

Marcum Coronavirus Crisis Management for Museums

Q&A from April 3, 2020 Webinar

The guidance around the provisions of FFCRA, CARES and SBA are continually changing. This guidance is based on the best available information as of April 3, 2020.

1. *Are organizations able to use SBA loans to cover the costs of independent contractors performing services during this time? Or is it meant to cover individuals on payroll only? (SBA or PPP)*
 - a. Contractors don't count for the loan calculator or headcount.
2. *Is there not a streamlined EIDL application?*
 - a. There is at <https://covid19relief.sba.gov/#/>
3. *How will institutions who have already furloughed staff be able to take advantage of CARES?*
 - a. Bring staff back - pay them even if they are unable to work.
4. *We are a nonprofit children's museum. Both our earned and contributed income are lost or nearly lost for this period of closure. With no income, how on earth would we repay any loans we acquire now in the future? (past 8 weeks)*
 - a. EIDL loans can be up to 30 years to pay back. PPP loans may be forgiven if used for payroll.
5. *To be clear, you can apply to PPP and EIDL correct?*
 - a. You cannot be awarded both the EIDL and PPP loans, however if you did receive an EIDL between January 31, 2020 and the date the PPP loans became/become available you can refinance the EIDL into the PPP.
6. *What about seasonal, hourly staff (museum docents) who will not be working due to existing and future closures? Can any of the relief programs be used for their wages?*
 - a. Yes, PPP can be used for their wages and forgiven if paid during 8 week period following receipt of loan.
7. *Isn't the payroll tax only a deferment?*
 - a. There is deferment option, yes, but there is also a refundable credit option if business is closed or revenue is down 50% or more.
8. *When you say "over 100 employees", do you mean 100 FTEs?*
 - a. See below for guidance.
9. *For eFMLA due to subject to quarantine - does that include a state-wide order to stay-at-home?*
 - a. Yes

10. *How does an organization show "substantial economic injury"?*

- a. To be eligible for EIDL assistance, a small business or private Non-profit must sustain economic injury AND be located in a disaster declared state/county. In general you simply need to be able to prove economic loss now versus prior to the Covid-19 pandemic.

11. *If I applied for the EIDL over a week ago, should I reapply on the new on-line system?*

- a. Yes

12. *For PPP loan forgiveness - How is payroll/positions counted if employees resign on their own for another job, move, are fired for cause, or even pass away? Do those positions need to be refilled?*

- a. Yes, they will need to be replaced for PPP forgiveness.

13. *If we already had a sick leave (2 weeks/10 days) program, does this mean we need to pay an additional 2 weeks sick leave?*

- a. I believe the new law requires employers to provide 80 hours of sick leave to someone who has been diagnosed with Covid-19 or has to care for someone with it. I don't believe you are required to add an additional 80 hours of sick leave if you already were providing it.

14. *Can you apply for PPP and EIDL or only one?*

- a. You cannot be awarded both the EIDL and PPP loans, however if you did receive an EIDL between January 31, 2020 and the date the PPP loans became/become available you can refinance the EIDL into the PPP.

15. *I know you said this is a changing area, but many of our members are trying to unpack how to count the 500 person maximum for PPP. To what extent and how should they be counting part-time staff, temps, interns, students, etc.?*

- a. See below for guidance.

16. *If some employees already applied for unemployment can they also get paid if my organization gets a PPP loan?*

- a. Yes, but their unemployment benefits will be reduced by what you pay them.

17. *My understanding is the EIDL waived personal guarantee. If the loan max is \$2m, what is the max that can be borrowed without a personal guarantee?*

- a. \$200,000

18. Is EIDL for public nonprofits?

- a. Eligibility for the EIDL loan is currently available to organizations that have been in operation since 1/31/20 and SEEMS to include tax exempt organizations under 501(c), (d) and (e) & under state laws. We continue to look for further clarification from the SBA but no further guidance is currently available except with respect to Faith Based organizations. See the SBA's Frequently Asked Questions for further guidance on Faith Based Organizations.

19. PPP applications, what time period do they expect to be used for debt obligation interest?

- a. If mortgage interest to be forgiven must be used during 8 week period following disbursement; other debt interest no restriction because not forgivable - but no more than 25% of loan can be used for interest.

20. If you take the Employee Retention Credit of up to \$10,000 per employee can you still apply for the SBA loan and get the loan forgiveness?

- a. No

21. But if we are nonprofits, tax credits don't benefit us, correct?

- a. These are payroll tax credits, not income tax credits.

22. Can you address the notion of the loans being forgivable? What conditions are they forgiven under?

- a. Must be used 75% for payroll, and maintain FTE and salaries to a certain level.

The SBA has its own definition of employees

§121.106 How does SBA calculate number of employees?

- a. In determining a concern's number of employees, SBA counts all individuals employed on a full-time, part-time, or other basis. This includes employees obtained from a temporary employee agency, professional employee organization or leasing concern. SBA will consider the totality of the circumstances, including criteria used by the IRS for Federal income tax purposes, in determining whether individuals are employees of a concern. Volunteers (i.e., individuals who receive no compensation, including no in-kind compensation, for work performed) are not considered employees.
- b. Where the size standard is number of employees, the method for determining a concern's size includes the following principles:
 1. The average number of employees of the concern is used (including the employees of its domestic and foreign affiliates) based upon numbers of employees for each of the pay periods for the preceding completed 12 calendar months.
 2. Part-time and temporary employees are counted the same as full-time employees.

From FAQ <https://www.sba.gov/contracting/government-contracting-programs/hubzone-program/frequently-asked-questions#employee>

Who is considered an Employee?

How does SBA define the term "employee"?

Employee means all individuals employed on a full-time, part-time, or other basis, so long as that individual works a minimum of 40 hours per month. This includes employees obtained from a temporary employee agency, leasing concern, or through a union agreement or co-employed pursuant to a professional employer organization agreement.

An owner is considered an employee if the owner work a minimum of 40 hours per month; regardless of whether or not the individual receives compensation.