

Fiqh Council of North America Statement on Government PPP Loans

Is an Interest-Bearing Loan announced by US Government under CARES Act Permissible according to Shari'ah?

Assalam 'alaikum wa rahmatullah,

The United States government passed the Coronavirus Aid, Relief, and Economic Security Act [CARES Act] on March 26, 2020 which allocated \$2 trillion to help the country recover from the effects of the novel Coronavirus Disease 2019 [COVID-19]. This act includes loans for major industries and small businesses impacted by the coronavirus. The monetary aid by the government is given in the form of "loans" which are forgiven if certain requirements are met. As an example, here is a summary of one clause which mentions the conditions of loan forgiveness: "Any portion of the Section 7(a) loan used to maintain payroll, provided workers stay employed through to the end of June 2020, will be forgiven in an amount equal to the sum of the following costs incurred and payments made during the eight-week period beginning on the date of the origination of a covered loan: (i) payroll costs; (ii) interest payments on mortgages; (iii) covered rent obligations; and (iv) covered utility payments."^[1]

These loans were actually intended to function like grants or gifts to eligible institutions. The reason they are structured as loans is so that they can be easily and quickly administered through existing financial institutions and already-established processes: FDIC banks, credit unions, etc.^[2] For this reason, the interest may still be due on these "loans" even when the principal is forgiven.

An important principle in Islamic Law is captured by the legal maxim: "the consideration in contracts is the functional meaning, not the wording" [al-‘ibrah fi l-uqūd li l-ma‘ānī lā li l-alfāz]. For example, if someone says, "I will give you this gift if you give me that gift", the contract is viewed as a type of sale transaction. Even though the word 'gift' is used, since two items are being exchanged, it is functionally a sale contract and not a gift at all. This same principle is applied to a loan contract that has a guarantee of forgiveness. It is normally unlawful for a Muslim to enter into a contract that stipulates interest on a loan. However, exceptions to the rule can be made when there is an extremely high probability that this interest will not be incurred. The reason for the exception is that such a contract would in reality be functionally equivalent to an interest-free loan.

It is the opinion of the Fiqh Council that it is permissible for Muslim businesses to avail this loan under the following conditions:

1. The loan amount must be used strictly for the purposes for which it is given.
2. All the terms of the loan must be followed, so that the loan amount is forgiven as stipulated in section 7 of CARES Act.
3. The Islamic organizations taking the loan must make every effort to ensure that they will not incur interest.
4. It is recommended to consult a lawyer for submitting the application for this loan to protect the organization and its representatives from any future legal problems.

(Adopted by the Fiqh Council of North America on April 2, 2020)