

# Coronavirus Aid, Relief, and Economic Security (CARES) Act



## Paycheck Protection Program Virtual Meeting

## HCA Healthcare Physician FAQ - Updated 4/14/2020

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This document is a compilation of frequently asked questions (FAQs) from physicians, which were answered by a panel of external financial and legal experts who are working with HCA Healthcare as we continue to provide you with support and resources in this unprecedented time.

Note that these FAQs were prepared based on information available as of **April 14, 2020** and are subject to revision and interpretation based on pending rules and regulations.

Visit the [HCA Healthcare's Physician Relief Website](#)\* to learn more about this and other financial support services, such as:

- HCA Healthcare Physician Relief Call Line,
- Guidance information around CARES Act programs,
- Checklists to help navigate applications, and
- Banks who are available to support you should your financial institution not be an SBA lender

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## FREQUENTLY ASKED QUESTIONS: TABLE OF CONTENTS

1. <a href="#">Bank Access</a>	Page 2
2. <a href="#">Interaction with Other Programs</a>	Page 2
3. <a href="#">Loan Timing</a>	Page 3
4. <a href="#">Use of Proceeds</a>	Page 4
5. <a href="#">Eligibility</a>	Page 4
6. <a href="#">Affiliation</a>	Page 6
7. <a href="#">Loan Amount Calculation &amp; Forgiveness</a>	Page 7

*\*Neither the assistance provided by HCA nor its outside advisors should be considered legal advice or guidance.*

# Coronavirus Aid, Relief, and Economic Security (CARES) Act

## Bank Access

**Q: Is it acceptable to apply through more than one bank? We didn't want to risk having Wells Fargo turn us down so we thought about applying through another bank as well.**

No. Each applicant should only submit one application. The guidance issued in connection with the Program makes clear that an applicant can take out only one loan in connection with the Program. In the certifications to the Application, the applicant must certify that “the Applicant has not and will not receive another loan under the Paycheck Protection Program”. By submitting multiple applications, an applicant risks receiving multiple loans.

**Q: I bank with Wells Fargo and was able to submit my "interest in the program" with general contact information and estimated loan amount under their website on Saturday morning. By Sunday, Wells announce that they are no longer accepting applications, and this has been confirmed with my banker. If I am not given an application through Wells, what are my other options? Other banks are already indicating that they are preferentially providing loans to their existing customers.**

You should reach out to another approved lender under the program. We understand that other approved lenders will be taking applications from new customers. Expect to comply with Know Your Customer requirements under the Bank Secrecy Act and anti-money laundering regulations. This will include providing an EIN and organizational documents for the applicant as well as a copy of the drivers' license for the approved signatory.

For practices that do not have access to a PPP lender, HCA has developed a relationship with a PPP lender that will accept applications from independent physician practices who bank at other financial institutions. The HCA CARES website at [hcahealthcare.com/hcacares](https://hcahealthcare.com/hcacares) has information and an application link for this PPP lender and a link to SBA.gov to find other PPP lenders.

## Interaction with Other Programs

**Q: There is something called the \$10,000 emergency grant for EIDL (economic injury disaster loan). I was told that this is another fully forgivable loan that I can apply for simultaneously with the PPP but that the PPP funds will be less this \$10,000, as you cannot 'double dip' in requesting government funds. Can you please provide clarity on the interaction between these funds, and how many forgivable loans can we apply for?**

The Economic Injury Disaster Loan and the Payroll Protection Program loans are separate loan programs under the CARES Act. The EIDL provides for loans up to \$2 million, but have certain collateral requirements and personal guarantee requirements for 20% owners of the borrower. The EIDL also provides for a \$10,000 emergency advance on the EIDL loan, which is generally made within three days of application. The general rule is that an applicant cannot double dip and get funds from both loan programs for the same purpose, so you will need to carefully track what each loan is used to fund (e.g., PPP funds fund payroll). Also, the CARES Act requires an applicant to refinance an EIDL received through April 3, 2020 with a PPP loan. And, if an applicant has received a \$10,000 EIDL advance, but is later approved for a PPP instead, the \$10,000 advance amount is reduced from the amount of the loan eligible for forgiveness under the PPP.

# Coronavirus Aid, Relief, and Economic Security (CARES) Act

**Q: There is something called the “50% Employee retention tax credit”, which allows employers to retain a tax credit against the employer portion of the payroll tax. How does this interact with the PPP loan request, as in, can you apply for this employee retention tax credit in addition to the Economic Injury Disaster Loan AND the PPP loan?**

There are several qualifications for being eligible to use the Employee Retention Credit. Even an eligible Employer cannot receive the Credit if the Employer receives a Small Business Interruption Loan under the PPP. But, an Employer can receive the \$10,000 advance under the Economic Injury Disaster Loan (EIDL) and still claim the Retention Credit. Filing for this relief is available at <https://disasterloan.sbs.gov/ela/> . The IRS has a separate FAQ summary devoted to questions about the Retention Credit. See <https://www.irs.gov/newsroom/faqs-employee-retention-credit-under-the-cares-act> .

**Q: Can physicians both apply the PPP & Medicare Advance payments?**

Yes. These are separate programs with separate qualification criteria.

**Q: How many forgivable loans can we apply for and how can we figure out what the best options are for these loan plans? They are all part of the CARES Act, but I can't find if there is a limit to what I can apply for.**

For most independent physician practices, we generally believe that the loan with the most favorable terms is the PPP. It is forgivable if used for the permitted purposes, and the portion that is not forgivable is converted into a 2-year, 1% loan, which has a 6 month payment deferral. However, each practice and each owner has different business and tax situations, so there is not a one-size fits all answer

**Q: There is something called the “social security tax deferral’ loan. How are small business owners to know which we are eligible for and how many we can apply for?**

Employers may be able to defer the employer portion of any Social Security taxes for the period beginning on March 27, 2020, and ending before January 1, 2021. Half of the employer portion of any Social Security taxes for the payroll tax deferral period can be deferred until December 31, 2021. The second half can be deferred until December 31, 2022. This Social Security tax deferral is not available if a company obtains a PPP loan.

## Loan Timing

**Q: Do your 8 weeks start as soon as you receive the loan, or can you choose which 8 weeks to use it?**

The 8 week forgiveness period commences on the date of the loan.

**Q: Any idea when the funds will be available? We have been approved for the PPP but don't know when the funds will be released.**

The Treasury has indicated that funds will be available as soon as possible. We understand that some applicants have submitted applications and received calls back from their lenders, but we are not aware of

# Coronavirus Aid, Relief, and Economic Security (CARES) Act

any applicants having received funds as of April 8, 2020. We would expect to see funding occur within the week following submission of the application.

## Use of Proceeds

**Q: Can you pay back any excess loan amount at end of the 2 month period? Do you have to pay any interest?**

The PPP loan can be prepaid at any time. Interest will begin accruing from the date of advance, but all payments are deferred for six months. It will generally take up to 4 months to determine loan forgiveness (8 week period to pay payroll and other permitted expenses) and up to 60 days for the bank to determine what portion is eligible for forgiveness. So, a borrower should not elect to prepay the loan until the forgiveness determination is made. A borrower will have to pay accrued interest on any prepaid portion, dating back to the date of the loan.

**Q: As a physician office, I will still be having insurance money coming in over the next couple of months for services done months ago. How do I prove that those funds were used to pay for practice expenses and not go over the 25% non-payroll amount?**

A borrower will need to keep detailed records of each of your permitted non-payroll expenses. Retain any cancelled checks or bank statements that demonstrate such funds paid for interest on mortgage obligations incurred before February 15, 2020, rent payments on leases incurred before February 15, 2020, and utility payments under service agreements dated before February 15, 2020.

**Q: Can you pay rent ahead (for future months) to utilize all of your forgivable loan as long as you pay during the 8 weeks?**

No. Pre-payment of rent is not permissible.

## Eligibility

**Q: Many of our physicians are independent contractors that contract with a large contract management company. Are the independent contractors able to apply for the PPP loan directly, or to your knowledge, will the contract management company apply for assistance to continue paying their physicians?**

Independent contractors have the ability to apply for a PPP loan on their own so they do not count for purposes of a borrower's PPP loan calculations, including employee count or payroll expenses.

**Q: If we are a new business that started Jan 2020, can we still apply on the basis of January payroll?**

Yes. If the applicant was not in business from February 15, 2019 to June 30, 2019, it may use the average monthly payroll costs for the period January 1, 2020 through February 29, 2020.

**Q: Are 1099 employees also added to this loan?**

No. What an applicant pays independent contractors and 1099s does not count toward payroll costs in calculating how much an applicant can borrow and how much can be forgiven.

# Coronavirus Aid, Relief, and Economic Security (CARES) Act

**Q: What is the difference between a sole proprietor vs. an independent contractor? Are these interchangeable? The application start dates are different and the funds are drying up.**

A sole proprietorship generally is a one-person business that has not registered with a state as a business entity. An independent contractor generally works for another person and entity and provides services, but is not an employee. It is possible to be both, so we would suggest consulting with your accountant or tax advisor for guidance. Starting April 3, 2020, sole proprietorships can apply for PPP; independent contractors may apply starting April 10, 2020.

**Q: If the physician owns two separate medical practices in two separate states, should two separate applications be submitted?**

The physician should apply for a loan for each separate medical practice under its own EIN. Note that the physician, if she owns greater than 50% of the voting equity or controls each practice, will need to disclose the affiliation on the Application and may have to aggregate the two practices for employee counts.

**Q: Our doctors are partners in other companies. I was told if their partnership in other companies was under 20%, we did not have to include that info; however, it appears it does matter. Can you confirm the amount where it does matter, and is it in total or each individual partner's share?**

In the Application, the applicant is required to list any owner of 20% or more of the equity of the applicant. In addition, the applicant must list any Affiliates of the applicant and each 20% owner. PPP requires all applicants to apply the affiliation rules set forth in the SBA's Interim Final Rule on Affiliation.

<https://home.treasury.gov/system/files/136/Affiliation%20rules%20overview%20%28for%20public%29.pdf>.

This is relevant to the applicant when calculating number of employees for purposes of eligibility.

**Q: The physician owners of our practice each have a PC, which is the entity with ownership in the practice. Should the individual PC's each apply for the physician salaries and practice apply separately for other employees?**

~~Outdated: Each application decision has to be made on the facts and circumstances specific to each applicant, so it is difficult to provide generalized advice. However, in this fact situation, assuming affiliation rules are satisfied and each entity is eligible, the PC should submit an application for physician payroll and eligible expenses and the practice should submit an application for the other employees. Most applicants are applying for each entity with a separate EIN and payroll.~~

*Updated as of April 15, 2020: Each application decision has to be made on the facts and circumstances specific to each applicant, so it is difficult to provide generalized advice. However, in this fact situation, assuming affiliation rules are satisfied and based on updated guidance issued by the SBA, the practice should file one application and include the payroll costs, up to \$100,000 annualized, of each partner of a PC.*

# Coronavirus Aid, Relief, and Economic Security (CARES) Act

**Q: If I am an independent contractor to a practice, do I fill out my own PPP, or does the contracting practice include the contractor in their calculation of payroll?**

The rules are clear that independent contractors have the ability to apply on their own so they do not count for purposes of a borrower's PPP loan calculations.

**Q: Can you clarify if the loan repayment will be determined by the number of hours paid in 2019 or number of employees by June 30th? For example, if an employee wants to reduce hours, can I add more employees to equal those hours?**

Forgiveness will be reduced for (i) any reduction in FTE employees during the 8 week period following loan funding compared to the average number of FTE employees per month for either February 15 to June 15, 2020 or January 1 to February 29, 2020, and (ii) any reduction in total wages for employees who did not make more than \$100,000 by 25%. So, number of employees and wages paid will be relevant metrics. The Treasury has indicated that it will be issuing additional guidance in the next 30 days on forgiveness, so the rules may be clarified.

**Q: Our practice is a PLLC, and the physicians are paid by a guaranteed draw of \$10,000 twice per month. Profits above that are distributed at the end of the quarter. Does that mean that each physician could count \$100,000 as their yearly salary regarding loan amount calculation?**

*Outdated:* No. If the physician receives a K-1 for such compensation, she is not eligible to include any portion of her compensation for purposes of the loan amount calculation.

*Updated as of April 15, 2020:* Yes, based on updated guidance issued by the SBA. The self-employment income of "general active partners" may be reported as a payroll cost, up to \$100,000 annualized, on a PPP loan application filed by or on behalf of a partnership.

**Q: If a physician owner has a corporation (one EIN number) but two DBAs under it, should the payroll information of both be included on one application?**

Yes, the applicant should submit one application tied to the EIN.

## Affiliation

**Q: Do affiliate businesses apply together for a single PPP loan, or do they apply separately with affiliation only being relevant as a test for eligibility based on the number of employees?**

The affiliation test is only relevant for the eligibility test based on the number of employees. If a practice and all Affiliates falls below 500 employees, then each affiliated practice may apply separately.

# Coronavirus Aid, Relief, and Economic Security (CARES) Act

**Q: We are part owner (49%) of a surgery center which is part of a bigger company that has more than 500 employees. The surgery center total employee is 32 people. Should we include these employees in our application? Could this affect our practice's eligibility for the PPP loan?**

PPP requires all applicants to apply the affiliation rules set forth in the SBA's Interim Final Rule on Affiliation. The relevant affiliation rules look at (i) affiliation based on ownership, (ii) affiliation based on stock options, convertible securities and agreements to merge, (iii) affiliation based on management and (iv) affiliation based on identity of interest between close relatives (spouse, parent, child, or a spouse of such person). These are fact specific determinations, and there are no bright line rules (e.g., 50% ownership) for determining affiliation. Based on the facts, you will need to review the operating agreement for the surgery center in light of the SBA rules on affiliation to determine if the surgery center and your practice are under common control the surgery center employees need to be included in your employee count.

## Loan Amount Calculation & Forgiveness

**Q: One of my employees was making \$150,000, but I was only able to calculate their loans at \$100,000. Will I be penalized if I hire them back and don't pay them 100% of their \$150,000 salary? I'm concerned because this applies to multiple employees.**

No, you will not be penalized in terms of PPP loan forgiveness if you re-hire an employee who made over \$150,000 at a rate of pay less than that. Please also bear in mind that PPP loan forgiveness will be reduced for:

- Any decrease in excess of 25 percent occurring during the 8-week period starting on the date of the Loan, in the wages of employees whose pay rate was less than \$100,000 per year; and
- The proportion of any decrease during the 8-week period starting on the disbursement date of the loan, in the average number of monthly full-time equivalent (FTEs) employees (*i.e., the numerator*) compared to the average number of FTEs employed per month (*i.e., the denominator*) during, at the election of the Borrower,
  - the period of 2/15/19 through 6/30/19 or
  - the period of 1/1/20 through 2/29/20.

Note that the definition of FTEs for this rule differs from the definition of employees for Loan amount qualification, and that special rules will apply to Borrowers that employ seasonal employees. The amount of PPP loan forgiveness also should be reduced for the dollar amount representing the percentage of loan proceeds used for non-payroll costs that is less than 75% of the total loan proceeds. Loan forgiveness will not be reduced for employees laid off between February 15, 2020 and April 26, 2020 and re-hired by June 30, 2020 for purposes of the FTE reduction rule.

# Coronavirus Aid, Relief, and Economic Security (CARES) Act

**Q: When staff aren't comfortable coming back to work and being exposed to COVID, how does this affect the loan calculation and loan forgiveness? Similarly, when someone is exposed to COVID and has to quarantine, how would this affect loan forgiveness?**

The PPP focuses on head count, so if an employee does not return to work, a substitute employee may be hired and count towards the FTE count. If any employee is exposed to COVID and has to quarantine, that employee would likely be eligible for sick pay, which constitutes a payroll cost that is forgivable under PPP. However, a borrower cannot use the loan proceeds to pay for any sick leave if it plans to take a tax credit on that sick leave expense, as permitted under the Families First Coronavirus Response Act.

**Q: For determining the size of the loan and the forgiveness, can you count pension plan contributions, health insurance premiums, social security taxes, anything else?**

For all purposes under the PPP, payroll costs include payments required for the provision of group health care benefits, including insurance premiums and payments of any retirement benefits.

More guidance has been issued concerning how a borrower should 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. The SBA has opined that under the Act, payroll costs are to be calculated on a gross basis without regard to (i.e., not including subtractions or additions based on) federal taxes imposed or withheld, such as the employee's and employer's share of Federal Insurance Contributions Act (FICA) and income taxes required to be withheld from employees. Payroll costs are not reduced by taxes imposed on an employee and required to be withheld by the employer and further exclude the employer's share of payroll tax. This interpretation is consistent with the text of the statute and advances the legislative purpose of ensuring workers remain paid and employed. Further, because the reference period for determining a borrower's maximum loan amount will largely or entirely precede the period from February 15, 2020, to June 30, 2020, the period during which borrowers will be subject to the restrictions on allowable uses of the loans may extend beyond that period. For purposes of the amount of loan forgiveness, these statutory exclusions will apply with respect to such taxes imposed or withheld at any time, not only during the period from February 15, 2020, to June 30, 2020.

As to "anything else," payroll costs also include, employee compensation (salary, wage, commission, or similar compensation, payment of cash tip or equivalent), payments for vacation, parental, family, medical, or sick leave, dismissal or separation payments, and payments of State or local tax assessed on (but not excised out of) the compensation of employees. Payroll costs for loan application purposes should be used to calculate an average monthly payroll cost for the applicable period (recent guidance states that borrowers can calculate their aggregate payroll costs using data either from the previous 12 months or from calendar year 2019, with the latter being what is requested in the loan application), and for loan forgiveness purposes, must be those that are incurred and paid during the 8-week period commencing on the disbursement date of the loan.



# Coronavirus Aid, Relief, and Economic Security (CARES) Act

**Q: If I've already furloughed employees, do I have to hire back 100% of my workforce to not be penalized on my loan forgiveness? Do I have to hire back the same people in the 8 week period?**

Loan forgiveness looks to essentially three items. First, the organization must spend the money on allowable expenses. Second, 75% of the loan proceeds should be used for payroll costs as allowable expenses. The first two tests determine the amount eligible for forgiveness. The third test uses a quotient as determined by dividing the average FTEs over the 8 week period (i.e., the numerator) by one of two FTE counts (borrower's choice): either the average FTEs from 2/15/19 through 6/30/19; or the average FTEs from 1/1/20 through 2/29/20 (i.e., the denominator). The intent of the program is to re-hire employees that were laid off between the period 2/15/20 through 4/26/20 by 6/30/20 but certainly additional guidance may be needed from the Treasury if the requirement is to hire back the same people or simply look at the average FTEs.

**Q: Can funds be used to retroactively pay employees? If so, how far back?**

No, PPP loan proceeds cannot be used to retroactively pay employees. PPP loan proceeds can only be used for payroll costs *incurred* and paid during the 8-week period commencing on the date of the loan.

**Q: Due to the current epidemic, I have cut down 50% of the hours but retained all of them to continue to work. Bottom line, their salaries have been cut down to 50%. To qualify for forgiveness, do I have to increase the number of hours of employment back to usual for the medical assistants?**

No. PPP loan forgiveness will be reduced for:

- Any decrease in excess of 25 percent occurring during the 8-week period starting on the disbursement date of the loan, in the wages of employees whose pay rate was less than \$100,000 per year; and
- The proportion of any decrease during the 8-week period starting on the date of the Loan, in the average number of monthly full-time equivalent (FTEs) employees (i.e., the numerator) compared to the average number of FTEs employed per month (i.e., the denominator) during, at the election of the Borrower,
  - the period of 2/15/19 through 6/30/19 or
  - the period of 1/1/20 through 2/29/20.

Note that the definition of FTEs for this rule differs from the definition of employees for Loan amount qualification, and that special rules will apply to Borrowers that employ seasonal employees. The amount of PPP loan forgiveness also should be reduced for the dollar amount representing the percentage of loan proceeds used for non-payroll costs that is less than 75% of the total loan proceeds. Loan forgiveness will not be reduced for employees laid off between February 15, 2020 and April 26, 2020 and re-hired by June 30, 2020 for purposes of the FTE loan forgiveness reduction rule.

Because you reduced hours, and thus pay, of employees likely making less than \$100,000 annually, and reduced FTE employees *prior* to the 8-week period following the loan disbursement date, you likely would not have any loan forgiveness reduction on the basis of the stated facts.

# Coronavirus Aid, Relief, and Economic Security (CARES) Act

## **Q: Are physicians with K-1s allowed to include their payroll costs in the calculation?**

~~Outdated: It depends. There has been no definitive guidance on this issue yet. What matters for PPP loan payroll cost inclusion purposes is whether the physicians received employee compensation from your business concern or entity. While more facts about the specifics of your situation are needed for any specific answer, if the physicians did not receive employee compensation then their compensation could not be included in payroll costs for purposes of your PPP loan application and the calculation of the maximum loan amount.~~

*Updated as of April 15, 2020: Most likely, based on updated guidance issued by the SBA. The self-employment income of “general active partners” may be reported as a payroll cost, up to \$100,000 annualized, on a PPP loan application filed by or on behalf of a partnership.*

## **Q: For any employee making more than \$100,000, do you still count them with a salary as \$99,999? Or are they entirely excluded?**

Employees making more than \$100,000 per year are included in payroll costs (as defined in the PPP) at an annual pay rate of \$100,000, prorated for the period of time they worked if less than the full year. Note that other payroll cost inclusion and exclusion rules exist and may apply.

## **Q: If an employee joins in July 2019, should we annualize the salary to full year?**

No. Employees making more than \$100,000 per year are included in payroll costs (as defined in the PPP) at an annual pay rate of \$100,000, prorated for the period of time they worked in 2019 if less than the full year. Similarly, the salaries of employees making less than \$100,000 per year also should be prorated for the period of time they worked in 2019 if less than the full year. Recent guidance states that borrowers can calculate their aggregate payroll costs using data either from the previous 12 months or from calendar year 2019 the latter of which is requested on the loan application.

## **Q: The calculation notes you exclude the Federal employment taxes including income tax withheld from Feb 15- June 30, 2020. Do you think they will issue more guidance on this? Is this really related to the calculation of the forgiveness of debt? Or do we need to subtract out these things from the 2019 payroll already reported for 2019?**

More guidance has been issued concerning how a borrower should 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. The SBA has opined that under the Act, payroll costs are to be calculated on a gross basis without regard to (i.e., not including subtractions or additions based on) federal taxes imposed or withheld, such as the employee’s and employer’s share of Federal Insurance Contributions Act (FICA) and income taxes required to be withheld from employees. Payroll costs are not reduced by taxes imposed on an employee and required to be withheld by the employer and further exclude the employer’s share of payroll tax. This interpretation is consistent with the text of the statute and advances the legislative purpose of ensuring workers remain paid and employed. Further, because the reference period for determining a borrower’s maximum loan amount will largely or entirely precede the period from

# Coronavirus Aid, Relief, and Economic Security (CARES) Act

February 15, 2020, to June 30, 2020, the period during which borrowers will be subject to the restrictions on allowable uses of the loans may extend beyond that period. For purposes of the amount of loan forgiveness, these statutory exclusions will apply with respect to such taxes imposed or withheld at any time, not only during the period from February 15, 2020, to June 30, 2020.

**Q: We have an agreed amount of deferred compensation that we pay monthly to physician shareholders that have retired or left the practice. It is paid as wages and the physicians receive a W-2 for these payments. Do these qualify as compensation for PPP loan purposes? How will this apply to the evaluation of number of employees and total salaries for purposes of loan forgiveness?**

~~Outdated: The PPP loan Application, SBA Form 2483, among other things, contains the following certification, “[t]he funds will be used to retain workers and maintain payroll . . .”. As such, the intent of the program is to continue to employ paid employees of the organization. Under the PPP definition of payroll costs, the payment of “any” retirement benefits is included and the individuals appear to be receiving payment in the form of a W-2. To date there is no guidance further defining the nature of retirement benefits. Also, more facts might be needed specific to this question along with further clarifications from the Treasury.~~

*Updated as of April 15, 2020: The PPP loan Application, SBA Form 2483, among other things, contains the following certification, “[t]he funds will be used to retain workers and maintain payroll . . .”. As such, the intent of the program is to continue to employ paid employees of the organization. Under the PPP definition of payroll costs, the payment of “any” retirement benefits is included and the individuals appear to be receiving payment in the form of a W-2. Newly issued guidance by the SBA, however, specifically refers to allowing partners to include the self-employment income of “general active partners”. There is no specific definition of “general active partners”, but on its face the language would appear to exclude retired partners or those that are no longer with the practice.*

**Q: Are taxes withheld from employees an excluded cost, or is the payroll cost based on gross pay?**

Payroll costs are based upon and should include gross pay, and no taxes withheld from employees should be separately added.

**Q: What is the time frame for the 75% of the loan amount to be paid for payroll? Is it for payroll just through June 30?**

Payroll costs must be incurred and paid during the 8-week period starting on the date the loan proceeds are distributed to the borrower. Technically, if a loan was applied for on June 30, 2020, and disbursed thereafter, the entire 8-week period starting on the date the loan proceeds are distributed would be after June 30, 2020.

**Q: Is there a gross receipts cap for the Paycheck Protection Program?**

There is no gross receipts cap. The PPP states that if applicable, the size standard in number of employees established by the Administration for the industry in which the business concern operates will be used.

# Coronavirus Aid, Relief, and Economic Security (CARES) Act

## **Q: Can malpractice insurance be considered a qualified cost for the loan calculation?**

No, there is no PPP provision allowing malpractice insurance to be included in payroll costs under any circumstance, and malpractice insurance is not an allowable use of PPP loan proceeds.

## **Q: What can I include in utilities? Can I count my phones and medical waste disposal? How about 401K contributions?**

Allowable uses under the Act include utilities such as power, water, transportation, telephone, and internet access. There has been no guidance indicating whether medical waste disposal can be included in utilities; the argument likely would be that utilities relate to things that everyone uses and not to things that are used in particular industries. Under the PPP definition of payroll costs, the payment of any retirement benefits is included, which would include 401K contributions.

## **Q: We added a new physician and an additional medical assistant on Feb. 1st, 2020. Their pay histories were not on our 2019 payroll reports. Can I add their amounts going forward to our total loan amounts? We don't want to let them go because we can't afford to keep them.**

Likely yes. For payroll costs used for PPP loan amount determination purposes, although the SBA loan application, SBA Form 2483, instructs that the period for determining payroll costs is 2019, more recent guidance states that borrowers can calculate their aggregate payroll costs using data either from the previous 12 months or from calendar year 2019. While the underlined rule indicates their payroll costs might be included, from a practical standpoint their inclusion or not could come down to what your lender requires or will allow or accept.

## **Q: If I am a partner in a surgery center, do I have to include salary of the employees of the surgery center and include them in the FTE count?**

Yes, you would count the employees in the number of employee count of your practice if the surgery center is a business concern or entity that is affiliated with your practice. See FAQs under “Affiliation”. In such circumstances, you would not, however, count the salaries of the surgery center in your average monthly payroll calculation on your application.

## **Q: In 2019, I had 13 employees, but in March and April this year, two employees quit. Do I have to hire two employees to make up 13 employees to be eligible for forgiveness of the loan?**

Loan forgiveness will not be reduced for employees laid off between February 15, 2020 and April 26, 2020 and re-hired by June 30, 2020 for purposes of the FTE loan forgiveness reduction rule. The FTE loan forgiveness reduction rule provides that the amount of loan forgiveness will be reduced for the proportion of any decrease during the 8-week period starting on the date of the Loan, in the average number of monthly full-time equivalent (FTEs) employees (*i.e., the numerator*) compared to the average number of FTEs employed per month (*i.e., the denominator*) during, at the election of the Borrower,

- the period of 2/15/19 through 6/30/19 or
- the period of 1/1/20 through 2/29/20.

# Coronavirus Aid, Relief, and Economic Security (CARES) Act

Note that the definition of FTEs for this rule differs from the definition of employees for Loan amount qualification, and that special rules will apply to Borrowers that employ seasonal employees. The amount of PPP loan forgiveness also should be reduced for the dollar amount representing the percentage of loan proceeds used for non-payroll costs that is less than 75% of the total loan proceeds.

**Q: If employees were furloughed before the loan, my understanding is that as long as you reestablish employment by June 30 you are still eligible for the full amount of the loan to be forgiven?**

Loan forgiveness will not be reduced for employees laid off between February 15, 2020 and April 26, 2020 and re-hired by June 30, 2020 for purposes of the FTE loan forgiveness reduction rule.

**Q: For a joint venture, if the payroll is done through the hospital, where and how should the employees be included even though this payroll is 50% my cost?**

There is no definitive guidance on this point, and more facts are needed about this employment arrangement, how employees are treated under legal agreements, if you are the JV or the hospital, etc. Note to that if the hospital is legally a professional employer organization (PEO) any employees would be employees of the business concern or entity that hired them from the PEO, and not of the PEO.

**Q: Our physician partners are not employed by the practice and do not receive a W-2 or 1099. They are employed by their own PC/LLC. In this situation, do we need to count physician partners as an FTE?**

~~Outdated: No, their payroll costs cannot be used by, and they cannot be FTE employees of, the business concern or entity that is your practice. This conclusion, however, would be subject to the PC/LLC not being considered an affiliate of the practice. See Affiliation under FAQs.~~

*Updated as of April 15, 2020: Each application decision has to be made on the facts and circumstances specific to each applicant, so it is difficult to provide generalized advice based on these facts. However, in this fact situation, assuming affiliation rules are satisfied and assuming that the physician partners PC/LLC is a partner in the practice, the practice should file one application and include the payroll costs, up to \$100,000 annualized, of each physician partner who is "generally active". If, however, the PC/LLC is not a partner in the practice, it should file on its own and the practice should not include the payroll costs of the PC/LLC.*

**Q: When you make payroll over the next few months, you are using the loan but also regular income from the business. Would the loan still be forgiven?**

Self-funded payroll is not prohibited, but it is not allowed to be used for loan forgiveness purposes either. However, at least 75% of the PPP loan proceeds must be used for payroll costs incurred and paid during the 8-week period commencing on the date the loan is made. Assuming payroll costs are all used in such proportion during that 8-week period (and that there is no forgiveness reduction for a reduction in FTE employees or a greater than 25% reduction in the pay of employees making less than \$100,000 per year) the application for loan forgiveness you must submit to your lender likely would be approved. At most, the principal amount of the PPP loan plus accrued interest may be forgiven.

# Coronavirus Aid, Relief, and Economic Security (CARES) Act

**Q: If you hire more employees than what was listed when we applied, how will that affect our loan forgiveness?**

Hiring more full-time equivalent employees during the 8-week period commencing on the disbursement date of the loan than a PPP loan-eligible business concern or entity had on, at the election of the Borrower, either (A) the period of 2/15/19 through 6/30/19 or (B) the period of 1/1/20 through 2/29/20 will prevent any reduction in loan forgiveness based upon a reduction in FTEs.

**Q: How can physicians find out more information regarding SBA status updates once they have filed the loan application?**

Check this link frequently as it has been and likely will be updated every day:

<https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf>

In terms of status updates of your loan application, contact your lender.

**Q: If I have full-time employee who does not want to come to work because they are afraid of what is going on, do I still have to pay their payroll if I get a loan approved since they were full time before all this, even if they stay home since they are refusing to go to work?**

For her to be employed and her pay to count as payroll costs, she would need to still be working for you, which she can do remotely if you can make such an arrangement. Also, loan forgiveness will not be reduced for employees laid off between February 15, 2020 and April 26, 2020 and re-hired by June 30, 2020 for purposes of the FTE loan forgiveness reduction rule.