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The Small Business Administration (SBA), in consultation with the Department of the Treasury, intends to provide timely additional guidance to address borrower and lender questions concerning the implementation of the Paycheck Protection Program (PPP), established by section 1102 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act or the Act). This document will be updated on a regular basis.

Borrowers and lenders may rely on the guidance provided in this document as SBA's interpretation of the CARES Act and of the Paycheck Protection Program Interim Final Rules ("PPP Interim Final Rules") ([link](#)). The U.S. government will not challenge lender PPP actions that conform to this guidance,<sup>1</sup> and to the PPP Interim Final Rules and any subsequent rulemaking in effect at the time.

1. **Question:** Paragraph 3.b.iii of the PPP Interim Final Rule states that lenders must "[c]onfirm the dollar amount of average monthly payroll costs for the preceding calendar year by reviewing the payroll documentation submitted with the borrower's application." Does that require the lender to replicate every borrower's calculations?

**Answer:** No. Providing an accurate calculation of payroll costs is the responsibility of the borrower, and the borrower attests to the accuracy of those calculations on the Borrower Application Form. Lenders are expected to perform a good faith review, in a reasonable time, of the borrower's calculations and supporting documents concerning average monthly payroll cost. For example, minimal review of calculations based on a payroll report by a recognized third-party payroll processor would be reasonable. In addition, as the PPP Interim Final Rule indicates, lenders may rely on borrower representations, including with respect to amounts required to be excluded from payroll costs.

If the lender identifies errors in the borrower's calculation or material lack of substantiation in the borrower's supporting documents, the lender should work with the borrower to remedy the issue.<sup>2</sup>

2. **Question:** Are small business concerns (as defined in section 3 of the Small Business Act, 15 U.S.C. 632) required to have 500 or fewer employees to be eligible borrowers in the PPP?

**Answer:** No. Small business concerns can be eligible borrowers even if they have more than 500 employees, as long as they satisfy the existing statutory and regulatory definition of a "small business concern" under section 3 of the Small Business Act, 15 U.S.C. 632. A business can qualify if it meets the SBA employee-based or revenue-

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<sup>1</sup> This document does not carry the force and effect of law independent of the statute and regulations on which it is based.

<sup>2</sup> Question 1 published April 3, 2020.

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based size standard corresponding to its primary industry. Go to [www.sba.gov/size](http://www.sba.gov/size) for the industry size standards.

Additionally, a business can qualify for the Paycheck Protection Program as a small business concern if it met both tests in SBA's "alternative size standard" as of March 27, 2020: (1) maximum tangible net worth of the business is not more than \$15 million; and (2) the average net income after Federal income taxes (excluding any carry-over losses) of the business for the two full fiscal years before the date of the application is not more than \$5 million.

A business that qualifies as a small business concern under section 3 of the Small Business Act, 15 U.S.C. 632, may truthfully attest to its eligibility for PPP loans on the Borrower Application Form, unless otherwise ineligible.

3. **Question:** Does my business have to qualify as a small business concern (as defined in section 3 of the Small Business Act, 15 U.S.C. 632) in order to participate in the PPP?

**Answer:** No. In addition to small business concerns, a business is eligible for a PPP loan if the business has 500 or fewer employees whose principal place of residence is in the United States, or the business meets the SBA employee-based size standards for the industry in which it operates (if applicable). Similarly, PPP loans are also available for qualifying tax-exempt nonprofit organizations described in section 501(c)(3) of the Internal Revenue Code (IRC), tax-exempt veterans organization described in section 501(c)(19) of the IRC, and Tribal business concerns described in section 31(b)(2)(C) of the Small Business Act that have 500 or fewer employees whose principal place of residence is in the United States, or meet the SBA employee-based size standards for the industry in which they operate.

4. **Question:** Are lenders required to make an independent determination regarding applicability of affiliation rules under 13 C.F.R. 121.301(f) to borrowers?

**Answer:** No. It is the responsibility of the borrower to determine which entities (if any) are its affiliates and determine the employee headcount of the borrower and its affiliates. Lenders are permitted to rely on borrowers' certifications.

5. **Question:** Are borrowers required to apply SBA's affiliation rules under 13 C.F.R. 121.301(f)?

**Answer:** Yes. Borrowers must apply the affiliation rules set forth in SBA's Interim Final Rule on Affiliation. A borrower must certify on the Borrower Application Form that the borrower is eligible to receive a PPP loan, and that certification means that the borrower is a small business concern as defined in section 3 of the Small Business Act (15 U.S.C. 632), meets the applicable SBA employee-based or revenue-based size standard, or meets the tests in SBA's alternative size standard, after applying the affiliation rules, if applicable. SBA's existing affiliation exclusions apply to the PPP, including, for example the exclusions under 13 CFR 121.103(b)(2).

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6. **Question:** The affiliation rule based on ownership (13 C.F.R. 121.301(f)(1)) states that SBA will deem a minority shareholder in a business to control the business if the shareholder has the right to prevent a quorum or otherwise block action by the board of directors or shareholders. If a minority shareholder irrevocably gives up those rights, is it still considered to be an affiliate of the business?

**Answer:** No. If a minority shareholder in a business irrevocably waives or relinquishes any existing rights specified in 13 C.F.R. 121.301(f)(1), the minority shareholder would no longer be an affiliate of the business (assuming no other relationship that triggers the affiliation rules).

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](#).

9. **Question:** My small business is a seasonal business whose activity increases from April to June. Considering activity from that period would be a more accurate reflection of my business's operations. However, my small business was not fully ramped up on February 15, 2020. Am I still eligible?

**Answer:** In evaluating a borrower's eligibility, a lender may consider whether a seasonal borrower was in operation on February 15, 2020 or for an 8-week period between February 15, 2019 and June 30, 2019.

10. **Question:** What if an eligible borrower contracts with a third-party payer such as a payroll provider or a Professional Employer Organization (PEO) to process payroll and report payroll taxes?

**Answer:** SBA recognizes that eligible borrowers that use PEOs or similar payroll providers are required under some state registration laws to report wage and other data on

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the Employer Identification Number (EIN) of the PEO or other payroll provider. In these cases, payroll documentation provided by the payroll provider that indicates the amount of wages and payroll taxes reported to the IRS by the payroll provider for the borrower's employees will be considered acceptable PPP loan payroll documentation. Relevant information from a Schedule R (Form 941), Allocation Schedule for Aggregate Form 941 Filers, attached to the PEO's or other payroll provider's Form 941, Employer's Quarterly Federal Tax Return, should be used if it is available; otherwise, the eligible borrower should obtain a statement from the payroll provider documenting the amount of wages and payroll taxes. In addition, employees of the eligible borrower will not be considered employees of the eligible borrower's payroll provider or PEO.

11. **Question:** May lenders accept signatures from a single individual who is authorized to sign on behalf of the borrower?

**Answer:** Yes. However, the borrower should bear in mind that, as the Borrower Application Form indicates, only an authorized representative of the business seeking a loan may sign on behalf of the business. An individual's signature as an "Authorized Representative of Applicant" is a representation to the lender and to the U.S. government that the signer is authorized to make the certifications, including with respect to the applicant and each owner of 20% or more of the applicant's equity, contained in the Borrower Application Form. Lenders may rely on that representation and accept a single individual's signature on that basis.

12. **Question:** I need to request a loan to support my small business operations in light of current economic uncertainty. However, I pleaded guilty to a felony crime a very long time ago. Am I still eligible for the PPP?

**Answer:** Eligibility for the PPP has been expanded. A business is ineligible due to an owner's criminal history only if an owner of 20 percent or more of the equity of the applicant:

- is presently incarcerated or, for any felony, is presently subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction; or
- has been convicted of, pleaded guilty or nolo contendere to, or commenced any form of parole or probation (including probation before judgment) for, a felony involving fraud, bribery, embezzlement, or a false statement in a loan application or an application for federal financial assistance within the last five years or any other felony within the last year.

13. **Question:** Are lenders permitted to use their own online portals and an electronic form that they create to collect the same information and certifications as in the Borrower Application Form, in order to complete implementation of their online portals?

**Answer:** Yes. Lenders may use their own online systems and a form they establish that asks for the same information (using the same language) as the Borrower Application Form. Lenders are still required to send the data to SBA using SBA's interface.

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14. **Question:** What time period should borrowers use to determine their number of employees and payroll costs to calculate their maximum loan amounts?

**Answer:** In general, borrowers can calculate their aggregate payroll costs using data either from the previous 12 months or from calendar year 2019. For seasonal businesses, the applicant may use average monthly payroll for the period between February 15, 2019, or March 1, 2019, and June 30, 2019. An applicant that was not in business from February 15, 2019 to June 30, 2019 may use the average monthly payroll costs for the period January 1, 2020 through February 29, 2020.

Borrowers may use their average employment over the same time periods to determine their number of employees, for the purposes of applying an employee-based size standard. Alternatively, borrowers may elect to use SBA's usual calculation: the average number of employees per pay period in the 12 completed calendar months prior to the date of the loan application (or the average number of employees for each of the pay periods that the business has been operational, if it has not been operational for 12 months).

15. **Question:** Should payments that an eligible borrower made to an independent contractor or sole proprietor be included in calculations of the eligible borrower's payroll costs?

**Answer:** No. Any amounts that an eligible borrower has paid to an independent contractor or sole proprietor should be excluded from the eligible business's payroll costs. However, an independent contractor or sole proprietor will itself be eligible for a loan under the PPP, if it satisfies the applicable requirements.

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.<sup>3</sup>

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<sup>3</sup> The definition of "payroll costs" in the CARES Act, 15 U.S.C. 636(a)(36)(A)(viii), excludes "taxes imposed or withheld under chapters 21, 22, or 24 of the Internal Revenue Code of 1986 during the covered period," defined as February 15, 2020, to June 30, 2020. As described above, the SBA interprets this statutory exclusion to mean that payroll costs are calculated on a gross basis, without subtracting federal taxes that are imposed on the employee or

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17. **Question:** I filed or approved a loan application based on the version of the PPP Interim Final Rule published on April 2, 2020. Do I need to take any action based on the updated guidance in these FAQs?

**Answer:** No. Borrowers and lenders may rely on the laws, rules, and guidance available at the time of the relevant application. However, borrowers whose previously submitted loan applications have not yet been processed may revise their applications based on clarifications reflected in these FAQs.

18. **Question:** Are PPP loans for existing customers considered new accounts for FinCEN Rule CDD purposes? Are lenders required to collect, certify, or verify beneficial ownership information in accordance with the rule requirements for existing customers?

**Answer:** If the PPP loan is being made to an existing customer and the necessary information was previously verified, you do not need to re-verify the information.

Furthermore, if federally insured depository institutions and federally insured credit unions eligible to participate in the PPP program have not yet collected beneficial ownership information on existing customers, such institutions do not need to collect and verify beneficial ownership information for those customers applying for new PPP loans, unless otherwise indicated by the lender's risk-based approach to BSA compliance.<sup>4</sup>

19. **Question:** Do lenders have to use a promissory note provided by SBA or may they use their own?

**Answer:** Lenders may use their own promissory note or an SBA form of promissory note.

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withheld from employee wages. Unlike employer-side payroll taxes, such employee-side taxes are ordinarily expressed as a reduction in employee take-home pay; their exclusion from the definition of payroll costs means payroll costs should not be reduced based on taxes imposed on the employee or withheld from employee wages. 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, and 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 determination of allowable uses of loans and the amount of loan forgiveness, this statutory exclusion will apply with respect to such taxes imposed or withheld at any time, not only during such period.

<sup>4</sup> Questions 2 – 18 published April 6, 2020. Question 12 revised June 25, 2020. The original FAQ 12 was as follows:

**Question:** I need to request a loan to support my small business operations in light of current economic uncertainty. However, I pleaded guilty to a felony crime a very long time ago. Am I still eligible for the PPP?

**Answer:** Yes. Businesses are only ineligible if an owner of 20 percent or more of the equity of the applicant is presently incarcerated, on probation, on parole; subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction; or, within the last five years, for any felony, has been convicted; pleaded guilty; pleaded nolo contendere; been placed on pretrial diversion; or been placed on any form of parole or probation (including probation before judgment).

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20. **Question:** The amount of forgiveness of a PPP loan depends on the borrower's payroll costs over an eight-week or 24-week period; when does that eight-week or 24-week period begin?

**Answer:** The eight-week or 24-week period starts on the date your lender makes a disbursement of the PPP loan to the borrower. The lender must disburse the loan no later than 10 calendar days from the date of loan approval.

The Paycheck Protection Program Flexibility Act of 2020, which became law on June 5, 2020, extended the covered period for loan forgiveness from eight weeks after the date of loan disbursement to 24 weeks after the date of loan disbursement, providing substantially greater flexibility for borrowers to qualify for loan forgiveness. The 24-week period applies to all borrowers, but borrowers that received an SBA loan number before June 5, 2020, have the option to use an eight-week period.<sup>5</sup>

21. **Question:** Do lenders need a separate SBA Authorization document to issue PPP loans?

**Answer:** No. A lender does not need a separate SBA Authorization for SBA to guarantee a PPP loan. However, lenders must have executed SBA Form 2484 (the Lender Application Form for the Paycheck Protection Program)<sup>6</sup> to issue PPP loans and receive a loan number for each originated PPP loan. Lenders may include in their promissory notes for PPP loans any terms and conditions, including relating to amortization and disclosure, that are not inconsistent with Sections 1102 and 1106 of the CARES Act, the PPP Interim Final Rules and guidance, and SBA Form 2484.

22. **Question:** I am a non-bank lender that meets all applicable criteria of the PPP Interim Final Rule. Will I be automatically enrolled as a PPP lender? What criteria will SBA and the Treasury Department use to assess whether to approve my application to participate as a PPP lender?

**Answer:** We encourage lenders that are not currently 7(a) lenders to apply in order to increase the scope of PPP lending options and the speed with which PPP loans can be disbursed to help small businesses across America. We recognize that financial technology solutions can promote efficiency and financial inclusion in implementing the PPP. Applicants should submit SBA Form 3507 and the relevant attachments to [NFRLApplicationForPPP@sba.gov](mailto:NFRLApplicationForPPP@sba.gov). Submission of the SBA Form 3507 does not result in automatic enrollment in the PPP. SBA and the Treasury Department will evaluate each application from a non-bank or non-insured depository institution lender and

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<sup>5</sup> Questions 19 – 20 published April 8, 2020. Question 20 revised June 25, 2020. The original FAQ 20 was as follows:

Question: The amount of forgiveness of a PPP loan depends on the borrower's payroll costs over an eight-week period; when does that eight-week period begin?

Answer: The eight-week period begins on the date the lender makes the first disbursement of the PPP loan to the borrower. The lender must make the first disbursement of the loan no later than ten calendar days from the date of loan approval.

<sup>6</sup> This requirement is satisfied by a lender when the lender completes the process of submitting a loan through the E-Tran system; no transmission or retention of a physical copy of Form 2484 is required.

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determine whether the applicant has the necessary qualifications to process, close, disburse, and service PPP loans made with SBA's guarantee. SBA may request additional information from the applicant before making a determination.

23. **Question:** How do the \$10 million cap and affiliation rules work for franchises?

**Answer:** If a franchise brand is listed on the SBA Franchise Directory, each of its franchisees that meets the applicable size standard can apply for a PPP loan. (The franchisor does not apply on behalf of its franchisees.) The \$10 million cap on PPP loans is a limit per franchisee entity, and each franchisee is limited to one PPP loan.

Franchise brands that have been denied listing on the Directory because of affiliation between franchisor and franchisee may request listing to receive PPP loans. SBA will not apply affiliation rules to a franchise brand requesting listing on the Directory to participate in the PPP, but SBA will confirm that the brand is otherwise eligible for listing on the Directory.

24. **Question:** How do the \$10 million cap and affiliation rules work for hotels and restaurants (and any business assigned a North American Industry Classification System (NAICS) code beginning with 72)?

**Answer:** Under the CARES Act, any single business entity that is assigned a NAICS code beginning with 72 (including hotels and restaurants) and that employs not more than 500 employees per physical location is eligible to receive a PPP loan.

In addition, SBA's affiliation rules (13 CFR 121.103 and 13 CFR 121.301) do not apply to any business entity that is assigned a NAICS code beginning with 72 and that employs not more than a total of 500 employees. As a result, if each hotel or restaurant location owned by a parent business is a separate legal business entity, each hotel or restaurant location that employs not more than 500 employees is permitted to apply for a separate PPP loan provided it uses its unique EIN.

The \$10 million maximum loan amount limitation applies to each eligible business entity because individual business entities cannot apply for more than one loan. The following examples illustrate how these principles apply.

Example 1. Company X directly owns multiple restaurants and has no affiliates.

- Company X may apply for a PPP loan if it employs 500 or fewer employees per location (including at its headquarters), even if the total number of employees employed across all locations is over 500.

Example 2. Company X wholly owns Company Y and Company Z (as a result, Companies X, Y, and Z are all affiliates of one another). Company Y and Company Z each own a single restaurant with 500 or fewer employees.

- Company Y and Company Z can each apply for a separate PPP loan, because each has 500 or fewer employees. The affiliation rules do not apply, because



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Company Y and Company Z each has 500 or fewer employees and is in the food services business (with a NAICS code beginning with 72).

Example 3. Company X wholly owns Company Y and Company Z (as a result, Companies X, Y, and Z are all affiliates of one another). Company Y owns a restaurant with 400 employees. Company Z is a construction company with 400 employees.

- Company Y is eligible for a PPP loan because it has 500 or fewer employees. The affiliation rules do not apply to Company Y, because it has 500 or fewer employees and is in the food services business (with a NAICS code beginning with 72).
- The waiver of the affiliation rules does not apply to Company Z, because Company Z is in the construction industry. Under SBA's affiliation rules, 13 CFR 121.301(f)(1) and (3), Company Y and Company Z are affiliates of one another because they are under the common control of Company X, which wholly owns both companies. This means that the size of Company Z is determined by adding its employees to those of Companies X and Y. Therefore, Company Z is deemed to have more than 500 employees, together with its affiliates. However, Company Z may be eligible to receive a PPP loan as a small business concern if it, together with Companies X and Y, meets SBA's other applicable size standards," as explained in FAQ #2.

**25. Question:** Does the information lenders are required to collect from PPP applicants regarding every owner who has a 20% or greater ownership stake in the applicant business (i.e., owner name, title, ownership %, TIN, and address) satisfy a lender's obligation to collect beneficial ownership information (which has a 25% ownership threshold) under the Bank Secrecy Act?

**Answer:**

For lenders with existing customers: With respect to collecting beneficial ownership information for owners holding a 20% or greater ownership interest, if the PPP loan is being made to an existing customer and the lender previously verified the necessary information, the lender does not need to re-verify the information. Furthermore, if federally insured depository institutions and federally insured credit unions eligible to participate in the PPP program have not yet collected such beneficial ownership information on existing customers, such institutions do not need to collect and verify beneficial ownership information for those customers applying for new PPP loans, unless otherwise indicated by the lender's risk-based approach to Bank Secrecy Act (BSA) compliance.

For lenders with new customers: For new customers, the lender's collection of the following information from all natural persons with a 20% or greater ownership stake in the applicant business will be deemed to satisfy applicable BSA requirements and FinCEN regulations governing the collection of beneficial ownership information: owner name, title, ownership %, TIN, address, and date of birth. If any ownership interest of 20% or greater in the applicant business belongs to a business or other legal entity, lenders will need to collect appropriate beneficial ownership information for that entity.

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If you have questions about requirements related to beneficial ownership, go to <https://www.fincen.gov/resources/statutes-and-regulations/cdd-final-rule>. Decisions regarding further verification of beneficial ownership information collected from new customers should be made pursuant to the lender's risk-based approach to BSA compliance.<sup>7</sup>

26. **Question:** SBA regulations require approval by SBA's Standards of Conduct Committee (SCC) for SBA Assistance, other than disaster assistance, to an entity, if its sole proprietor, partner, officer, director, or stockholder with a 10 percent or more interest is: a current SBA employee; a Member of Congress; an appointed official or employee of the legislative or judicial branch; a member or employee of an SBA Advisory Council or SCORE volunteer; or a household member of any of the preceding individuals. Do these entities need the approval of the SCC in order to be eligible for a PPP loan?

**Answer:** The SCC has authorized a blanket approval for PPP loans to such entities so that further action by the SCC is not necessary in the PPP program.

27. **Question:** SBA regulations require a written statement of no objection by the pertinent Department or military service before it provides any SBA Assistance, other than disaster loans, to an entity, if its sole proprietor, partner, officer, director, or stockholder with a 10 percent or more interest, or if a household member of any of the preceding individuals, is an employee of another Government Department or Agency having a grade of at least GS-13 or its equivalent. Does this requirement apply to PPP loans?

**Answer:** No. The SCC has determined that a written statement of no objection is not required from another Government Department or Agency for PPP loans.

28. **Question:** Is a lender permitted to submit a PPP loan application to SBA through E-Tran before the lender has fulfilled its responsibility to review the required borrower documentation and calculation of payroll costs?

**Answer:** No. Before a lender submits a PPP loan through E-Tran, the lender must have collected the information and certifications contained in the Borrower Application Form and the lender must have fulfilled its obligations set forth in paragraphs 3.b.(i)-(iii) of the PPP Interim Final Rule. Please refer to the Interim Final Rule and FAQ #1 for more information on the lender's responsibility regarding confirmation of payroll costs.

Lenders who did not understand that these steps are required before submission to E-Tran need not withdraw applications submitted to E-Tran before April 14, 2020, but must fulfill lender responsibilities with respect to those applications as soon as practicable and no later than loan closing.<sup>8</sup>

<sup>7</sup> Questions 21 – 25 published April 13, 2020.

<sup>8</sup> Questions 26 – 28 published April 14, 2020.

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29. **Question:** Can lenders use scanned copies of documents or E-signatures or E-consents permitted by the E-sign Act?

**Answer:** Yes. All PPP lenders may accept scanned copies of signed loan applications and documents containing the information and certifications required by SBA Form 2483 and the promissory note used for the PPP loan. Additionally, lenders may also accept any form of E-consent or E-signature that complies with the requirements of the Electronic Signatures in Global and National Commerce Act (P.L. 106-229).

If electronic signatures are not feasible, when obtaining a wet ink signature without in-person contact, lenders should take appropriate steps to ensure the proper party has executed the document.

This guidance does not supersede signature requirements imposed by other applicable law, including by the lender's primary federal regulator.<sup>9</sup>

30. **Question:** Can a lender sell a PPP loan into the secondary market?

**Answer:** Yes. A PPP loan may be sold into the secondary market at any time after the loan is fully disbursed. A secondary market sale of a PPP loan does not require SBA approval. A PPP loan sold into the secondary market is 100% SBA guaranteed. A PPP loan may be sold on the secondary market at a premium or a discount to par value.<sup>10</sup>

31. **Question:** Do businesses owned by large companies with adequate sources of liquidity to support the business's ongoing operations qualify for a PPP loan?

**Answer:** In addition to reviewing applicable affiliation rules to determine eligibility, all borrowers must assess their economic need for a PPP loan under the standard established by the CARES Act and the PPP regulations at the time of the loan application. Although the CARES Act suspends the ordinary requirement that borrowers must be unable to obtain credit elsewhere (as defined in section 3(h) of the Small Business Act), borrowers still must certify in good faith that their PPP loan request is necessary. Specifically, before submitting a PPP application, all borrowers should review carefully the required certification that "[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant." Borrowers must make this certification in good faith, taking into account their current business activity and their ability to access other sources of liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business. For example, it is unlikely that a public company with substantial market value and access to capital markets will be able to make the required certification in good faith, and such a company should be prepared to demonstrate to SBA, upon request, the basis for its certification.

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<sup>9</sup> Question 29 published April 15, 2020.

<sup>10</sup> Question 30 published April 17, 2020.

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Lenders may rely on a borrower's certification regarding the necessity of the loan request. Any borrower that applied for a PPP loan prior to the issuance of this guidance and repays the loan in full by May 7, 2020 will be deemed by SBA to have made the required certification in good faith.<sup>11</sup>

32. **Question:** Does the cost of a housing stipend or allowance provided to an employee as part of compensation count toward payroll costs?

**Answer:** Yes. Payroll costs includes all cash compensation paid to employees, subject to the \$100,000 annual compensation per employee limitation.

33. **Question:** Is there existing guidance to help PPP applicants and lenders determine whether an individual employee's principal place of residence is in the United States?

**Answer:** PPP applicants and lenders may consider IRS regulations (26 CFR § 1.121-1(b)(2)) when determining whether an individual employee's principal place of residence is in the United States.

34. **Question:** Are agricultural producers, farmers, and ranchers eligible for PPP loans?

**Answer:** Yes. Agricultural producers, farmers, and ranchers are eligible for PPP loans if: (i) the business has 500 or fewer employees, or (ii) the business fits within the revenue-based sized standard, which is average annual receipts of \$1 million.

Additionally, agricultural producers, farmers, and ranchers can qualify for PPP loans as a small business concern if their business meets SBA's "alternative size standard." The "alternative size standard" is currently: (1) maximum net worth of the business is not more than \$15 million, and (2) the average net income after Federal income taxes (excluding any carry-over losses) of the business for the two full fiscal years before the date of the application is not more than \$5 million.

For all of these criteria, the applicant must include its affiliates in its calculations. [Link](#) to Applicable Affiliation Rules for the PPP.

35. **Question:** Are agricultural and other forms of cooperatives eligible to receive PPP loans?

**Answer:** As long as other PPP eligibility requirements are met, small agricultural cooperatives and other cooperatives may receive PPP loans.<sup>12</sup>

36. **Question:** To determine borrower eligibility under the 500-employee or other applicable threshold established by the CARES Act, must a borrower count all employees or only full-time equivalent employees?

<sup>11</sup> Question 31 published April 23, 2020.

<sup>12</sup> Questions 32 – 35 published April 24, 2020.

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**Answer:** For purposes of loan eligibility, the CARES Act defines the term employee to include “individuals employed on a full-time, part-time, or other basis.” A borrower must therefore calculate the total number of employees, including part-time employees, when determining their employee headcount for purposes of the eligibility threshold. For example, if a borrower has 200 full-time employees and 50 part-time employees each working 10 hours per week, the borrower has a total of 250 employees.

By contrast, for purposes of loan forgiveness, the CARES Act uses the standard of “full-time equivalent employees” to determine the extent to which the loan forgiveness amount will be reduced in the event of workforce reductions.<sup>13</sup>

37. **Question:** Do businesses owned by private companies with adequate sources of liquidity to support the business’s ongoing operations qualify for a PPP loan?

**Answer:** See response to FAQ #31.<sup>14</sup>

38. **Question:** Section 1102 of the CARES Act provides that PPP loans are available only to applicants that were “in operation on February 15, 2020.” Is a business that was in operation on February 15, 2020 but had a change in ownership after February 15, 2020 eligible for a PPP loan?

**Answer:** Yes. As long as the business was in operation on February 15, 2020, if it meets the other eligibility criteria, the business is eligible to apply for a PPP loan regardless of the change in ownership. In addition, where there is a change in ownership effectuated through a purchase of substantially all assets of a business that was in operation on February 15, the business acquiring the assets will be eligible to apply for a PPP loan even if the change in ownership results in the assignment of a new tax ID number and even if the acquiring business was not in operation until after February 15, 2020. If the acquiring business has maintained the operations of the pre-sale business, the acquiring business may rely on the historic payroll costs and headcount of the pre-sale business for the purposes of its PPP application, except where the pre-sale business had applied for and received a PPP loan. The Administrator, in consultation with the Secretary, has determined that the requirement that a business “was in operation on February 15, 2020” should be applied based on the economic realities of the business’s operations.

39. **Question:** Will SBA review individual PPP loan files?

**Answer:** Yes. In FAQ #31, SBA reminded all borrowers of an important certification required to obtain a PPP loan. To further ensure PPP loans are limited to eligible borrowers in need, the SBA has decided, in consultation with the Department of the Treasury, that it will review all loans in excess of \$2 million, in addition to other loans as appropriate, following the lender’s submission of the borrower’s loan forgiveness application. Additional guidance implementing this procedure will be forthcoming.

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<sup>13</sup> Questions 36 published April 26, 2020.

<sup>14</sup> Question 37 published April 28, 2020.

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The outcome of SBA's review of loan files will not affect SBA's guarantee of any loan for which the lender complied with the lender obligations set forth in paragraphs III.3.b(i)-(iii) of the Paycheck Protection Program Rule (April 2, 2020) and further explained in FAQ #1.<sup>15</sup>

40. **Question:** Will a borrower's PPP loan forgiveness amount (pursuant to section 1106 of the CARES Act and SBA's implementing rules and guidance) be reduced if the borrower laid off an employee, offered to rehire the same employee, but the employee declined the offer?

**Answer:** No. As an exercise of the Administrator's and the Secretary's authority under Section 1106(d)(6) of the CARES Act to prescribe regulations granting de minimis exemptions from the Act's limits on loan forgiveness, SBA and Treasury intend to issue an interim final rule excluding laid-off employees whom the borrower offered to rehire (for the same salary/wages and same number of hours) from the CARES Act's loan forgiveness reduction calculation. The interim final rule will specify that, to qualify for this exception, the borrower must have made a good faith, written offer of rehire, and the employee's rejection of that offer must be documented by the borrower. Employees and employers should be aware that employees who reject offers of re-employment may forfeit eligibility for continued unemployment compensation.

41. **Question:** Can a seasonal employer that elects to use a 12-week period between May 1, 2019 and September 15, 2019 to calculate its maximum PPP loan amount under the interim final rule issued by Treasury on April 27, 2020, make all the required certifications on the Borrower Application Form?

**Answer:** Yes. The Borrower Application Form requires applicants to certify that "The Applicant is eligible to receive a loan under the rules in effect at the time this application is submitted that have been issued by the Small Business Administration (SBA) implementing the Paycheck Protection Program." On April 27, 2020, Treasury issued an interim final rule allowing seasonal borrowers to use an alternative base period for purposes of calculating the loan amount for which they are eligible under the PPP. An applicant that is otherwise in compliance with applicable SBA requirements, and that complies with Treasury's interim final rule on seasonal workers, will be deemed eligible for a PPP loan under SBA rules. Instead of following the instructions on page 3 of the Borrower Application Form for the time period for calculating average monthly payroll for seasonal businesses, an applicant may elect to use the time period in Treasury's interim final rule on seasonal workers.

42. **Question:** Do nonprofit hospitals exempt from taxation under section 115 of the Internal Revenue Code qualify as "nonprofit organizations" under section 1102 of the CARES Act?

**Answer:** Section 1102 of the CARES Act defines the term "nonprofit organization" as "an organization that is described in section 501(c)(3) of the Internal Revenue Code of

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<sup>15</sup> Questions 38 – 39 published April 29, 2020.

1986 and that is exempt from taxation under section 501(a) of such Code.” The Administrator, in consultation with the Secretary of the Treasury, understands that nonprofit hospitals exempt from taxation under section 115 of the Internal Revenue Code are unique in that many such hospitals may meet the description set forth in section 501(c)(3) of the Internal Revenue Code to qualify for tax exemption under section 501(a), but have not sought to be recognized by the IRS as such because they are otherwise fully tax-exempt under a different provision of the Internal Revenue Code.

Accordingly, the Administrator will treat a nonprofit hospital exempt from taxation under section 115 of the Internal Revenue Code as meeting the definition of “nonprofit organization” under section 1102 of the CARES Act if the hospital reasonably determines, in a written record maintained by the hospital, that it is an organization described in section 501(c)(3) of the Internal Revenue Code and is therefore within a category of organization that is exempt from taxation under section 501(a).<sup>16</sup> The hospital’s certification of eligibility on the Borrower Application Form cannot be made without this determination. This approach helps accomplish the statutory purpose of ensuring that a broad range of borrowers, including entities that are helping to lead the medical response to the ongoing pandemic, can benefit from the loans provided under the PPP.

This guidance is solely for purposes of qualification as a “nonprofit organization” under section 1102 of the CARES Act and related purposes of the CARES Act, and does not have any consequences for federal tax law purposes. Nonprofit hospitals should also review all other applicable eligibility criteria, including the *Interim Final Rules on Promissory Notes, Authorizations, Affiliation, and Eligibility* (April 28, 2020) regarding an important limitation on ownership by state or local governments. 85 FR 23450, 23451.<sup>17</sup>

43. **Question:** FAQ #31 reminded borrowers to review carefully the required certification on the Borrower Application Form that “[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.” SBA guidance and regulations provide that any borrower who applied for a PPP loan prior to April 24, 2020 and repays the loan in full by May 7, 2020 will be deemed by SBA to have made the required certification in good faith. Is it possible for a borrower to obtain an extension of the May 7, 2020 repayment date?

**Answer:** SBA is extending the repayment date for this safe harbor to May 14, 2020. Borrowers do not need to apply for this extension. This extension will be promptly implemented through a revision to the SBA’s interim final rule providing the safe harbor.

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<sup>16</sup> This determination need not account for the ancillary conditions set forth in section 501(r) of the Internal Revenue Code and elsewhere associated with securing the tax exemption under that section. Section 501(r) states that a hospital organization shall not be treated as described in section 501(c)(3) unless it meets certain community health and other requirements. However, section 1102 of the CARES Act defines the term “nonprofit organization” solely by reference to section 501(c)(3), and section 501(r) does not amend section 501(c)(3). Therefore, for purposes of the PPP, the requirements of section 501(r) do not apply to the determination of whether an organization is “described in section 501(c)(3).”

<sup>17</sup> Questions 40 – 42 published May 3, 2020.

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SBA intends to provide additional guidance on how it will review the certification prior to May 14, 2020.

44. **Question:** How do SBA’s affiliation rules at 13 C.F.R. 121.301(f) apply with regard to counting the employees of foreign and U.S. affiliates?

**Answer:** For purposes of the PPP’s 500 or fewer employee size standard, an applicant must count all of its employees and the employees of its U.S and foreign affiliates, absent a waiver of or an exception to the affiliation rules. 13 C.F.R. 121.301(f)(6). Business concerns seeking to qualify as a “small business concern” under section 3 of the Small Business Act (15 U.S.C. 632) on the basis of the employee-based size standard must do the same.<sup>18</sup>

45. **Question:** Is an employer that repays its PPP loan by the safe harbor deadline (May 18, 2020) eligible for the Employee Retention Credit?

**Answer:** Yes. An employer that applied for a PPP loan, received payment, and repays the loan by the safe harbor deadline (May 18, 2020) will be treated as though the employer had not received a covered loan under the PPP for purposes of the Employee Retention Credit. Therefore, the employer will be eligible for the credit if the employer is otherwise an eligible employer for purposes of the credit.<sup>19</sup>

46. **Question:** How will SBA review borrowers’ required good-faith certification concerning the necessity of their loan request?

**Answer:** When submitting a PPP application, all borrowers must certify in good faith that “[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.” SBA, in consultation with the Department of the Treasury, has determined that the following safe harbor will apply to SBA’s review of PPP loans with respect to this issue: Any borrower that, together with its affiliates,<sup>20</sup> received PPP loans with an original principal amount of less than \$2 million will be deemed to have made the required certification concerning the necessity of the loan request in good faith.

SBA has determined that this safe harbor is appropriate because borrowers with loans below this threshold are generally less likely to have had access to adequate sources of liquidity in the current economic environment than borrowers that obtained larger loans. This safe harbor will also promote economic certainty as PPP borrowers with more limited resources endeavor to retain and rehire employees. In addition, given the large volume of PPP loans, this approach will enable SBA to conserve its finite audit

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<sup>18</sup> Questions 43 – 44 published May 5, 2020.

<sup>19</sup> Question 45 published May 6, 2020; revised May 27, 2020 to change the date from “(May 14, 2020)” to “(May 18, 2020).”

<sup>20</sup> For purposes of this safe harbor, a borrower must include its affiliates to the extent required under the interim final rule on affiliates, 85 FR 20817 (April 15, 2020).



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resources and focus its reviews on larger loans, where the compliance effort may yield higher returns.

Importantly, borrowers with loans greater than \$2 million that do not satisfy this safe harbor may still have an adequate basis for making the required good-faith certification, based on their individual circumstances in light of the language of the certification and SBA guidance. SBA has previously stated that all PPP loans in excess of \$2 million, and other PPP loans as appropriate, will be subject to review by SBA for compliance with program requirements set forth in the PPP Interim Final Rules and in the Borrower Application Form. If SBA determines in the course of its review that a borrower lacked an adequate basis for the required certification concerning the necessity of the loan request, SBA will seek repayment of the outstanding PPP loan balance and will inform the lender that the borrower is not eligible for loan forgiveness. If the borrower repays the loan after receiving notification from SBA, SBA will not pursue administrative enforcement or referrals to other agencies based on its determination with respect to the certification concerning necessity of the loan request. SBA's determination concerning the certification regarding the necessity of the loan request will not affect SBA's loan guarantee.

47. **Question:** An SBA interim final rule posted on May 8, 2020 provided that any borrower who applied for a PPP loan and repays the loan in full by May 14, 2020 will be deemed by SBA to have made the required certification concerning the necessity of the loan request in good faith. Is it possible for a borrower to obtain an extension of the May 14, 2020 repayment date?

**Answer:** Yes, SBA is extending the repayment date for this safe harbor to May 18, 2020, to give borrowers an opportunity to review and consider FAQ #46. Borrowers do not need to apply for this extension. This extension will be promptly implemented through a revision to the SBA's interim final rule providing the safe harbor.<sup>21</sup>

48. **Question:** What is the deadline for lenders to complete the initial SBA Form 1502 reporting process?

**Answer:** SBA is extending the deadline for lenders to submit the initial SBA Form 1502. Under SBA's interim final rule on disbursements, posted April 28, 2020, lenders must disburse PPP loans within 10 calendar days of loan approval; a loan is considered approved when the loan is assigned a loan number by SBA. That interim final rule also provides that loans for which funds have not been disbursed because a borrower has not submitted required loan documentation within 20 calendar days of loan approval shall be cancelled by the lender.<sup>22</sup> Previously, the deadline for lenders' submission of the initial SBA Form 1502 reporting information was May 22, 2020.<sup>23</sup> SBA is extending the deadline for lenders to electronically upload the initial SBA Form 1502 reporting information to the later of: (1) May 29, 2020, or (2) 10 calendar days after disbursement

<sup>21</sup> Questions 46 – 47 published May 13, 2020.

<sup>22</sup> 85 FR 26321, 26322-23.

<sup>23</sup> 85 FR 29845, 29846.

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or cancellation of the PPP loan. This extension of the timeline for the initial SBA Form 1502 reporting information will be promptly implemented through revisions to SBA's interim final rules providing an extension to the certification safe harbor and the deadline for SBA Form 1502 reporting.<sup>24</sup>

49. **Question:** What is the maturity date of a PPP loan?

**Answer:** If a PPP loan received an SBA loan number on or after June 5, 2020, the loan has a five-year maturity. If a PPP loan received an SBA loan number before June 5, 2020, the loan has a two-year maturity, unless the borrower and lender mutually agree to extend the term of the loan to five years. The promissory note for the PPP loan will state the term of the loan.<sup>25</sup>

50. **Question:** What effect does the payment or nonpayment of fees of an agent or other third party have on SBA's guarantee of a PPP loan or SBA's payment of fees to lenders?

**Answer:** The payment or nonpayment of fees of an agent or other third party is not material to SBA's guarantee of a PPP loan or to SBA's payment of fees to lenders. Additional information about such fees can be found in paragraph III.4.c of the initial Paycheck Protection Program interim final rule ([link](#)).

51. **Question:** Do payments required for the provision of group health care benefits, including insurance premiums, include vision and dental benefits?

**Answer:** Yes.<sup>26</sup>

52. **Question:** The Paycheck Protection Program Flexibility Act of 2020 (Flexibility Act) extended the deferral period for borrower payments of principal, interest, and fees on all PPP loans to the date that SBA remits the borrower's loan forgiveness amount to the lender (or, if the borrower does not apply for loan forgiveness, 10 months after the end of the borrower's loan forgiveness covered period). Previously, the deferral period could end after 6 months. Are lenders and borrowers required to modify promissory notes used for PPP loans to reflect the extended deferral period?

**Answer:** The extension of the deferral period under the Flexibility Act automatically applies to all PPP loans. Lenders are required to give immediate effect to the statutory extension and should notify borrowers of the change to the deferral period. SBA does not require a formal modification to the promissory note. A modification of a promissory note to reflect the required statutory deferral period under the Flexibility Act will have no effect on the SBA's guarantee of a PPP loan.<sup>27</sup>

<sup>24</sup> Question 48 published May 19, 2020.

<sup>25</sup> Question 49 published June 25, 2020.

<sup>26</sup> Questions 50 – 51 published August 11, 2020.

<sup>27</sup> Question 52 published October 7, 2020.



## Frequently Asked Questions (FAQs) PAYCHECK PROTECTION PROGRAM

As of August 4, 2020

The Small Business Administration (SBA), in consultation with the Department of the Treasury, is providing this guidance to address borrower and lender questions concerning forgiveness of Paycheck Protection Program (PPP) loans, as provided for under section 1106 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), as amended by the Paycheck Protection Program Flexibility Act (Flexibility Act).

Borrowers and lenders may rely on the guidance provided in this document as SBA's interpretation, in consultation with the Department of the Treasury, of the CARES Act, the Flexibility Act, and the Paycheck Protection Program Interim Final Rules ("PPP Interim Final Rules") ([link](#)).

### **General Loan Forgiveness FAQs**

- 1. Question:** Which loan forgiveness application should sole proprietors, independent contractors, or self-employed individuals with no employees complete?

**Answer:** Sole proprietors, independent contractors, and self-employed individuals who had no employees at the time of the PPP loan application and did not include any employee salaries in the computation of average monthly payroll in the Borrower Application Form automatically qualify to use the Loan Forgiveness Application Form 3508EZ or lender equivalent and should complete that application.

- 2. Question:** Can PPP lenders use scanned copies of documents, E-signatures, or E-consents for loan forgiveness applications and loan forgiveness documentation?

**Answer:** Yes. All PPP lenders may accept scanned copies of signed loan forgiveness applications and documents containing the information and certifications required by SBA Form 3508, 3508EZ, or lender equivalent. Lenders may accept any form of E-consent or E-signature that complies with the requirements of the Electronic Signatures in Global and National Commerce Act (P.L. 106-229).

If electronic signatures are not feasible, then when obtaining a wet ink signature without in-person contact, lenders should take appropriate steps to ensure the proper party has executed the document.

This guidance does not supersede signature requirements imposed by other applicable law, including by the lender's primary federal regulator.

- 3. Question:** If a borrower submits a timely loan forgiveness application, does the borrower have to make any payments on its loan prior to SBA remitting the forgiveness amount, if any?

**Answer:** As long as a borrower submits its loan forgiveness application within ten months of the completion of the Covered Period (as defined below), the borrower is not

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required to make any payments until the forgiveness amount is remitted to the lender by SBA. If the loan is fully forgiven, the borrower is not responsible for any payments. If only a portion of the loan is forgiven, or if the forgiveness application is denied, any remaining balance due on the loan must be repaid by the borrower on or before the maturity date of the loan. Interest accrues during the time between the disbursement of the loan and SBA remittance of the forgiveness amount. The borrower is responsible for paying the accrued interest on any amount of the loan that is not forgiven. The lender is responsible for notifying the borrower of remittance by SBA of the loan forgiveness amount (or that SBA determined that no amount of the loan is eligible for forgiveness) and the date on which the borrower's first payment is due, if applicable.

### **Loan Forgiveness Payroll Costs FAQs**

- 1. Question:** Are payroll costs that were incurred during the Covered Period<sup>1</sup> or the Alternative Payroll Covered Period<sup>2</sup> but paid after the Covered Period or the Alternative Payroll Covered Period eligible for loan forgiveness?

**Answer:** Yes, if the payroll costs are paid on or before the next regular payroll date after the Covered Period or Alternative Payroll Covered Period.

Example: A borrower received its loan before June 5, 2020 and elects to use a 24-week Covered Period. The borrower's Covered Period runs from Monday, April 20 through Sunday, October 4. The borrower has a biweekly payroll cycle, with a pay period ending on Sunday, October 4. However, the borrower will not make the corresponding payroll payment until the next regular payroll date of Friday, October 9. Under these circumstances, the borrower incurred payroll costs during the Covered Period and may seek loan forgiveness for the payroll costs paid on October 9 because the cost was incurred during the Covered Period and payment was made on the first regular payroll date after the Covered Period.

- 2. Question:** Are payroll costs that were incurred before the Covered Period but paid during the Covered Period eligible for loan forgiveness?

**Answer:** Yes.

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<sup>1</sup> The Covered Period is either (1) the 24-week (168-day) period beginning on the PPP loan disbursement date, or (2) if the borrower received its PPP loan before June 5, 2020, the borrower may elect to use an eight-week (56-day) Covered Period. For example, if the borrower is using a 24-week Covered Period and received its PPP loan proceeds on Monday, April 20, the first day of the Covered Period is April 20 and the last day of the Covered Period is Sunday, October 4. In no event may the Covered Period extend beyond December 31, 2020.

<sup>2</sup> Borrowers with a biweekly (or more frequent) payroll schedule may elect to calculate eligible payroll costs using the 24-week (168-day) period (or for loans received before June 5, 2020 at the election of the borrower, the eight-week (56-day) period) that begins on the first day of their first pay period following their PPP loan disbursement date (i.e., the "Alternative Covered Period"). For example, if the borrower is using a 24-week Alternative Payroll Covered Period and received its PPP loan proceeds on Monday, April 20, and the first day of its first pay period following its PPP loan disbursement is Sunday, April 26, the first day of the Alternative Payroll Covered Period is April 26 and the last day of the Alternative Payroll Covered Period is Saturday, October 10. In no event may the Alternative Payroll Covered Period extend beyond December 31, 2020.

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Example: A borrower received its loan before June 5, 2020 and elects to use a 24-week Covered Period. The borrower's Covered Period runs from Monday, April 20 through Sunday, October 4. The borrower has a biweekly payroll cycle, with a payroll cycle ending on Saturday, April 18. The borrower will not make the corresponding payroll payment until Friday, April 24. While these payroll costs were not incurred during the Covered Period, they were paid during the Covered Period and are therefore eligible for loan forgiveness.

**3. Question:** Are borrowers required to calculate payroll costs for partial pay periods?

**Answer:** If the borrower uses a biweekly or more frequent (e.g., weekly) payroll cycle, the borrower may elect to calculate eligible payroll costs using the eight-week (for borrowers that received their loans before June 5, 2020 and elect this Covered Period length) or 24-week period that begins on the first day of the first payroll cycle following the PPP Loan Disbursement Date (referred to as the Alternative Payroll Covered Period). However, if a borrower pays twice a month or less frequently, it will need to calculate payroll costs for partial pay periods. The Covered Period or Alternative Covered Period for any borrower will end no later than December 31, 2020.

Example: A borrower uses a biweekly payroll cycle. The borrower's 24-week Covered Period begins on Monday, June 1 and ends on Sunday, November 15. The first day of the borrower's first payroll cycle that starts in the Covered Period is June 7. The borrower may elect an Alternative Payroll Covered Period that starts on June 7 and ends on November 21 (167 days later). Payroll costs incurred (i.e., the pay was earned on that day) during this Alternative Payroll Covered Period are eligible for loan forgiveness if the last payment is made on or before the first regular payroll date after November 21.

**4. Question:** For purposes of calculating cash compensation, should borrowers use the gross amount before deductions for taxes, employee benefits payments, and similar payments, or the net amount paid to employees?

**Answer:** The gross amount should be used when calculating cash compensation.

**5. Question:** Are only salaries or wages covered by loan forgiveness, or can a borrower pay lost tips, lost commissions, bonuses, or other forms of incentive pay and have such costs qualify for loan forgiveness?

**Answer:** Payroll costs include all forms of cash compensation paid to employees, including tips, commissions, bonuses, and hazard pay. Note that forgivable cash compensation per employee is limited to \$100,000 on an annualized basis.

**6. Question:** What expenses for group health care benefits will be considered payroll costs that are eligible for loan forgiveness?

**Answer:** Employer expenses for employee group health care benefits that are paid or incurred by the borrower during the Covered Period or the Alternative Payroll Covered Period are payroll costs eligible for loan forgiveness. However, payroll costs do not

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include expenses for group health care benefits paid by employees (or beneficiaries of the plan) either pre-tax or after tax, such as the employee share of their health care premium. Forgiveness is not provided for expenses for group health benefits accelerated from periods outside the Covered Period or Alternative Payroll Covered Period.

If a borrower has an insured group health plan, insurance premiums paid or incurred during the Covered Period or Alternative Payroll Covered Period qualify as “payroll costs,” as long as the premiums are paid during the applicable period or by the next premium due date after the end of the applicable period. As noted, only the portion of the premiums paid by the borrower for coverage during the applicable Covered Period or Alternative Payroll Covered Period is included, not any portion paid by employees or beneficiaries or any portion paid for coverage for periods outside the applicable period. Loan Forgiveness Payroll Costs FAQ 8 outlines the rules that apply to owner health insurance.

7. **Question:** What contributions for retirement benefits will be considered payroll costs that are eligible for loan forgiveness?

**Answer:** Generally, employer contributions for employee retirement benefits that are paid or incurred by the borrower during the Covered Period or Alternative Payroll Covered Period qualify as “payroll costs” eligible for loan forgiveness. The employer contributions for retirement benefits included in the loan forgiveness amount as payroll costs cannot include any retirement contributions deducted from employees’ pay or otherwise paid by employees. Forgiveness is not provided for employer contributions for retirement benefits accelerated from periods outside the Covered Period or Alternative Covered Period. Loan Forgiveness Payroll Costs FAQ 8 outlines the treatment of retirement benefits for owners, which are different from this general approach.

8. **Question:** How is the amount of owner compensation that is eligible for loan forgiveness determined?

**Answer:** The amount of compensation of owners who work at their business that is eligible for forgiveness depends on the business type and whether the borrower is using an eight-week or 24-week Covered Period. In addition to the specific caps described below, the amount of loan forgiveness requested for owner-employees and self-employed individuals’ payroll compensation is capped at \$20,833 per individual in total across all businesses in which he or she has an ownership stake. For borrowers that received a PPP loan before June 5, 2020 and elect to use an eight-week Covered Period, this cap is \$15,385. If their total compensation across businesses that receive a PPP loan exceeds the cap, owners can choose how to allocate the capped amount across different businesses. The examples below are for a borrower using a 24-week Covered Period.

C Corporations: The employee cash compensation of a C-corporation owner-employee, defined as an owner who is also an employee (including where the owner is the only employee), is eligible for loan forgiveness up to the amount of 2.5/12 of his or her 2019 employee cash compensation, with cash compensation defined as it is for all other

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employees. Borrowers are also eligible for loan forgiveness for payments for employer state and local taxes paid by the borrowers and assessed on their compensation, for the amount paid by the borrower for employer contributions for their employee health insurance, and for employer retirement contributions to their employee retirement plans capped at the amount of 2.5/12 of the 2019 employer retirement contribution. Payments other than for cash compensation should be included on lines 6-8 of PPP Schedule A of the loan forgiveness application (SBA Form 3508 or lender equivalent), for borrowers using that form, and do not count toward the \$20,833 cap per individual.

S Corporations: The employee cash compensation of an S-corporation owner-employee, defined as an owner who is also an employee, is eligible for loan forgiveness up to the amount of 2.5/12 of their 2019 employee cash compensation, with cash compensation defined as it is for all other employees. Borrowers are also eligible for loan forgiveness for payments for employer state and local taxes paid by the borrowers and assessed on their compensation, and for employer retirement contributions to their employee retirement plans capped at the amount of 2.5/12 of their 2019 employer retirement contribution. Employer contributions for health insurance are not eligible for additional forgiveness for S-corporation employees with at least a 2% stake in the business, including for employees who are family members of an at least 2% owner under the family attribution rules of 26 U.S.C. 318, because those contributions are included in cash compensation. The eligible non-cash compensation payments should be included on lines 7 and 8 of PPP Schedule A of the Loan Forgiveness Application (SBA Form 3508), for borrowers using that form, and do not count toward the \$20,833 cap per individual.

Self-employed Schedule C (or Schedule F) filers: The compensation of self-employed Schedule C (or Schedule F) individuals, including sole proprietors, self-employed individuals, and independent contractors, that is eligible for loan forgiveness is limited to 2.5/12 of 2019 net profit as reported on IRS Form 1040 Schedule C line 31 (or 2.5/12 of 2019 net farm profit, as reported on IRS Form 1040 Schedule F line 34) (or for new businesses, the estimated 2020 Schedule C (or Schedule F) referenced in question 10 of “Paycheck Protection Program: How to Calculate Maximum Loan Amounts – By Business Type”<sup>3</sup>). Separate payments for health insurance, retirement, or state or local taxes are not eligible for additional loan forgiveness; health insurance and retirement expenses are paid out of their net self-employment income. If the borrower did not submit its 2019 IRS Form 1040 Schedule C (or F) to the Lender when the borrower initially applied for the loan, it must be included with the borrower’s forgiveness application.

General Partners: The compensation of general partners that is eligible for loan forgiveness is limited to 2.5/12 of their 2019 net earnings from self-employment that is subject to self-employment tax, which is computed from 2019 IRS Form 1065 Schedule K-1 box 14a (reduced by box 12 section 179 expense deduction, unreimbursed partnership expenses deducted on their IRS Form 1040 Schedule SE, and depletion

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<sup>3</sup> [https://www.sba.gov/sites/default/files/2020-06/How-to-Calculate-Loan-Amounts-508\\_1.pdf](https://www.sba.gov/sites/default/files/2020-06/How-to-Calculate-Loan-Amounts-508_1.pdf).

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claimed on oil and gas properties) multiplied by 0.9235.<sup>4</sup> Compensation is only eligible for loan forgiveness if the payments to partners are made during the Covered Period or Alternative Payroll Covered Period. Separate payments for health insurance, retirement, or state or local taxes are not eligible for additional loan forgiveness. If the partnership did not submit its 2019 IRS Form 1065 K-1s when initially applying for the loan, it must be included with the partnership's forgiveness application.

LLC owners: LLC owners must follow the instructions that apply to how their business was organized for tax filing purposes for tax year 2019, or if a new business, the expected tax filing situation for 2020.

### **Loan Forgiveness Nonpayroll Costs FAQs**

1. **Question:** Are nonpayroll costs incurred prior to the Covered Period, but paid during the Covered Period, eligible for loan forgiveness?

**Answer:** Yes, eligible business mortgage interest costs, eligible business rent or lease costs, and eligible business utility costs incurred prior to the Covered Period and paid during the Covered Period are eligible for loan forgiveness.

Example: A borrower's 24-week Covered Period runs from April 20 through October 4. On May 4, the borrower receives its electricity bill for April. The borrower pays its April electricity bill on May 8. Although a portion of the electricity costs were incurred before the Covered Period, these electricity costs are eligible for loan forgiveness because they were paid during the Covered Period.

2. **Question:** Are nonpayroll costs incurred during the Covered Period, but paid after the Covered Period, eligible for loan forgiveness?

**Answer:** Nonpayroll costs are eligible for loan forgiveness if they were incurred during the Covered Period and paid on or before the next regular billing date, even if the billing date is after the Covered Period.

Example: A borrower's 24-week Covered Period runs from April 20 through October 4. On October 6, the borrower receives its electricity bill for September. The borrower pays its September electricity bill on October 16. These electricity costs are eligible for loan forgiveness because they were incurred during the Covered Period and paid on or before the next regular billing date (November 6).

3. **Question:** If a borrower elects to use the Alternative Payroll Covered Period for payroll costs, does the Alternative Payroll Covered Period apply to nonpayroll costs?

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<sup>4</sup> This treatment follows the computation of self-employment tax from IRS Form 1040 Schedule SE Section A line 4 and removes the "employer" share of self-employment tax, consistent with how payroll costs for employees in the partnership are determined.



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**Answer:** No. The Alternative Payroll Covered Period applies only to payroll costs, not to nonpayroll costs. The Covered Period always starts on the date the lender makes a disbursement of the PPP loan. Nonpayroll costs must be paid or incurred during the Covered Period to be eligible for loan forgiveness. For payroll costs only, the borrower may elect to use the Alternative Payroll Covered Period to align with its biweekly or more frequent payroll schedule.

4. **Question:** Is interest on unsecured credit eligible for loan forgiveness?

**Answer:** No. Payments of interest on business mortgages on real or personal property (such as an auto loan) are eligible for loan forgiveness. Interest on unsecured credit is not eligible for loan forgiveness because the loan is not secured by real or personal property. Although interest on unsecured credit incurred before February 15, 2020 is a permissible use of PPP loan proceeds, this expense is not eligible for forgiveness.

5. **Question:** Are payments made on recently renewed leases or interest payments on refinanced mortgage loans eligible for loan forgiveness if the original lease or mortgage existed prior to February 15, 2020?

**Answer:** Yes. If a lease that existed prior to February 15, 2020 expires on or after February 15, 2020 and is renewed, the lease payments made pursuant to the renewed lease during the Covered Period are eligible for loan forgiveness. Similarly, if a mortgage loan on real or personal property that existed prior to February 15, 2020 is refinanced on or after February 15, 2020, the interest payments on the refinanced mortgage loan during the Covered Period are eligible for loan forgiveness.

Example: A borrower entered into a five-year lease for its retail space in March 2015. The lease was renewed in March 2020. For purposes of determining forgiveness of the borrower's PPP loan, the March 2020 renewed lease is deemed to be an extension of the original lease, which was in force before February 15, 2020. As a result, the lease payments made under the renewed lease during the Covered Period are eligible for loan forgiveness.

6. **Question:** Covered utility payments, which are eligible for forgiveness, include a "payment for a service for the distribution of . . . transportation" under the CARES Act. What expenses does this category include?

**Answer:** A service for the distribution of transportation refers to transportation utility fees assessed by state and local governments. Payment of these fees by the borrower is eligible for loan forgiveness.<sup>5</sup>

7. **Question:** Are electricity supply charges eligible for loan forgiveness if they are charged separately from electricity distribution charges?

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<sup>5</sup> For more information on transportation utility fees, see [https://www.fhwa.dot.gov/ipd/value\\_capture/defined/transportation\\_utility\\_fees.aspx](https://www.fhwa.dot.gov/ipd/value_capture/defined/transportation_utility_fees.aspx).

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**Answer:** Yes. The entire electricity bill payment is eligible for loan forgiveness (even if charges are invoiced separately), including supply charges, distribution charges, and other charges such as gross receipts taxes.

### **Loan Forgiveness Reductions FAQs**

1. **Question:** Will a borrower be subject to a reduction to its forgiveness amount due to a reduction in FTE employees during the Covered Period if the borrower offered to rehire one or more laid off employees but the employees declined?

**Answer:** In calculating its loan forgiveness amount, a borrower may exclude any reduction in FTE employees if the borrower is able to document in good faith the following: (1) an inability to rehire individuals who were employees of the borrower on February 15, 2020 and (2) an inability to hire similarly qualified individuals for unfilled positions on or before December 31, 2020. Borrowers are required to inform the applicable state unemployment insurance office of any employee's rejected rehire offer within 30 days of the employee's rejection of the offer. The documents that borrowers should maintain to show compliance with this exemption include the written offer to rehire an individual, a written record of the offer's rejection, and a written record of efforts to hire a similarly qualified individual.

2. **Question:** If a seasonal employer elects to use a 12-week period between May 1, 2019 and September 15, 2019 to calculate its maximum PPP loan amount, what period in 2019 should be used as the reference period for calculating any reductions in the loan forgiveness amount?

**Answer:** A seasonal employer that elects to use a 12-week period between May 1, 2019 and September 15, 2019 to calculate its maximum PPP loan amount must use the same 12-week period as the reference period for calculation of any reduction in the amount of loan forgiveness.

3. **Question:** When calculating the FTE Reduction Exceptions in Table 1 of the PPP Schedule A Worksheet on the Loan Forgiveness Application (SBA Form 3508 or lender equivalent), do borrowers include employees who made more than \$100,000 in 2019 (those listed in Table 2 of the PPP Schedule A Worksheet)?

**Answer:** Yes. The FTE Reduction Exceptions apply to all employees, not just those who would be listed in Table 1 of the Loan Forgiveness Application (SBA Form 3508 or lender equivalent). Borrowers should therefore include employees who made more than \$100,000 in the FTE Reduction Exception line in Table 1 of the PPP Schedule A Worksheet.

4. **Question:** How do borrowers calculate the reduction in their loan forgiveness amount arising from reductions in employee salary or hourly wage?

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**Answer:** Certain pay reductions during the Covered Period or the Alternative Payroll Covered Period may reduce the amount of loan forgiveness a borrower will receive. If the salary or hourly wage of a covered employee<sup>6</sup> is reduced by more than 25% during the Covered Period or the Alternative Payroll Covered Period, the portion in excess of 25% reduces the eligible forgiveness amount unless the borrower satisfies the Salary/Hourly Wage Reduction Safe Harbor (as described in the Loan Forgiveness Application (SBA Form 3508 or lender equivalent)). The examples below assume that each employee is a “covered employee.”

Example 1: A borrower received its PPP loan before June 5, 2020 and elected to use an eight-week covered period. Its full-time salaried employee’s pay was reduced during the Covered Period from \$52,000 per year to \$36,400 per year on April 23, 2020 and not restored by December 31, 2020. The employee continued to work on a full-time basis with a full-time equivalency (FTE) of 1.0. The borrower should refer to the “Salary/Hourly Wage Reduction” section under the “Instructions for PPP Schedule A Worksheet” in the PPP Loan Forgiveness Application Instructions. In Step 1, the borrower enters the figures in 1.a, 1.b, and 1.c, and because annual salary was reduced by more than 25%, the borrower proceeds to Step 2. Under Step 2, because the salary reduction was not remedied by December 31, 2020, the Salary/Hourly Wage Reduction Safe Harbor is not met, and the borrower is required to proceed to Step 3. Under Step 3.a., \$39,000 (75% of \$52,000) is the minimum salary that must be maintained to avoid a penalty. Salary was reduced to \$36,400, and the excess reduction of \$2,600 is entered in Step 3.b. Because this employee is salaried, in Step 3.e., the borrower would multiply the excess reduction of \$2,600 by 8 (if it had instead selected a 24-week Covered Period, it would multiply by 24) and divide by 52 to arrive at a loan forgiveness reduction amount of \$400. The borrower would enter on the PPP Schedule A Worksheet, Table 1, \$400 as the salary/hourly wage reduction in the column above box 3 for that employee.

Example 2: A borrower received its PPP loan before June 5, 2020 and elected to use a 24-week Covered Period. An hourly employee’s hourly wage was reduced from \$20 per hour to \$15 per hour during the Covered Period. The employee worked 10 hours per week between January 1, 2020 and March 31, 2020. The borrower should refer to the “Salary/Hourly Wage Reduction” section under the “Instructions for PPP Schedule A Worksheet” in the PPP Loan Forgiveness Application Instructions. Because the employee’s hourly wage was reduced by exactly 25% (from \$20 per hour to \$15 per hour), the wage reduction does not reduce the eligible forgiveness amount. The amount on line 1.c would be 0.75 or more, so the borrower would enter \$0 in the Salary/Hourly Wage Reduction column for that employee on the PPP Schedule A Worksheet, Table 1.

If the same employee’s hourly wage had been reduced to \$14 per hour, the reduction would be more than 25%, and the borrower would proceed to Step 2. If that reduction

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<sup>6</sup> A “covered employee” is an individual who: (1) was employed by the borrower at any point during the Covered Period or Alternative Payroll Covered Period and whose principal place of residence is in the United States; and (2) received compensation from the borrower at an annualized rate less than or equal to \$100,000 for all pay periods in 2019 or was not employed by the borrower at any point in 2019.

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were not remedied as of December 31, 2020, the borrower would proceed to Step 3. This reduction in hourly wage in excess of 25% is \$1 per hour. In Step 3, the borrower would multiply \$1 per hour by 10 hours per week to determine the weekly salary reduction. The borrower would then multiply the weekly salary reduction by 24 (because the borrower is using a 24-week Covered Period). The borrower would enter \$240 in the Salary/Hourly Wage Reduction column for that employee on the PPP Schedule A Worksheet, Table 1. If the borrower applies for forgiveness before the end of the 24-week Covered Period, it must account for the salary reduction (the excess reduction over 25%, or \$240) for the full 24-week Covered Period.

Example 3: An employee earned a wage of \$20 per hour between January 1, 2020 and March 31, 2020 and worked 40 hours per week. During the Covered Period, the employee's wage was not changed, but his or her hours were reduced to 25 hours per week. In this case, the salary/hourly wage reduction for that employee is zero, because the hourly wage was unchanged. As a result, the borrower would enter \$0 in the Salary/Hourly Wage Reduction column for that employee on the PPP Schedule A Worksheet, Table 1. The employee's reduction in hours would be taken into account in the borrower's calculation of its FTE during the Covered Period, which is calculated separately and may result in a reduction of the borrower's loan forgiveness amount.

5. **Question:** For purposes of calculating the loan forgiveness reduction required for salary/hourly wage reductions in excess of 25% for certain employees, are all forms of compensation included or only salaries and wages?

**Answer:** For purposes of calculating reductions in the loan forgiveness amount, the borrower should only take into account decreases in salaries or wages.

