Question to NECA National: **What if an employer is paying employees under the PPP and there is a COVID 19 outbreak at a worksite? Do those employees then get paid under the FFCRA, or stay under the PPP?** I would argue that the employer has a choice here. The employer can keep all employees on payroll as if they were still working. They would pay them as they normally would under the CBA and use the PPP loan to cover payroll. If any employee was impacted by the outbreak meaning they fall under one of the covered reasons for the FFCRA that can be found here, these employees are eligible for the EPSLA payments under the FFCRA, but that doesn't mean the employer has to pay them this way. If the employer so chooses, they can just keep them on the payroll to maintain their PPP loan. My argument is that as long as the employees are getting paid, it does not matter how the employer is doing it. What should be noted is that the employer **cannot** do both. This is an either/or situation. Any payments that are made under the FFCRA and reimbursed through a tax credit do not count toward the PPP loan. I think either way the employer goes, it is going to be an accounting headache so maybe a treat for the payroll folks will be in order once all of this is over. Contractors must be reminded to make these decisions alongside competent tax and accounting advisors. There will be tax consequences to all of these decisions and proper planning will be critical. Our guidance cannot replace that step.

More information from NECA National:

U.S. Senate Committee on Small Business and Entrepreneurship

QUESTION:	**How is the loan size determined?**
Answer:	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 February 15, 2019 – June 30, 2019:** Your max loan is equal to 250 percent of your average monthly payroll costs. If your business is a seasonal employer, the max loan is equal to 250 percent of your average monthly payroll costs between February 15, 2019 – June 30, 2019; you can also opt to choose March 1, 2019 as your time period startdate. • **If you were <u>not</u> in business between February 15, 2019 – June 30, 2019:** Your max loan is equal to 250 percent of 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.

QUESTION:	**What costs are eligible for payroll?**
Answer:	• Compensation (salary, wage, commission, or similar compensation, payment of cash tip orequivalent) • 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
QUESTION:	**What costs are not eligible for payroll?**
Answer:	• Employee/owner compensation over $100,000 • Taxes imposed or withheld under chapters 21, 22, and 24 of the IRS code • Compensation of employees whose principal place of reside nce is outside of the U.S. • Qualified sick and family leave for which a credit is allowed under sections 7001 and 7003 of the *Families First Coronavirus Response Act*

QUESTION:	**What are allowable uses of loan proceeds?**
Answer:	• Payroll costs (as noted above) • Costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums • Employee salaries, commissions, or similar compensations (see exclusions above) • Payments of interest on any mortgage obligation (which shall not include any prepayment of or payment of principal on a mortgage obligation) • Rent (including rent under a lease agreement) • Utilities • Interest on any other debt obligations that were incurred before the covered period

SBA Interim Guidance April 8, 2020

7. Question: The CARES Act excludes from the definition of payroll costs any employee compensation in excess of an annual salary of $100,000. Does that exclusion apply to all employee benefits of monetary value?

Answer: No. The exclusion of compensation in excess of $100,000 annually applies only to cash compensation, not to non-cash benefits, including:

- employer contributions to defined-benefit or 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 compensation of employees.

8. Question: Do PPP loans cover paid sick leave?

Answer: Yes. PPP loans covers payroll costs, including costs for employee vacation, parental, family, medical, and sick leave. 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 (Public Law 116–127). Learn more about the Paid Sick Leave Refundable Credit here.

16. **Question:** 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?

Answer: Under the Act, payroll costs are 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. As a result, payroll costs are not reduced by taxes imposed on an employee and required to be withheld by the employer, but payroll costs do not include the employer's share of payroll tax. 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.

SBA Interim Final Rule

Can my PPP loan be forgiven in whole or in part?

Yes. The amount of loan forgiveness can be up to the full principal amount of the loan and any accrued interest. That is, the borrower will not be responsible for any loan payment if the borrower uses all of the loan proceeds for forgivable purposes described below and employee and compensation levels are maintained.

Hinshaw Alert April 10, 2020 on Loan Forgiveness

Loan Forgiveness

The loan can be forgiven in whole or in part. The amount to be forgiven is equal to the amount spent during the 8 week period following the first disbursement of the loan proceeds to the borrower (the "Covered Period") on (i) payroll costs, (ii) interest payments on mortgages incurred before February 15, 2020, (iii) rent payments on leases in effect before February 15, 2020, and (iv) utility payments for which service began before February 15, 2020. The lender must make the first disbursement of the loan proceeds within ten days of the SBA's approval.

The maximum amount of loan forgiveness for non-payroll expenses is 25% of the amount of the loan. Eligible payroll costs include compensation up to $100,000 in prorated wages, per employee. Aggregate payroll costs must not exceed payroll costs incurred during the equivalent eight week period for the previous year, proportionate to the number of employees.

The amount of loan forgiveness is reduced by:

- Any reduction in the ratio of (1) the average number of monthly full-time equivalent (FTE) employees during the Covered Period; versus (2) those employed during either of two reference periods: February 15 to June 30, 2019; or January 1 to February 29, 2020 (each a "Reference Period"); plus
- The amount of any reduction in total salary or wages of any employee during the Covered Period in excess of 25% of the total wages and salary of the employee during the most recent full quarter during which the employee was employed—taking into account only employees whose annualized salary was less than $100,000.

To encourage employers to rehire workers laid off due to the COVID-19 crisis, borrowers who rehire laid off workers by June 30, 2020, will not be penalized for having a reduced payroll at the start of the period.