

## FAQ's for the PPP

**Question:    How Can I Use My PPP Loan?**

**Answer:**    Employers seeking full forgiveness should strive to have at least 75% of the funds used for payroll costs. Payroll costs are defined in the [Interim Final Rule, 2.f](#): **gross wages, employer health premium costs, employer retirement match amounts, and state/local employer taxes.**

A PPP loan may also be used for rent, utility, or interest payments on other debt obligations that were incurred before February 15, 2020. Specifically, Treasury states.

The proceeds of a PPP loan are to be used for:

- i. payroll costs (as defined in the Act and in 2.f.)
- ii. costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums
- iii. mortgage interest payments (but not mortgage prepayments or principal payments)
- iv. rent payments
- v. utility payments
- vi. interest payments on any other debt obligations that were incurred before February 15, 2020; and/or vii.

### **SBA EIDL LOANS**

Refinancing an SBA EIDL loan made between January 31, 2020 and April 3, 2020. If you received an SBA EIDL loan from January 31, 2020 through April 3, 2020, you could 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."

**Question:    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?**

**Answer:**    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 the loan approval.

**Question:** To determine borrower eligibility under the 500-employee or other applicable threshold established by the CARES Act, must a borrower count all employees or only full-time equivalent employees?

**Answer:** For purposes of loan eligibility, **the CARES Act defines the term employee to include "individuals employed on a full-time, part-time, or other basis."** A borrower must therefore calculate the total number of employees, including part-time employees, when determining their employee headcount for purposes of the eligibility threshold.

For example, if a borrower has 200 full-time employees and 50 part-time employees each working 10 hours per week, the borrower has a total of 250 employees.

By contrast, for purposes of loan forgiveness, the CARES Act uses the standard of "full-time equivalent employees" to determine the extent to which the loan forgiveness amount will be reduced in the event of workforce reductions.

**Question:** Will a borrower's PPP loan forgiveness amount (pursuant to section 1106 of the CARES Act and SBA's implementing rules and guidance) be reduced if the borrower laid off an employee, offered to rehire the same employee, but the employee declined the offer?

**Answer:** No. As an exercise of the Administrator's and the Secretary's authority under Section 1106(d)(6) of the CARES Act, SBA and Treasury intend to issue an interim final rule excluding laid-off employees whom the borrower offered to rehire (for the same salary/wages and same number of hours) from the CARES Act's loan forgiveness reduction calculation.

The interim final rule will specify that, to qualify for this exception, the borrower must have made a good faith, written offer of rehire, and the employee's rejection of that offer must be documented by the borrower. Employees and employers should be aware that employees who reject offers of re-employment may forfeit eligibility for continued unemployment compensation.

**Question:** Can we delay the first disbursement?

**Answer:** It may be possible to delay disbursement up to ten days after loan approval, but we recommend discussing with your lender immediately if you want to delay funding. The Treasury specifically says, "The lender must make the first

disbursement of the loan no later than ten calendar days from the date of loan approval."

**Question:**     **What are the terms of the PPP Loan amount that is not forgiven?**

**Answer:**       The PPP Loan has a fixed interest rate of 1% and is due in 2 years. All payments are deferred for 6 months; however, interest will accrue over that period. There are no prepayment penalties or fees.

**Question:**     **What happens if after the 8-week period and prior to June 30, 2020, we still cannot go back to work and thus must terminate all employees?**

**Answer:**       There is reference to a rehiring grace period in the PPP Borrower Information Sheet published by Treasury stating employers have until June 30, 2020 to restore full-time employment and salary levels for changes made between February 15, 2020 and April 26, 2020. Some employers are wondering if there would be any negative impacts to their loans if they are forced to lay off staff again after the 8-week loan period or are unable to rehire by June 30 due to state/local restrictions. There is nothing in any of the guidance that addresses this scenario.

However, nothing in the guidance yet speaks to requiring you maintain staffing levels after the 8-week period. This may be a case for reading too much into the guidance, but since this hasn't been addressed specifically by Treasury, we suggest monitoring the daily guidance updates published by Treasury or speaking with your lender to see how they interpret that section of the guidance.

**Question:**     **Can employees refuse a recall to work and still collect unemployment?**

**Answer:**       In most cases, no, but ultimately it will be up to the state to decide on a case-by-case basis.

When an employer recalls an employee to work, it must notify its state unemployment agency of the offer of work made to that individual. This should stop the eligibility for benefits based on work not being available.

Depending upon the circumstances, however, an individual may be unavailable for work due to COVID-19. The individual may be caring for a child whose school or caregiving place is closed or still be caring for someone diagnosed with COVID-19. Additionally, he or she could have some reason to feel unsafe at the workplace due to the pandemic, which might be deemed allowable. Therefore, if the individual does not accept the recall notice, he or she will have to continue to certify with the

unemployment agency as to why he or she cannot work due to COVID-19, or for another qualifying reason.

If an employer has any reason to believe an employee might refuse a recall for unlawful reasons, it may wish to educate him or her on the consequences of unemployment fraud. These could include not only reimbursing the state for benefits paid but also civil and criminal penalties, including incarceration.

Additionally, through the end of July 2020, unemployment recipients will receive an additional \$600 per week on top of their regular unemployment insurance entitlement through provisions under the CARES Act. In many cases, this will provide more money than the employee normally made when working, and these employees may feel less inclined to return to work before August, and therefore, refuse the recall.

Employers may advise these employees that the offer of work has been reported to the state, and unemployment benefits will stop as of the intended start date. Any dishonest statements made by the employee to the unemployment agency would be considered fraud and may be subject to the penalties mentioned above.