loan, you can re-finance the EIDL loan with the PP loan, OR you can apply for both loans and decide which one you take if you qualify for both. Loans are limited to one per Taxpayer Identification Number.

LOAN DETAILS

Q. *How much can my business borrow?*

A. The maximum loan amount is the lesser of:

the average total monthly payments by the applicant for payroll costs incurred during the 1-year period before the date on which the loan is made multiplied by **2.5**

If you have a seasonal business, you may use the period February 15, 2019 – June 30, 2019 or March 1, 2019 – June 30, 2019 to calculate the average payroll

OR

-\$10 million

“Payroll costs” is the sum of payments of any compensation with respect to employees that is a—

- salary, wage, commission, or similar compensation (not including individual compensation in excess of \$100,000, prorated)
- payment of cash tip or equivalent;
- payment for vacation, parental, family, medical, or sick leave;
- allowance for dismissal or separation;
- payment required for the provisions of group health care benefits, including insurance premiums;
- payment of any retirement benefit; or
- payment of State or local tax assessed on the compensation of employees.

Q. *What can the loan be used for?*

A. The loan can be used to pay the following during:

- payroll costs (including commissions and other compensation)
- costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums
- payments of interest on any mortgage obligation on real or personal property on loans taken out before February 15, 2020
- rent
- utilities; and
- interest on any other debt obligations that were incurred before the covered period.

Q. *What about my employees who make more than \$100,000? Can I use the loan to pay them?*

Yes, but only up to \$100,000 per employee, prorated during the covered period.

Example: An employee makes \$150k/year ($\$150,000/52 \text{ weeks} = \$2,884/\text{week}$), the forgiveness is only for \$1,923 ($\$100k/52 \text{ weeks}$) during those 8 weeks.

Q. *Can I use the loan to pay payroll taxes to the state and federal government, unemployment insurance premiums for the quarter and workers comp premiums?*

A. Loan proceeds may be used to pay state and local taxes assessed on employee compensation. Loan proceeds **may not be used** to pay federal social security taxes, federal railroad retirement act taxes, federal income taxes, unemployment insurance premiums, or workers' compensation premiums.

Q. *When is my first loan payment due?*

A. At least six-months and up to one year after the loan is funded and interest is accrued during the deferment period before you make your first payment.

LOAN FORGIVENESS

Q. *How will I get loan forgiveness at the end of the process with my bank?*

A. Loan recipients eligible for forgiveness or partial forgiveness will have to provide documentation to the lender to obtain loan forgiveness. Recipients will want to maintain diligent records to provide to lenders given that the IRS excludes the forgiven amount from taxable gross income. Required submissions must include documentation verifying the number of full-time equivalent employees and pay rates (includes payroll tax filings), documentation (cancelled checks, payment receipts, etc.,) verifying payments on covered mortgage, leave or rent documents, and covered utility payments. Recipients must also submit certification from an authorized business representative that the documentation provided is true and correct and that the amount of forgiveness requested was used to retain employees and/or make other qualified payments.

Not later than 90 days after the date on which the amount of forgiveness, the Administrator must remit payment to the lender equal to the amount of forgiveness, plus interest accrued through the date of payment.

Certain authorized lenders or certain third-party participants in secondary market, determine at the discretion of the Administrator, may report to the Administrator an expected forgiveness amount on a covered loan or on a pool of covered loans, of up to 100% of principal. Within 15 days, the Administrator must purchase the reported expected forgiveness amounts.

Q. *What type of documentation will I need to get my loan forgiven?*

A. Documentation verifying employment and payroll costs

Documentation verifying mortgage interest payments, rent payments, and utility payments

Certifications from authorized representative that all information presented is true and correct and the amount of forgiveness requested

The lender will have 60 days from submission of the application to issue a decision on the application

Q. *What portions of the loan may be forgiven?*

A. The borrower is eligible for forgiveness of indebtedness for the sum of the following payments made during the covered period (8 weeks from loan origination):

- payroll costs
- interest payments on any mortgage obligation
- rent
- and utilities

But, the amount eligible for forgiveness is **reduced** by the percentage of

- the average number of full-time equivalent employees per month employed by the eligible recipient during the covered period (8 weeks from loan origination); and
- the borrower's choice of either:
 - the average number of full-time equivalent employees per month employed by the eligible recipient during the period beginning on February 15, 2019 and ending on June 30, 2019;

OR

- the average number of full-time equivalent employees per month employed by the eligible recipient during the period beginning on January 1, 2020 and ending on February 29, 2020

The amount of loan forgiveness is reduced by the amount of any reduction in total salary or wages of any employee during the covered period that is in excess of 25% of the total salary or wages of the employee during the most recent full quarter during which the employee was employed before February 15, 2020. Salary reductions for individuals who earn more than \$100,000 per year will not be reduced from the loan forgiveness.

The average number of full-time equivalent employees is determined by calculating the average number of full-time equivalent employees for each pay period falling within a month.

Q. *How do I determine how many full-time employees I have?*

A. The average number of full-time equivalent employees is determined by calculating the average number of full-time equivalent employees for each pay period falling within a month.

And, the amount of loan forgiveness is reduced by the amount of any reduction in total salary or wages of any employee during the covered period that is in excess of 25 percent of the total salary or wages of the employee during the most recent full quarter during which the employee was employed before February 15, 2020.

Q. *When it says “reduction in workforce” may decrease the amount of loan forgiveness, what about people terminated for cause or who voluntarily quit during this time period?*

A. The Act is unclear and specifies only that the federal government will forgive the loans in an amount equal to the amount of qualifying costs (as defined in the act) spent during an eight-week period after the origination of the loan. The amount of the forgiveness for the loans will be reduced if the employer reduces its workforce during the eight-week period compared to prior periods.

The more important focus will be on whether the employer has re-hired all employees it laid off (going back to February 15, 2020).

Q. *Do furloughs count as a reduction in workforce?*

A. Many companies use these terms interchangeably. The label placed on the action is not likely to be legally determinative. Instead, the action itself will be the focus. The US DOL FAQs, describe “furlough” to mean a layoff where employees are no longer working.

Q. *What happens after my loan is forgiven? Am I taxed? What about the amounts of the loan that are not forgiven?*

A. The amount of the loan that is forgiven is excluded from taxable income. The amounts that are not forgiven are required to be repaid, not to exceed 4% (this rate will be set by the lending institution where you obtain the loan).

Q. *What happens to the portion of my loan that is not forgiven?*

- A.** The amount of the loan that is not forgiven will operate according to the loan terms agreed upon by you and the lender.