



PPP: LOAN FORGIVENESS PROCESS AND DOCUMENTATION

CARES ACT Q&A

1. My company is an S Corp. We pay Life Insurance that covers each owner out of payroll. It is a “First to Die” policy and is paid quarterly. Can this be paid as payroll expense?

Life insurance payments do not qualify as payroll costs.

2. If a sole proprietor pays health insurance out of monthly income for he and his wife - Is this permissible as payroll expense.

We would need to confirm how the borrower has treated these payments in the past. There are some restrictions on how/whether a self-employed person can deduct his/her own health insurance benefits on Schedule C. If they have not been deducted on the Schedule C in the past, then the “net income” on that Schedule (and the “owner compensation replacement” amount would be higher), meaning that payment of the owner compensation replacement would include those amounts.

Note – for a sole proprietor, the “payroll costs” attributable to him/her (but not that attributable to other employees) is limited to the “owner compensation replacement” amount – which is 15.38% (8/52) of 2019 net income. (Interim Final Rule – 4/14/2020).

3. Can I pay my March rent from my PPP account? I haven't paid it yet, and was about to do so until I listened to the call - March 15th was mentioned? (S Corp)

This is not addressed specifically in the CARES Act or SBA guidance, but we are advising that the “payments made and costs incurred” language from the Act would cover this payment. The reference was to February 15th in that the lease obligation must have been in effect as of that date to be eligible.

4. Can we pay car notes, fuel charges, and insurance premiums using our PPP funds?

Interest (but not principal) on a car note is an eligible expense provided the loan is secured by the car and was outstanding on February 15, 2020. Gas and transportation costs are listed as utilities and would be permitted. Insurance premiums are not permitted.

5. Our loan began on April 11. We pay part of our employees biweekly and part of them monthly. Can we run a mini “catch up” payroll on June 5 to pay for one week’s payroll? We wouldn’t be paying in advance; the hours/work would have been completed during the 8 week period.

Yes.

If you have any questions or if we can help in any way, please reach out to your Loan Officer or contact one of our program specialists at 844-350-8512 or by email at CARESAct@thecitizensbank.net.



CITIZENS BANK
A Bank Built For You

CARES ACT Q&A: *continued*

6. Question about payroll and the “covered period”. For example, the loan was funded on April 16, 2020; the company had a payroll on April 15th. The payroll was covering the period of April 1-15, 2020. We also have a payroll for April 30, 2020. The April 30th payroll includes semi-monthly as well as monthly employees. Would any of this be considered usable for the PPP due to the dates covered? Should I just wait until May to start using the funds or does the 8 weeks begin on April 16th? The same question goes for the utility payments. Some of the utilities paid in April cover a period in March also. Are these covered utility expenses or should I wait until May?

Yes, your PPP loan can and should be used to pay the April 30 payroll. You can use proceeds to pay April utility bills that cover March use.

7. Can part of the 75% payroll cost consist of paying the monthly employees' Arkansas and federal taxes? If so, would the receipt from EFTPS be sufficient for part of the documentation?

Payroll includes the employees' share of payroll taxes and withholdings. We believe that Electronic Federal Tax Payment System receipts would be fine for documentation. The Act includes payroll receipts as the type of documentation that might be required to prove forgiveness.

8. For sole proprietors, can a portion of their annual SEP IRA contribution count on a prorated basis?

No specific guidance has been issued on this point. However, we believe that a SEP IRA contribution is a “retirement benefit” as used in the payroll cost definition. The safest approach is certainly to prorate as suggested above.

9. There was some information early about “Transportation Utilities” being included as an eligible expense. Is that still the case or was this ruled out in the additional guidance? If it is an eligible expense, what constitutes a Transportation Utility?

Yes, transportation costs are included as utilities and are an allowed use of the proceeds. There has been no guidance as to what a transportation cost is. We believe that payments to employees to commute by bus, metro, etc., would qualify.

10. Are equipment leases and truck leases eligible for loan forgiveness as being defined as a rent expense?

Yes. The Interim Final Rule issued on April 14th confirms that “business rent payments” include rental payments on both real and personal property.

11. Is diesel fuel used to operate my company's forklifts and loaders eligible for loan forgiveness as being defined as a utility?

Gas is covered as a utility. The SBA has not provided any guidance on this, but we believe that diesel would fall within the spirit of the Act.

The Interim Final Rule issued on April 14th specifically states that the “gas you use driving your business vehicle” is an eligible utility cost.

12. Is diesel fuel used for my company's delivery trucks eligible for loan forgiveness as being defined as a utility?

Same as question 11.

13. Last year we had two W2 employees that made over \$100,000. For employees that made over \$100,000 last year, can they be included in our payroll amount for the SBA loan? Or do I need to do a separate payroll for these 2 employees that made more than \$100,000? What is the best approach here?

They can be included but capped at cash compensation of \$100K. We have suggested that employers calculate their total payroll amount with all employee salaries capped at \$100,000 and then move only that amount from their PPP account to their operations or payroll account.

14. I was a bit surprised about the “full time” status required for employees. On the application, it simply asked for the “number of jobs” in my store. I have one part-time employee that I included in that number, not because I was trying to pull the wool over anyone's eyes or anything, but simply because that's how many employees I pay. Can I still pay her from this fund, even though she won't be counted as full time?



CARES ACT Q&A: *continued*

Yes, the total number of employees (fulltime and part-time) is used to calculate the loan amount. The FTE or full-time equivalent status factors into whether there will be a reduction in forgiveness amount. You can still pay the part-time employee from the PPP funds.

15. We misunderstood the process and included “essential operations” contractors in our PPP application amount, so the amount we applied for exceeds 2.5x average payroll. How should we handle this?

I would revise the loan amount with the Bank because these amounts will not be forgiven.

16. Our nonprofit was formed mid-2019 and began paying payroll in June. Is the calculation based on the average since June? Or on Jan-Feb of 2020? I have heard conflicting guidelines, and salaries changed since formation so it would make a difference. Jan-Feb would be a more accurate picture of the organization.

If the entity was not in business during the period beginning on February 15, 2019 and ending on June 30, 2019, you can use payroll from January and February, 2020 to calculate the loan amount.

17. If quarterly bonuses for performance are a normal course of business and are consistent with amounts previously paid are they allowable as wages for PPP loan forgiveness?

The CARES Act includes “employee salaries, commissions, or similar compensations” in payroll.

However, the only specific cap that we have received is the \$100,000 limitation. Based on guidance to date, this should be permitted.

Given the lack of anything specific, however, it may be safest to increase normal wages during the 8-week period rather than paying lump sum bonuses.

18. Are auto leases considered as rent?

The Interim Final Rule issued on April 14th, providing guidance primarily to self-employed persons, specifically lists “business rent payments” as including payments of rent on vehicles used in the business. We believe that the same rule should apply to all employers.

19. If annual contributions to a profit sharing or retirement fund are payable during the 8-week period are they partially or fully included in payroll costs - or not at all?

The SBA has not issued specific guidance on this point. We are advising clients to allocate 8-weeks of the contribution to the covered period.

20. If monthly employer contributions to simple IRA plans are payable in the 8-week period but accrued from a time frame outside the period are they included as payroll costs forgivable for the PPP loan?

The SBA has not issued specific guidance on this point. We are advising clients to allocate 8-weeks of the contribution to the covered period.

We have spoken with some clients and other advisors that intend to “catch up” for the year on employer contributions (for the period from 1/1/2020 through the end of the 8-week period). That is a more aggressive approach.

21. State unemployment for the first quarter and payable during the 8 week period - are they included as payroll costs if paid within the 8 week period or should accrued SUI tax from the 8 week period be used as payroll cost?

Payroll includes state unemployment payments. We believe this would be fine.

22. For employees who are paid in excess of \$100,000, can you include 100% of their additional payroll costs or should you take a pro-rata share of the additional payroll costs commensurate with the percentage of their compensation that is eligible?

The guidance (FAQ 7) provides that the \$100,000 cap is applied to cash compensation and not to “non-cash benefits”, which are listed to include contributions to retirement plans and payment of health insurance benefits. Based upon this, we believe that you would not need to prorate those contributions. There has been uncertainty on this point, but we are now comfortable that no proration to match the \$100,000 cap is necessary

CARES ACT Q&A: *continued*

23. When calculating payroll, we have an individual whose salary is \$101,000 and then has a Car Allowance that is \$10,200. This is for the year. Does the \$100,000 come into play with the payroll reimbursement also? Should I deduct the \$11,200 from his annual salary and then divide the \$100,000 by 12 to get an amount to submit for reimbursement from the loan.

Based upon available guidance (FAQ 7), we believe that you would cap only his salary but not the car allowance.

24. Are raises allowed to help deplete the PPP funds for w-2 wage earners? If so, what is the maximum amount allowed?

There is no guidance on this point, but we believe that employee raises are allowed so long as they are reasonable and subject to the \$100,000 cap. Also note that a self-employed person is essentially limited, during the 8-week period, to treating 15.38% (8 weeks divided by 52 weeks) of his/her 2019 net income as payroll costs.

25. Are one time bonuses allowed as eligible payroll expense? Does this include owners who are paid through payroll or should they be excluded from any bonuses/raises?

The CARES Act includes “employee salaries, commissions, or similar compensations” in payroll. It does not say bonuses. We have advised clients that the safer approach seems to be to increase wages/salaries during the 8-week period as opposed to paying a lump sum bonus. Wage/salary payments to owners are included in payroll costs.

26. If a borrower does not have enough payroll in the 8 week period to spend 75% of his PPP loan would this keep him from being eligible for having ANY of his funds forgiven. For example if his loan was \$100,000 and he only has \$60,000 in payroll during the 8 weeks can he just not use the remaining \$15,000 and pay it back and be forgiven for the \$60,000. Along those same lines would the 25% allowable for other expenses still be based on the \$100,000 loan amount?

It is unclear at this point how forgiveness will be treated if borrowers do not use 75% on payroll. It seems most likely that it will be pro-rated, but we do not have guidance on this issue.

27. If a borrower had not received an EIDL when we did the loan but has since received one how does this affect them?

This issue is also unclear and we have received no guidance from the SBA. We are advising borrowers to use EIDL loans for purposes other than payroll to be safe.

28. Is there an allowable variance for employment numbers from start to finish? For example if someone had 45 employees when this started and has 44 at the end of June does this disqualify them for forgiveness?

Reductions in the number of employees will reduce the loan forgiveness amount based on a formula set forth in the CARES Act [this is a comparison of average number of full-time equivalent employees per pay period during the 8-week period, to the same calculation from either (i) 2/15-6/30/2019, or (ii) 1/1-2/29/2020].

So, a reduction by 1 employee would proportionately reduce the forgiveness amount but not eliminate the borrower from receiving loan forgiveness.

29. Is health insurance paid by an employer for 1099 employees considered an allowable expense?

No, payments to or on behalf of 1099 contractors are not covered within payroll costs.

30. If a borrower was capped at the \$100,000 salary limit for the loan are they capped to \$100,000/12 for monthly salary expense or can they use their normal salary.

The same cap applies both in determining the loan amount and in eligible “forgivable” expenses during the 8-week period.

HAVE MORE QUESTIONS?

Contact your loan officer or email us at CARESAct@thecitizensbank.net

CARES ACT Q&A: *continued*

31. I have a customer that paid a lump sum of \$60,000 for a 15 year lease on the building that they operate out of. We funded a loan to the business to pay this lease so they are making monthly payments to us from the business. I have a copy of the signed lease agreement. We have an assignment of that lease. Can they use the \$60,000 over the 180 months (\$333.33/mth) as their monthly lease or rent expense or just the interest portion of their current loan (currently around \$42)?

Unfortunately they would be limited to the interest portion on the debt (assuming it is a secured loan).

32. I have a borrower that received \$1,000 from SBA for EIDL. She applied for \$14,000 in PPP funds. Does this mean if she spends the PPP funds according to the guidance, \$1,000 of the \$14,000 will not be forgiven?

The CARES Act instructs that in calculating the loan amount you add the outstanding amount of an EIDL loan made between January 31-April 3 (less the \$10K advance) to the payroll calculation. (CARES Act pages 18-19; Interim Final Rule, pages 8-9). These EIDL loans can be refinanced into the PPP loans (page 17). The interim rule states: "If your EIDL loan was used for payroll costs, your PPP loan must be used to refinance your EIDL loan." So this borrower would have a \$15,000 PPP loan. The entire amount should be eligible for forgiveness if used on permissible expenses.

33. With regard to the same borrower, assuming she did not use the EIDL for payroll, are we still to add it to the PPP loan? If it is added, would that portion of PPP be eligible for forgiveness up to \$10,000 if all funds were used for eligible expenses?

See above. The entire loan amount would qualify for forgiveness if the other forgiveness requirements are met.

34. If an employee was let go and given severance in an amount sufficient to cover 75% of their base pay during the 8 week period and all FTE and FTEE requirements are met, would forgiveness be reduced?

Severance to that employee is a permitted payroll cost. Provided all other requirements are satisfied, forgiveness would be available.

35. Couple filing jointly. They are both sole proprietors and each have a Schedule C. Can they apply jointly or does each make application for PPP?

They should each file their own application.

36. Are business cell phone and internet expenses covered under utilities?

Yes.

37. I have customer that has three employees that work on unit costs associated with "seasonal work" -

they are sports physical therapists that work during the school year. They all filed for unemployment as soon as the schools closed. They would not be active employees and would not be filing for unemployment at the release of school but will probably continue to draw unemployment during the current COVID-19 circumstances. They would be part time employees. How do we account for them and do they have to be counted in FEE determination?

Their pay during the prior 12 months (or the 2019 year) would be taken into account in determining loan amount. They would also be taken into account to determine the number of FTEE during the lookback period of either 2/15-6/30/2019, or 1/1-2/29/2020.

38. Can you clarify if employees laid off prior to applying for loan also have to be returned to payroll and what date is the deadline - end of 8-weeks or 6/30?

The comparison, that may impact forgiveness, is to compare the average FTEE during the 8-week period, to average FTEE during the period of either 2/15-6/30/2019, or 1/1-2/29/2020.

If an employee was laid off between 2/15-4/26/2020, then he or she would not count against the employer in determining forgiveness if the employee is rehired by June 30.