



# Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (H.R.748)

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## Overview

SGI has reviewed portions of the Coronavirus Aid, Relief, and Economic Security (CARES) Act (H.R.748), as well as numerous articles and summaries, and has provided the essential facts you must know as a business operator. Should you have any questions, please, reach out to us for further insight or assistance.

Economic Injury Disaster Loan (EIDL)		Paycheck Protection Program (PPP) Section 7(a)
Administrator	SBA	SBA Approved Financial Institutions
Amount of Loan	Up to \$2 million	<ul style="list-style-type: none"> <li>• Lesser of \$10 million or 2.5 times average monthly payroll costs (not including independent contractor payments) incurred during calendar year 2019</li> <li>• Calculations for seasonal and new business can vary</li> </ul>
Interest Rate	For- Profit 3.75%   Non-Profit 2.75%	1%
Term/ Maturity	Up to 30 years	2 years
Deferral	12 months (interest accrues during deferment)	6 months (interest accrues during deferment)
Prepayment	Prepayment is eligible	Prepayment is eligible
Eligibility*	<ul style="list-style-type: none"> <li>• Small businesses in all U.S. States and territories, including sole proprietors or independent contractors</li> <li>• Internationally owned organizations located in the U.S.</li> <li>• Private nonprofit organizations</li> </ul>	<ul style="list-style-type: none"> <li>• Small businesses in all U.S. States and territories, including sole proprietors, independent contractors and eligible self-employed individuals</li> <li>• Internationally owned organizations located in the U.S.</li> <li>• 501 (c)(3) nonprofit organizations</li> </ul>
Usage	Fixed Debts, payroll and related benefits**, accounts payable and other expenses that cannot be paid because of the disaster's impact	Payroll and related benefits** Interest on mortgage payments or other debts, rents and utilities
Cannot be used for	Refinancing of debt, payment of other SBA loans or lenders, tax penalties, civil fines, repairs of property or other physical damage, pay dividends or distributions to owners or partners	Limited to uses noted above <input type="checkbox"/> (EIDL may be eligible to be refinanced into a PPP loan)
Collateral	If available, collateral will be taken on loans greater than \$25,000	No collateral from business or its owners
Loan forgiveness and grant eligibility	Emergency grant up to \$10,000 <input type="checkbox"/> (EIDL may be eligible to be refinanced into a PPP loan)	<ul style="list-style-type: none"> <li>• Eligibility is based on specific requirements</li> <li>• Forgiveness*** available on a portion of the loan proceeds if employers retain employees during specified period</li> <li>• Forgiveness of non-payroll allowable expenses is limited to 25% of total forgiveness</li> </ul>
Guarantees	Waives requirement of personal guarantees on loans less than \$200k	None
Can I Apply Now?	Application process and loans are available now	Application process and loans are available now

## What You Need to Know

### \$349 Billion loan program – “Paycheck Protection Program” (PPP)

#### Section 1102

#### Who is eligible?

Small businesses as defined by the Small Business Association (SBA) size standards (generally up to 500 employees, but up to 1,500 employees depending on the sector and certain sectors are based on revenue).

1. Businesses in the Accommodation and Food Services Sector (NAICS Code 72 – Accommodation and Food Services) are eligible with up to 500 employees at each location.
2. 501 (c)(3) non-profits with fewer than 500 employees.
3. Sole proprietors, the self-employed, and independent contractors
  - a. *An eligible self-employed individual, independent contractor, or sole proprietorship seeking a covered loan shall submit such documentation as is necessary to establish such individual as eligible, including payroll tax filings reported to the Internal Revenue Service, Forms 1099–MISC, and income and expenses from the sole proprietorship, as determined by the Administrator and the Secretary.*

Employees include individuals employed on a full-time, part-time or other basis.

For eligibility the lender must consider whether the borrower:

1. Was in operation on February 15, 2020
2. Had employees for whom the borrow paid salaries and payroll taxes; or
3. Paid independent contractors, as reported on FORM 1099-MISC

#### **Loan Administration:**

These loans will be administered through approved local lenders and SBA partners rather than directly through the SBA. Contact your financial institution to see if they are, or plan to be, an approved SBA lender for the 7(a) loan program. The SBA also provides a website to match you with possible lenders, and application:

<https://www.sba.gov/funding-programs/loans/paycheck-protection-program-ppp>

#### **Trusted Loan Contacts:**

##### **Live Oak Bank**

Brandon Bolen

Vice Pres. – Service Contractors

910-550-2858 (work)

##### **Eric King Associates**

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832-577-3600 (mobile)

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### What is a 'covered loan'?

A 'covered loan' means a loan made under the provisions of this bill during the covered period of February 15, 2020 – June 30, 2020.

The covered period includes 8 weeks from the initiation of the covered loan. This is the period in which the proceeds of the loan are to be used for specific types of expenses, as defined below. The period begins the day you receive your money from the bank.

The updated Q&A from the Treasury Dept and SBA indicates that the lender must make the first disbursement of the loan no later than 10 calendar days from the date of loan approval.

### What is the maximum loan amount?

Depending on your business's situation, the loan size will be calculated in different ways (see below). The maximum loan size is always **\$10 million**.

- **If you were in business in 2019:** Your max loan is equal to 2.5 times your average monthly payroll costs during calendar year 2019 or you could aggregate payroll costs from the previous 12 months.
  - If your business employs **seasonal workers**, you can opt to use average monthly payroll costs for the period between **February 15 or March 1, 2019 – June 30, 2019**.
- **If you were not in business between February 15, 2019 – June 30, 2019:** Your max loan is equal to 2.5 times your average monthly payroll costs between January 1, 2020 and February 29, 2020.
- **If you took out an Economic Injury Disaster Loan (EIDL) between February 15, 2020 and June 30, 2020** and you want to refinance that loan into a PPP loan, you would add the outstanding loan amount to the payroll sum.

### Can I obtain more than one PPP loan?

No, an entity is limited to one PPP loan. Each loan will be registered under a Taxpayer Identification Number (TIN) at SBA to prevent multiple loans to the same entity.

### How does the PPP loan coordinate with SBA's existing loans?

Borrowers may apply for PPP loans and other SBA financial assistance, including Economic Injury Disaster Loans (EIDLs), 7(a) loans, 504 loans, and microloans, and also receive investment capital from Small Business Investment Corporations (SBICs).

### **How does the PPP loan work with the temporary Emergency Economic Injury Grants and the Small Business Debt Relief program?**

Emergency Economic Injury Grant recipients and those who receive loan payment relief through the Small Business Debt Relief Program may apply for and take out a PPP loan. Refer to those sections for more information.

#### **Certifications made by the borrower:**

An eligible recipient applying for a covered loan shall make a good faith certification of the following:

1. The applicant was in operation on February 15, 2020 and had employees for whom it paid salaries and payroll taxes
2. Current economic uncertainty makes this loan request necessary to support the ongoing operations of the applicant.
3. The funds will be used to retain workers and maintain payroll or make mortgage interest payments, lease payments, and utility payments; I understand that if the funds are knowingly used for unauthorized purposes, the federal government may hold me legally liable such as for charges of fraud. Not more than 25 percent of loan proceeds may be used for non-payroll costs.
4. Documentation verifying the number of full-time equivalent employees on payroll as well as the dollar amounts of payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities for the eight-week period following this loan will be provided to the lender.
5. Loan forgiveness will be provided for the sum of documented payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities. As explained above, not more than 25 percent of the forgiven amount may be for non-payroll costs.
6. During the period beginning on February 15, 2020 and ending on December 31, 2020, the applicant has not and will not receive another loan under this program.
7. I further certify that the information provided in this application and the information provided in all supporting documents and forms is true and accurate in all material respects. I understand that knowingly making a false statement to obtain a guaranteed loan from SBA is punishable under the law, including under 18 USC 1001 and 3571 by imprisonment of not more than five years and/or a fine of up to \$250,000; under 15 USC 645 by imprisonment of not more than two years and/or a fine of not more than \$5,000; and, if submitted to a federally insured institution, under 18 USC 1014 by imprisonment of not more than thirty years and/or a fine of not more than \$1,000,000.

8. I acknowledge that the lender will confirm the eligible loan amount using tax documents I have submitted. I affirm that these tax documents are identical to those submitted to the Internal Revenue Service. I also understand, acknowledge, and agree that the Lender can share the tax information with SBA's authorized representatives, including authorized representatives of the SBA Office of Inspector General, for the purpose of compliance with SBA Loan Program Requirements and all SBA reviews.

**Waiver of Personal Guarantee Requirement:**

During the covered period, with respect to a covered loan:

1. no personal guarantee shall be required for the covered loan; and
2. no collateral shall be required for the covered loan.

**PPP Loan Forgiveness**

*Section 1106*

An eligible recipient shall be eligible for forgiveness of indebtedness on a covered loan in an amount equal to the sum of the following costs incurred and payments made during the covered period:

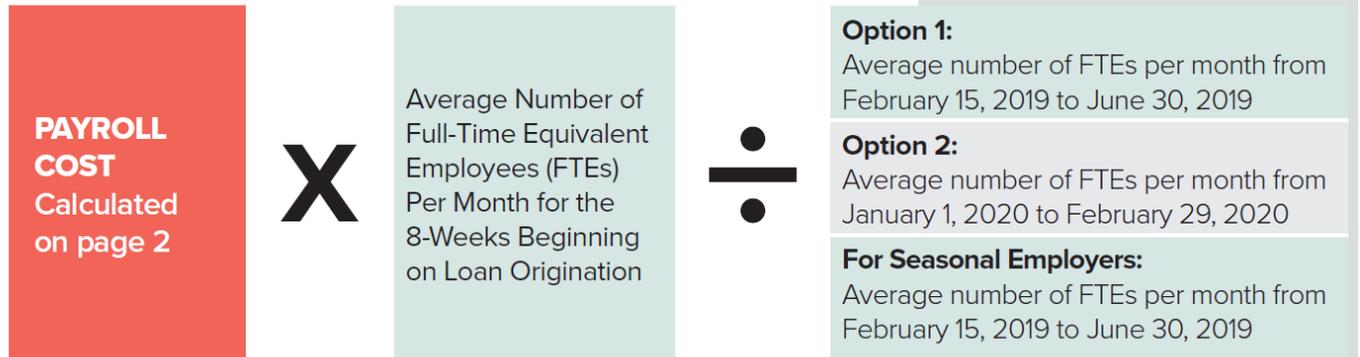
1. Payroll costs (*see definition on next page*);
2. Any payment of interest on any covered mortgage obligation;
  - a. Shall **NOT** include any prepayment of or payment of principal on a covered mortgage obligation
3. Payments on any covered rent obligation;
4. Covered utility payments
5. Interest payments on any other debt obligations that were incurred before February 15, 2020: and/or
6. Refinancing an SBA EIDL loan made between January 31, 2020 and April 3, 2020.
  - a. *If you received an SBA EIDL loan from January 31, 2020 through April 3, 2020, you can apply for a PPP loan. If your EIDL loan was not used for payroll costs, it does not affect your eligibility for a PPP loan. If your EIDL loan was used for payroll costs, your PPP loan must be used to refinance your EIDL loan. Proceeds from any advance up to \$10,000 on the EIDL loan will be deducted from the loan forgiveness amount on the PPP loan.*

Forgiveness on a covered loan is equal to the sum of payroll costs incurred during the covered 8-week period compared to the previous year or time period, proportionate to maintaining employees and wages.

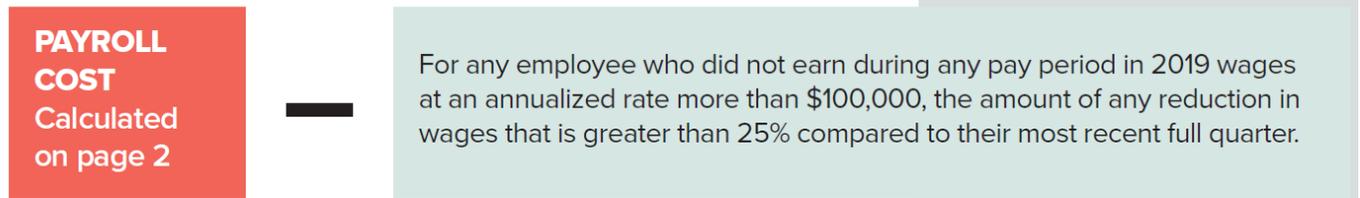
**How could loan forgiveness be reduced?**

The amount of loan forgiveness is reduced if there is a reduction in the number of employees or a reduction of greater than 25% in wages paid to employees. Specifically (graphic on next page):

Reduction based on reduction of number of employees



Reduction based on reduction in salaries



The amount of the loan forgiveness shall not exceed the principal amount of the financing made available under the applicable covered loan (the amount of money loaned).

**How are payroll costs defined?**

Payroll costs include the following:

- Compensation (salary, wage, commission, or similar compensation, payment of cash tip or equivalent)
  - Gross basis – do NOT include employer taxes or deduct employee withheld taxes
- 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

- Payment of State or local tax assessed on the compensation of employees

**What costs are NOT eligible for payroll?**

- Employee or owner compensation (includes salary, wages, commissions, cash tips, other equivalents) with an annualized rate of more than \$100,000
  - Payroll costs are capped at \$100,000 on an annualized basis for each employee.
    - This applies only to cash compensation and **NOT** to non-cash benefits, including:
      - Employer contributions to defined-benefit and defined-contribution retirement plans
      - Payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums; and
      - Payment of state and local taxes assessed on the compensation of employees.
- Taxes imposed or withheld under chapters 21, 22 and 24 of the IRS code
  - Social Security and Medicare Taxes
  - Income Tax
  - Railroad Retirement Tax
- Compensation of employees whose principal place of residence is outside of the U.S.
- Any amounts of qualified sick and family leave wages for which a credit is allowed under sections 7001 and 7003 of the Expanded FMLA or Emergency Paid Sick Leave Acts (Families First Act – H.R.6201).
- Payments made to an independent contractor or sole proprietor.
  - They are eligible for a loan under the PPP.

**How do I obtain forgiveness on my PPP loan?**

You must apply through your lender for forgiveness on your loan. The time period for applying for forgiveness is now defined as beginning 60 days after you receive the loan proceeds, and the last day to apply falls at 90 days (per a Bank of America promissory note). There is only a 30-day window to apply! The bank must render a decision within 60 days of your application.

In this application, you must include:

- Documentation verifying the number of employees on payroll and pay rates, including IRS payroll tax filings and State income, payroll and unemployment insurance filings
- Documentation verifying payments on covered mortgage obligations, lease obligations, and utilities.
- Certification from a representative of your business or organization that is authorized to certify that the documentation provided is true and that the amount that is being forgiven was used in accordance with the program's guidelines for use.

### **What happens after the forgiveness period?**

The amount of the loan that is forgiven will not be taxable as income. Any remaining balance will need to be repaid within a 2-year period at a 1% interest rate. Principal is deferred for the first 6 months after receiving the funds, however interest does accrue on the balance.

Currently there is a loophole in the law that seems to indicate not only that the loan can be forgiven and not be taxed as income, the expenses paid with loan proceeds remain tax deductible. Many CPAs have noticed this, and the law is clear, however we do believe that the IRS may rectify this later in 2020. If they do not, it's an incredible tax benefit.

### **Things you should be doing if you believe this loan is right for you:**

1. Contact your current bank to confirm they are able and ready to process your PPP application on Friday.
2. Reach out to one other SBA- approved bank as a backup option.
3. Consult with your accountant and other business advisors to prepare to apply.
4. Review the linked sample application and begin pulling together the needed documentation
  - a. <https://www.sba.gov/document/sba-form--paycheck-protection-program-ppp-sample-application-form>

## **Emergency EIDL (Economic Injury Disaster Loan) Grants**

### *Section 1110*

These grants provide an emergency advance of up to \$10,000 to small businesses and private non-profits harmed by COVID-19 within three days of applying for an SBA Economic Injury Disaster Loan (EIDL). To access the advance, you must first apply for an EIDL and then request the advance.

### **What is an EIDL and what is it used for?**

EIDLs are lower interest loans of up to \$2 million, with principal and interest deferment available for up to 4 years, that are available to pay for expenses that could have been met had the disaster not occurred, including payroll and other operating expenses.

<https://covid19relief.sba.gov/#/> - to apply for the EIDL grant and loan

### **What is the covered period for the grant (advance) that may come with this loan?**

The period beginning January 1, 2020 and ending on December 31, 2020. The grants are backdated to allow those who have already applied for EIDLs to be eligible to also receive the grant.

### **Who is eligible:**

The following with 500 or fewer employees are eligible:

- Small businesses (including sole proprietorships, with or without employees)
- Independent contractors
- Cooperative and employee owned businesses
- Private non-profits
- Tribal small businesses

### **What is the maximum amount of this grant:**

\$10,000

### **The allowable use of funds of this grant:**

- Providing paid sick leave to employees unable to work due to the direct effect of the COVID-19;
- maintaining payroll to retain employees during business disruptions or substantial slowdowns;
- meeting increased costs to obtain materials unavailable from the applicant's original source due to the interrupted supply chain;
- making rent or mortgage payments; and
- repaying obligations that cannot be met due to revenue losses.

### **Repayment provisions:**

- No requirement to repay any amounts of an advance (grant), even if subsequently denied a loan under section 7(b)(2) of the Small Business Act.
- If you receive an advance and transfer into, or are approved for, the loan program under section 7(a) of the Small Business Act, the advance amount shall be

reduced from the loan forgiveness amount for a loan for payroll costs made under such section 7(a).

**If I get an EIDL and/or an Emergency Economic Injury Grant, can I get a PPP loan?**

Whether you've already received an EIDL unrelated to COVID-19 or you receive a COVID-19 related EIDL and/or Emergency Grant between January 31, 2020 and June 30, 2020, you may also apply for a PPP loan. If you ultimately receive a PPP loan or refinance an EIDL into a PPP loan, any advance amount received under the Emergency Economic Injury Grant Program would be subtracted from the amount forgiven in the PPP.

**Small Business Tax Provisions**

*Section 2301*

**Employee Retention Credit (ERC) for Employers Subject to Closure or Experiencing Economic Hardship:**

\*\*These credits and deferral of employer payroll taxes are **NOT** available to employers receiving assistance through the **Payroll Protection Program (PPP)**.

This provision would provide for a refundable payroll tax credit for 50% of wages paid by eligible employers to certain employees during the COVID-19 crisis. The credit is available to employers, whose operations have been fully or partially suspended as a result of a government order limiting commerce, travel and group meetings. The credit is also provided to employers who have experienced a greater than 50 percent reduction in quarterly receipts, measured on a year-over-year basis.

**Eligibility**

- Wages of employees who are furloughed or face reduced hours as a result of their employer's closure or economic hardship
  - Employers with 100 or fewer employees, all employee wages are eligible, regardless of whether an employee is furloughed
- Wages and compensation, including health benefits, and is provided for the first \$10,000 in wages and compensation, paid by the employer to an eligible employee.
  - **DO NOT** include those taken into account for purposes of the payroll credits for required paid sick leave or required paid family leave, nor for any wages taken into account for the employer credit for paid family and medical leave (H.R.6201).
- <https://home.treasury.gov/system/files/136/Employee-Retention-Tax-Credit.pdf>

**Delay of Payment of Employer Payroll Taxes:**

This provision allows taxpayers to defer paying the employer portion of certain payroll taxes through the end of 2020. All 2020 deferred amounts due in two equal installments, one at the end of 2021, and the other at the end of 2022.

- Employer portion of FICA taxes
- The employer and employee representative portion of the Railroad Retirement taxes (that are attributable to the employer FICA rate)
- Half of SECA tax liability

### **Deduction of Net Operating Losses (NOLs)**

Retroactive amendment of the Tax Cuts & Jobs Act of 2017, allowing for the deduction of NOLs for years prior to 2018. You can now use these to amend prior tax returns, and carry back NOLs for 2018, 2019, and 2020 to the prior 5 years. If you are able to do this, you could quickly receive cash refunds.

## **Individual Impacts of Interest**

### **Recovery Rebates for Individuals**

*Section 2201*

#### **Who receives a check and how much?**

1. Individual taxpayers will receive \$1,200 each if their adjusted gross income (AGI) is less than \$75,000.
2. Married Filing Jointly filers will receive \$2,400 if their AGI is less than \$150,000.
3. Head of Household filers will receive \$1,200 if their AGI is less than \$112,500.

Payments in any category will be reduced by \$5 for every \$100 of income above those AGI thresholds.

Adjusted gross income (AGI) will be determined using your 2019 filed taxes (Line 8b of your Form 1040). If you have not yet filed 2019 taxes, the government will use Line 7 from the 2018 tax return.

Taxpayers with dependent children will receive a \$500 payment for each child, and this is not determined by income. Only children who have **NOT** yet turned 17 are eligible.

#### **Examples**

1. Married Filing Jointly with an AGI of \$137,000 and 3 dependent children under the age of 17:
  - a.  $\$2,400 + (\$500 \times 3) = \$3,900$
2. Head of Household with an AGI of \$117,000 and 1 dependent child over the age of 17:

a.  $\$1,200 - ((\$117,000 - \$112,500) \times \$5) + (\$500 \times 0) = \$975$

### Unemployment Assistance

*Sections 2102 and 2104*

Unemployment provisions are expanded to include a number of COVID-19 related causes. For weeks of unemployment, partial unemployment, or inability to work caused by COVID-19 beginning on or after January 27, 2020 and ending on or before December 31, 2020.

The weeks of coverage have been expanded to include up to 39 weeks, in general 13 additional weeks more than the current standard. For any state that enters into an agreement with the Secretary of Labor, unemployed individuals will receive an additional Federal payment of \$600 per week on top of their regular weekly benefit as determined under State law.

### Helpful Links:

- Coronavirus Aid, Relief, and Economic Security (CARES) Act (H.R.748) as written:
  - <https://www.congress.gov/bill/116th-congress/house-bill/748/text#toc-HCCF2DA7CBD6341059EAB97C24489743B>
- SBA Funding – Lender Match program
  - <https://www.sba.gov/funding-programs/loans/lender-match>
- PPP Interim Final Rule, April 2, 2020
  - <https://www.sba.gov/document/policy-guidance--ppp-interim-final-rule>
- Paycheck Protection Program (PPP) Loans – Frequently Asked Questions (FAQs)
  - <https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf>
- Instructions (IRS Form 7200)
  - <https://www.irs.gov/pub/irs-pdf/i7200.pdf>
- Advance Payment of Employer Credits Due to COVID-19 (IRS Form 7200)
  - <https://www.irs.gov/pub/irs-pdf/f7200.pdf>

### Frequently Asked Questions:

#### **Q: Do independent contractors count as employees for purposes of PPP loan calculations?**

- A: No, independent contractors have the ability to apply for a PPP loan on their own. They do not count for purposes of a borrower's PPP loan calculation.

To be clear, if we have Sales team members that are 100% commission, these are our employees and their wages to count (up to \$100,000 on an annualized basis). This is

more intended for a business that may bring in sub-contractors for regular jobs. Those subs, if independent contractors or sole proprietors may get their own funding.

**Q: What if not all of my PPP loan is forgiven?**

- A: You would pay back the loan on a 24 month (2 year) schedule at 1% interest. The clock starts the day funds are received by the borrow, however the first 6 months of payments are deferred while interest is accrued at a 1% rate. You would then repay any leftover balance over the remaining term of the loan.

**Q: Can I apply for more than one PPP loan?**

- A: No borrower may receive more than one PPP loan. If you are struggling to acquire a loan, there is nothing wrong with applying with two financial institutions. As soon as you receive acceptance of your loan, you can notify the other bank.

**Q: What happens if PPP loan funds are misused?**

- A: If you use PPP funds for unauthorized purposes, SBA will direct you to repay those amounts. If you knowingly use the funds for unauthorized purposes, you will be subject to additional liability such as charges for fraud. If one of your shareholders, members, or partners uses PPP funds for unauthorized purposes, SBA will have recourse against the shareholder, member or partner for the unauthorized use.

**Q: Do PPP loans cover paid sick leave?**

- A: They will cover any paid time off you provide your employees, including vacation, parental leave, family, medical and sick time. However, the CARES Act excludes qualified sick and family leave wages for which a credit is allowed under sections 7001 and 7003 of the Families First Coronavirus Response Act (FFCRA).

The reason for this is that you will receive payroll tax credits for any leave taken by your team members under the FFCRA provisions.

**Q: How should a borrower account for federal taxes when determining its payroll costs for purposes of the maximum loan amount, allowable uses of a PPP loan, and the amount of a loan that may be forgiven?**

- A: Gross wages (payroll) are not to be increased or reduced based on the employer's share of federal taxes or income taxes required to be withheld from employees. This should be done on the gross amount calculated as the employee's income.

For example, an employee who earned \$4,000 per month in gross wages, from which \$500 in federal taxes was withheld, would count as \$4,000 in payroll costs. The employee would receive \$3,500, and \$500 would be paid to the federal government. However, the employer-side federal payroll taxes imposed on the \$4,000 in wages are excluded from payroll costs under the statute.

**Q: The amount of forgiveness of a PPP loan depends on the borrower's payroll costs over an eight-week period; when does that eight-week period begin?**

- A: The eight-week period begins on the date the lender makes the first disbursement of the PPP loan to the borrower. The lender must make the first disbursement of the loan no later than ten calendar days from the date of loan approval.

Banks are doing their best on the ten days rule, but some are behind. The period will always begin when funds are received by you.

**Q: When and how do I apply for forgiveness of my loan?**

- A: First, you must apply for forgiveness from the lending institution that provided your loan. They will have a process in place. The 8 week period begins the date you receive your funds (56 days). 60 days after receiving your loan, you may apply for forgiveness. Per a promissory note example from Bank of America, you will only have up to 90 days after receiving your loan to complete and submit that request for forgiveness. That is only a 30 day window.

**Q: If I have furloughed employees and/or reduced hours for our team, and have been approved for a PPP loan. How do we gain full forgiveness?**

- A: The loan should be based on prior year headcount and average wages. You'll want to bring on some of your furloughed staff and may increase hours to capitalize. If volume is down, what are the projects that you've wanted to tackle but never have been able to do so because of a lack of time?

Clean the building, paint, implement new processes, reach out to your customers in some meaningful way, and train. You could even take a day with your team and volunteer in your community in some way. This would all be paid under the loan, keep your team employed, paid, and help prepare you for when things ramp up.

**Q: Are agents permitted in acquiring a PPP loan?**

- A: The banks are not making a tremendous amount of money, however if you are having difficulty there are some agents that can help. Do NOT pay an agent any money for helping you secure a loan. This is fraud, and the lending institution should be paying an agent for your loan.