

NAPEO

COVID-19 RESOURCE CENTER

Are PEO administrative fees, workers' compensation premiums, or the employer's share of FICA are considered "payroll costs" under the PPP?

A: This is a dynamic situation but, as of now, the statute and the SBA's guidance both indicate that "payroll costs" do **not** include PEO administrative fees or workers' compensation premiums (among other items not discussed in this Q/A). As discussed below, whether "payroll costs" includes the employer's share of FICA is less clear. In light of the lack of clarity regarding whether "payroll costs" include the employer's share of FICA, PEOs may want to consider excluding these amounts from "payroll costs" unless and until clarifying guidance is issued by the SBA or the Treasury Department.

Remember, PPP loan proceeds should only be used for "payroll costs," payments on mortgage interest, rent, utilities, and interest on pre-existing loans. If an obligation does not fall into one of these categories, the loan forgiveness portion of the PPP could be put into jeopardy.

The Interim Final Rules (IFR) recently issued by the Treasury department (available [here](#)) define "payroll costs" as follows:

What qualifies as "payroll costs?" Payroll costs consist of compensation to employees (whose principal place of residence is the United States) in the form of salary, wages, commissions, or similar compensation; cash tips or the equivalent (based on employer records of past tips or, in the absence of such records, a reasonable, good-faith employer estimate of such tips); payment for vacation, parental, family, medical, or sick leave; allowance for separation or dismissal; payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums, and retirement; payment of state and local taxes assessed on compensation of employees; and for an independent contractor or sole proprietor, wage, commissions, income, or net earnings from self-employment or similar compensation.

Based on the foregoing, it appears that PEO administrative fees and workers compensation premiums are excluded from the definition of "payroll costs" for purposes of determining the maximum loan amount and for what amounts may be forgiven.

With respect to the employer's share of FICA, it's a little less clear that they are to be treated the same as PEO administrative fees and workers compensation premiums and be excluded for all purposes. As noted above, federal taxes are not enumerated as one of the types of costs that comprise "payroll costs." Interestingly, the statute and the IFR both provide that the term "payroll costs" excludes any federal employment taxes imposed between February 15, 2020 and June 30, 2020. Therefore, the answer is not entirely clear as to whether "payroll costs" may encompass the employer's share of FICA. Given this lack of clarity, PEOs may want to consider adopting a cautious approach with respect to the employer's share of federal employment taxes, and exclude them from "payroll costs" for all purposes with respect to the PPP loan.