



## Table of Contents: Paycheck Protection Program (PPP) **Forgiveness Q&A** for Bankers

(This information is current as of **October 26, 2020**)

The focus of this Q&A is on PPP Loan Forgiveness and Forgiveness-Related Questions. Please see the original WBA PPP Q&A for Bankers resource for other PPP-related Q&A.

Items not identified as NEW are items transferred over from WBA's original PPP Q&A for Bankers Resource as this Q&A relates specifically to the PPP loan forgiveness phase.

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## Paycheck Protection Program (PPP) Loan Forgiveness Q&A for Bankers

### GENERAL LOAN FORGIVENESS Q&As

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

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 and should complete that application. However, if the PPP loan is \$50,000 or less, see next FAQ.

**NEW:** Is there a Loan Forgiveness Application for borrowers of loans of \$50,000 or less?

Yes, a borrower of a PPP loan of \$50,000 or less, other than any borrower that together with its affiliates received loans totaling \$2 million or greater, may use SBA Form 3508S (or lender's equivalent form) to apply for loan forgiveness.

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

Yes. All PPP lenders may accept scanned copies of signed loan forgiveness applications and documents containing the information and certifications required by the various SBA forgiveness application forms. 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.

**NEW:** The PPP loan forgiveness application forms (3508, 3508EZ, and 3508S) display an expiration date of 10/31/2020 in the upper-right corner. Is October 31, 2020 the deadline for borrowers to apply for forgiveness?

No. Borrowers may submit a loan forgiveness application any time before the maturity date of the loan, which is either two or five years from loan origination. However, if a borrower does not apply for loan forgiveness within 10 months after the last day of the borrower's loan forgiveness covered period, loan payments are no longer deferred, and the borrower must begin making payments on the loan.

Example: A borrower whose covered period ends on October 30, 2020 has until August 30,

2021 to apply for forgiveness before loan repayment begins. The expiration date in the upper-right corner of the posted PPP loan forgiveness application forms is displayed for purposes of SBA's compliance with the Paperwork Reduction Act and reflects the temporary expiration date for approved use of the forms. This date will be extended, and when approved, the same forms with the new expiration date will be posted.

**When must a borrower apply for loan forgiveness or start making payments on a loan?**

A borrower may submit a loan forgiveness application any time on or before the maturity date of the loan – including before the end of the covered period – if the borrower has used all of the loan proceeds for which the borrower is requesting forgiveness. If the borrower applies for forgiveness before the end of the covered period and has reduced any employee's salaries or wages in excess of 25 percent, the borrower must account for the excess salary reduction for the full 8-week or 24-week covered period, as described in Part III.5. If the borrower does not apply for loan forgiveness within 10 months after the last day of the covered period, or if SBA determines that the loan is not eligible for forgiveness (in whole or in part), the PPP loan is no longer deferred and the borrower must begin paying principal and interest. If this occurs, the lender must notify the borrower of the date the first payment is due. The lender must report that the loan is no longer deferred to SBA on the next monthly SBA Form 1502 report filed by the lender.

**NEW: 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?**

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 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.

**What must borrowers submit for forgiveness of their PPP loans?**

The loan forgiveness application form details the documentation requirements; specifically, documentation each borrower must submit with its Loan Forgiveness Application (SBA Form 3508, SBA Form 3508S, or SBA Form 3508EZ, as applicable, or lender equivalent), documentation each borrower is required to maintain and make available upon request, and documentation each borrower may voluntarily submit with its loan forgiveness application. Section 1106(e) of the Act requires borrowers to submit to their lenders an application, which includes certain documentation, and section 1106(f) provides that the borrower shall not receive forgiveness without submitting the required documentation.

**How much will be forgiven?**

The loan amounts will be forgiven as long as: 1) The loan proceeds are used to cover payroll costs, and most mortgage interest, rent, and utility costs (in existence as of 2/15/20) over the covered period after the loan is made; **and** 2) Employee and compensation levels are maintained. Payroll costs are capped at \$100,000 on an annualized basis for each employee.

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

Yes. The amount of loan forgiveness can be up to the full principal amount of the loan and any accrued interest. An eligible borrower will not be responsible for any loan payment if the borrower uses all of the loan proceeds for forgivable purposes as described below and employee and compensation levels are maintained or, if not, an applicable safe harbor applies. The actual amount of loan forgiveness will depend, in part, on the total amount of payroll costs, payments of interest on mortgage obligations incurred before February 15, 2020, rent payments on leases dated before February 15, 2020, and utility payments for service that began before February 15, 2020, over the loan forgiveness covered period.

**However**, to receive full loan forgiveness, a borrower must use at least 60% of the PPP loan for payroll costs, and not more than 40% of the loan forgiveness amount may be attributable to nonpayroll costs. For example, if a borrower uses 59% of its PPP loan for payroll costs, it will not receive the full amount of loan forgiveness it might otherwise be eligible to receive. Instead, the borrower will receive partial loan forgiveness, based on the requirement that 60% of the forgiveness amount must be attributable to payroll costs. For example, if a borrower receives a \$100,000 PPP loan, and during the covered period the borrower spends \$54,000 (or 54%) of its loan on payroll costs, then because the borrower used less than 60% of its loan on payroll costs, the maximum amount of loan forgiveness the borrower may receive is \$90,000 (with \$54,000 in payroll costs constituting 60% of the forgiveness amount and \$36,000 in nonpayroll costs constituting 40% of the forgiveness amount).

**LOAN FORGIVENESS PAYROLL COSTS Q&As**

**The amount of forgiveness of a PPP loan depends on the borrower's payroll costs over an eight- week period (now a 24-week period); when does that eight-week period begin?**

The eight-week (or 24 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. Consequently, if the borrower has no payroll costs during some or all of the 8-week (or 24 week) period that begins upon first disbursement of the loan, it will affect the forgiveness amount of the loan proceeds. Remember, the borrower is certifying in its application, among other things, that the funds will be used to retain workers and maintain payroll.

**When must payroll costs be incurred and/or paid to be eligible for forgiveness?**

In general, payroll costs paid or incurred during the covered period are eligible for forgiveness. For purposes of loan forgiveness, the covered period is the 24-week (or 8-week) period beginning on the date the lender disburses the PPP loan and ends no later than December 31,

2020. Alternatively, a borrower that received a PPP loan before June 5, 2020 may elect for the covered period to end eight weeks after the date of disbursement of the PPP loan. Borrowers may seek forgiveness for payroll costs for the applicable covered period beginning on either:

- i. the date of disbursement of the borrower's PPP loan proceeds from the Lender (i.e., the start of the covered period); or
- ii. the first day of the first payroll cycle in the covered period (the "alternative payroll covered period").

Payroll costs are considered paid on the day that paychecks are distributed or the borrower originates an ACH credit transaction. Payroll costs incurred during the borrower's last pay period of the covered period or the alternative payroll covered period are eligible for forgiveness if paid on or before the next regular payroll date; otherwise, payroll costs must be paid during the covered period (or alternative payroll covered period) to be eligible for forgiveness. Payroll costs are generally incurred on the day the employee's pay is earned (i.e., on the day the employee worked). For employees who are not performing work but are still on the borrower's payroll, payroll costs are incurred based on the schedule established by the borrower (typically, each day that the employee would have performed work).

The Administrator of the Small Business Administration (Administrator), in consultation with the Secretary of the Treasury (Secretary), recognizes that the covered period will not always align with a borrower's payroll cycle. For administrative convenience of the borrower, a borrower with a bi-weekly (or more frequent) payroll cycle may elect to use an alternative payroll covered period that begins on the first day of the first payroll cycle in the covered period and continues for either (a) eight weeks in the case of a borrower that received its PPP loan before June 5, 2020 and elects to use an eight-week covered period, or (b) 24 weeks, in the case of all other borrowers. If payroll costs are incurred during this alternative payroll covered period, but paid after the end of the alternative payroll covered period, such payroll costs will be eligible for forgiveness if they are paid no later than the first regular payroll date thereafter.

The Administrator, in consultation with the Secretary, determined that this alternative computational method for payroll costs is justified by considerations of administrative feasibility for borrowers, as it will reduce burdens on borrowers and their payroll agents while achieving the paycheck protection purposes manifest throughout the CARES Act, including section 1102. Because this alternative computational method is limited to payroll cycles that are bi-weekly or more frequent, this computational method will yield a calculation that the Administrator does not expect to materially differ from the actual covered period, while avoiding unnecessary administrative burdens and enhancing auditability.

Example: A borrower that received a PPP loan before June 5, 2020 and elects to use an eight-week covered period has a bi-weekly payroll schedule (with payments made every other week). The borrower's eight-week covered period begins on June 1 and ends on July 26. 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 for payroll cost purposes that starts

on June 7 and ends 55 days later (for a total of 56 days) on August 1. Payroll costs paid during this alternative payroll covered period are eligible for forgiveness. In addition, payroll costs incurred during this alternative payroll covered period are eligible for forgiveness if they are paid on or before the first regular payroll date occurring after August 1. Payroll costs that were both paid and incurred during the covered period (or alternative payroll covered period) may only be counted once.

**NEW: 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?**

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.

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

Yes. 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.

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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).

**NEW: Are borrowers required to calculate payroll costs for partial pay periods?**

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.

**Are salary, wages, or commission payments to furloughed employees; bonuses; or hazard pay during the covered period eligible for loan forgiveness?**

Yes. The CARES Act defines the term "payroll costs" broadly to include compensation in the form of salary, wages, commissions, or similar compensation. If a borrower pays furloughed employees their salary, wages, or commissions during the covered period, those payments are eligible for forgiveness as long as they do not exceed an annual salary of \$100,000, as prorated for the covered period.

**NEW: 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?**

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.

**NEW: 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?**

The gross amount should be used when calculating cash compensation.

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

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 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.

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

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.

**NEW: Are any individuals with an ownership stake in a PPP borrower exempt from application of the PPP owner-employee compensation rule when determining the amount of their compensation that is eligible for loan forgiveness?**

Yes, owner-employees with less than a 5 percent ownership stake in a C- or S-Corporation are not subject to the owner-employee compensation rule. The First Loan Forgiveness Rule, as revised by the Revisions to Loan Forgiveness and Loan Review Procedures Interim Final Rules, 85 FR 38304, 38307 (June 26, 2020), caps the amount of loan forgiveness for payroll compensation attributable to an owner-employee. There is no exception in the rule based on the owner-employee’s percentage of ownership. The Administrator, in consultation with the Secretary, has now determined that an owner employee in a C- or S-Corporation who has less than a 5 percent ownership stake will not be subject to the owner-employee compensation rule. This exemption is intended to cover owner-employees who have no meaningful ability to influence decisions over how loan proceeds are allocated.

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

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 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

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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).

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 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 REDUCTION Q&As**

**NEW: If borrower is permitted to use SBA Form 3508S (or lender's equivalent form) is borrower exempt from reductions to loan forgiveness amount?**

A borrower that uses new SBA Form 3508S (or lender's equivalent form) is exempt from any reductions in the borrower's loan forgiveness amount based on reductions in full-time equivalent (FTE) employees (section 1106(d)(2) of the CARES Act) or reductions in employee salary or wages (section 1106(d)(3) of the CARES Act) that would otherwise apply. As such, Part III.5 of the First Loan Forgiveness Rule, as revised by Revisions to Loan Forgiveness and Loan Review Procedures Interim Final Rules, does not apply to borrowers of loans of \$50,000 or less that use SBA Form 3508S (or lender's equivalent form) to apply for loan forgiveness.

The Administrator of the Small Business Administration (Administrator) and the Secretary of the Treasury (Secretary) determined that these exemptions are an appropriate exercise of their joint rulemaking authority to grant de minimis exemptions under section 1106(d)(6) of the CARES Act. The Administrator and the Secretary believe that the additional exemptions set forth above are consistent with the purposes of the CARES Act, including to provide much-needed financial assistance to a broad range of small businesses, and provide borrowers appropriate flexibility in the current economic climate.

**What effect does a reduction in a borrower's number of full-time equivalent (FTE) employees have on the loan forgiveness amount?**

In general, a reduction in FTE employees during the covered period or the alternative payroll

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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.

covered period reduces the loan forgiveness amount by the same percentage as the percentage reduction in FTE employees. The borrower must first select a reference period: (i) February 15, 2019 through June 30, 2019; (ii) January 1, 2020 through February 29, 2020; or (iii) in the case of a seasonal employer, either of the two preceding methods or a consecutive 12-week period between May 1, 2019 and September 15, 2019.<sup>5</sup> If the average number of FTE employees during the covered period or the alternative payroll covered period is less than during the reference period, the total eligible expenses available for forgiveness is reduced proportionally by the percentage reduction in FTE employees. Example: if a borrower had 10.0 FTE employees during the reference period and this declined to 8.0 FTE employees during the covered period, the percentage of FTE employees declined by 20 percent and thus only 80 percent of otherwise eligible expenses are available for forgiveness.

This formula implements section 1106(d)(2) of the CARES Act, which expressly requires that the loan forgiveness amount be reduced by the amount resulting from multiplying the amount that the borrower would otherwise receive by the quotient of the average FTE employees in the relevant reference period divided by the average FTE employees in the covered period.

Borrowers are exempted from the loan forgiveness reduction arising from a proportional reduction in FTE employees during the covered period 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.<sup>6</sup> The documents that borrowers should maintain to show compliance with this exemption include, but are not limited to, 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. Borrowers are also exempted from the loan forgiveness reduction arising from a reduction in the number of FTE employees during the covered period if the borrower is able to document in good faith an inability to return to the same level of business activity as the borrower was operating at before February 15, 2020, due to compliance with requirements established or guidance issued between March 1, 2020 and December 31, 2020 by the Secretary of Health and Human Services, the Director of the Centers for Disease Control and Prevention (CDC), or the Occupational Safety and Health Administration related to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID-19 (COVID Requirements or Guidance). Specifically, borrowers that can certify that they have documented in good faith that their reduction in business activity during the covered period stems directly or indirectly from compliance with such COVID Requirements or Guidance are exempt from any reduction in their forgiveness amount

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<sup>5</sup> This decision to permit seasonal employers to use, as a reference period, any consecutive 12-week period between May 1, 2019 and September 15, 2019 is an exercise of the Secretary's rulemaking authority under section 1109 of the CARES Act. This reference period is consistent with the interim final rule on seasonal employers issued by Treasury. See 85 FR 23917 (April 30, 2020).

<sup>6</sup> Further information regarding how borrowers will report information concerning rejected rehire offers to state unemployment insurance offices will be provided on SBA's website.

stemming from a reduction in FTE employees during the covered period. Such documentation must include copies of applicable COVID Requirements or Guidance for each business location and relevant borrower financial records.

The Administrator, in consultation with the Secretary, is interpreting the above statutory exemption to include both direct and indirect compliance with COVID Requirements or Guidance, because a significant amount of the reduction in business activity stemming from COVID Requirements or Guidance is the result of state and local government shutdown orders that are based in part on guidance from the three federal agencies.

Example: A PPP borrower is in the business of selling beauty products both online and at its physical store. During the covered period, the local government where the borrower's store is located orders all non-essential businesses, including the borrower's business, to shut down their stores, based in part on COVID-19 guidance issued by the CDC in March 2020. Because the borrower's business activity during the covered period was reduced compared to its activity before February 15, 2020 due to compliance with COVID Requirements or Guidance, the borrower satisfies the Flexibility Act's exemption and will not have its forgiveness amount reduced because of a reduction in FTEs during the covered period, if the borrower in good faith maintains records regarding the reduction in business activity and the local government's shutdown orders that reference a COVID Requirement or Guidance as described above.

#### **What does "full-time equivalent employee" mean?**

Full-time equivalent employee means an employee who works 40 hours or more, on average, each week. The hours of employees who work less than 40 hours are calculated as proportions of a single full-time equivalent employee and aggregated.

The CARES Act does not define the term "full-time equivalent employee," and the Administrator, in consultation with the Secretary, has determined that full-time equivalent is best understood to mean 40 hours or more of work each week.

#### **How should a borrower calculate its number of full-time equivalent (FTE) employees?**

Borrowers seeking forgiveness must document their average number of FTE employees during the covered period (or the alternative payroll covered period) and their selected reference period. For purposes of this calculation, borrowers must divide the average number of hours paid for each employee per week by 40, capping this quotient at 1.0. For example, an employee who was paid 48 hours per week during the covered period would be considered to be an FTE employee of 1.0.

For employees who were paid for less than 40 hours per week, borrowers may choose to calculate the full-time equivalency in one of two ways. First, the borrower may calculate the average number of hours a part-time employee was paid per week during the covered period. For example, if an employee was paid for 30 hours per week on average during the covered period, the employee could be considered to be an FTE employee of 0.75. Similarly, if an employee was paid for ten hours per week on average during the covered period, the employee could be

considered to be an FTE employee of 0.25. Second, for administrative convenience, borrowers may elect to use a full-time equivalency of 0.5 for each part-time employee. The Administrator recognizes that not all borrowers maintain hours-worked data, and has decided to afford such borrowers this flexibility in calculating the full-time equivalency of their part-time employees.

Borrowers may select only one of these two methods, and must apply that method consistently to all of their part-time employees for the covered period or the alternative payroll covered period and the selected reference period. In either case, the borrower shall provide the aggregate total of FTE employees for both the selected reference period and the covered period or the alternative payroll covered period, by adding together all of the employee-level FTE employee calculations. The borrower must then divide the average FTE employees during the covered period or the alternative payroll covered period by the average FTE employees during the selected reference period, resulting in the reduction quotient.

The Administrator, in consultation with the Secretary, determined that because the Act does not define the term FTE employee, this approach to measurement of FTE is a reasonable and appropriate exercise of the Administrator's rulemaking authority, as it balances the need for a reasonable measurement of FTE employee headcount with the need to limit borrower compliance burdens and ensure administrative feasibility.

**NEW:** 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?

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.

**What effect does a borrower's reduction in employees' salary or wages have on the loan forgiveness amount?**

Under section 1106(d)(3) of the CARES Act, a reduction in an employee's salary or wages in excess of 25 percent will generally result in a reduction in the loan forgiveness amount, unless an exception applies. Specifically, for each new employee in 2020 and each existing employee who was not paid more than the annualized equivalent of \$100,000 in any pay period in 2019, the borrower must reduce the total forgiveness amount by the total dollar amount of the salary or wage reductions that are in excess of 25 percent of base salary or wages between January 1, 2020 and March 31, 2020 (the reference period), subject to exceptions for borrowers who restore reduced wages or salaries (see g. below). This reduction calculation is performed on a per employee basis, not in the aggregate.

Example: A borrower is using a 24-week covered period. This borrower reduced a full-time employee's weekly salary from \$1,000 per week during the reference period to \$700 per week during the covered period. The employee continued to work on a full-time basis during the covered period with an FTE of 1.0. In this case, the first \$250 (25 percent of \$1,000) is exempted from the loan forgiveness reduction. The borrower seeking forgiveness would list \$1,200 as the

salary/hourly wage reduction for that employee (the extra \$50 weekly reduction multiplied by 24 weeks). If the borrower applies for forgiveness before the end of the covered period, it must account for the salary reduction for the full 24-week covered period (totaling \$1,200).

Example: A borrower that received a PPP loan before June 5, 2020 has elected to use an eight-week covered period. This borrower reduced a full-time employee's weekly salary from \$1,000 per week during the reference period to \$700 per week during the covered period. The employee continued to work on a full-time basis during the covered period, with an FTE of 1.0. In this case, the first \$250 (25 percent of \$1,000) is exempted from the loan forgiveness reduction. The borrower seeking forgiveness would list \$400 as the salary/hourly wage reduction for that employee (the extra \$50 weekly reduction multiplied by eight weeks).

The provision implements section 1106(d)(3) of the CARES Act, which provides that "the amount of loan forgiveness shall be reduced by the amount of any reduction in total salary or wages of any employee [who did not receive, during any single pay period during 2019, wages or salary at an annualized rate of pay in an amount more than \$100,000] during the covered period that is in excess of 25 percent of the total salary or wages of the employee during the most recent full quarter during which the employee was employed before the covered period."

**How should borrowers seeking loan forgiveness account for the reduction based on a reduction in the number of employees (Section 1106(d)(2)) relative to the reduction relating to salary and wages (Section 1106(d)(3))?**

To ensure that borrowers are not doubly penalized, the salary/wage reduction applies only to the portion of the decline in employee salary and wages that is not attributable to the FTE reduction.

The Act does not address the intersection between the FTE employee reduction provision in section 1106(d)(2) and the salary/wage reduction provision in section 1106(d)(3). To help ensure uniformity across all borrowers in applying the FTE reduction provision and the salary/wage reduction provision, the Administrator, in consultation with the Secretary, has determined that the salary/wage reduction applies only to the portion of the decline in employee salary and wages that is not attributable to the FTE reduction. This approach will help ensure that borrowers are not doubly penalized for reductions.

Example: An hourly wage employee had been working 40 hours per week during the borrower selected reference period (FTE employee of 1.0) and the borrower reduced the employee's hours to 20 hours per week during the covered period (FTE employee of 0.5). There was no change to the employee's hourly wage during the covered period. Because the hourly wage did not change, the reduction in the employee's total wages is entirely attributable to the FTE employee reduction and the borrower is not required to conduct a salary/wage reduction calculation for that employee.

The Administrator considered applying the salary/wage reduction provision in addition to the FTE reduction in situations similar to the example above because section 1106(d)(3) refers to reductions in "total salary or wages" in excess of 25 percent. However, the Administrator

determined that, based on the structure of section 1106(d)(2) and section 1106(d)(3), Congress intended to distinguish between an FTE reduction on the one hand and a reduction in hourly wages or salary on the other hand. This interpretation harmonizes the two loan forgiveness reduction provisions in a logical manner consistent with the statute.

**Will a borrower's loan forgiveness amount be reduced if the borrower reduced the hours of an employee, then offered to restore the reduction in hours, but the employee declined the offer?**

No. In calculating the loan forgiveness amount, a borrower may exclude any reduction in full-time equivalent employee headcount that is attributable to an individual employee if:

- i. the borrower made a good faith, written offer to restore the reduced hours of such employee;
- ii. the offer was for the same salary or wages and same number of hours as earned by such employee in the last pay period prior to the reduction in hours;
- iii. the offer was rejected by such employee; and
- iv. the borrower has maintained records documenting the offer and its rejection.

**NEW: 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?**

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.

**If a borrower restores reductions made to employee salaries and wages or FTE employees by not later than December 31, 2020, can the borrower avoid a reduction in its loan forgiveness amount?**

Yes. Section 1106(d)(5) of the CARES Act provides that if certain employee salaries and wages were reduced between February 15, 2020 and April 26, 2020 (the safe harbor period) but the borrower eliminates those reductions by December 31, 2020 or earlier, the borrower is exempt from any reduction in loan forgiveness amount that would otherwise be required due to reductions in salaries and wages under section 1106(d)(3) of the CARES Act. Similarly, if a borrower eliminates any reductions in FTE employees occurring during the safe harbor period by December 31, 2020 or earlier, the borrower is exempt from any reduction in loan forgiveness amount that would otherwise be required due to reductions in FTE employees.<sup>7</sup>

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<sup>7</sup> In light of the flexibility the Act provides to borrowers with respect to their selection of the reference time period

This provision implements section 1106(d)(5) of the CARES Act, which gives borrowers an opportunity to cure reductions in FTEs, salary/wage reductions in excess of 25 percent, or both, using the applicable methodology set forth in section 1106(d)(5). The Act provides that the reduction in FTEs or the reduction in salary/hourly wages must be eliminated “not later than December 31, 2020.” This does not change or affect the requirement that at least 60 percent of the loan forgiveness amount must be attributable to payroll costs.

**Will a borrower’s loan forgiveness amount be reduced if an employee is fired for cause, voluntarily resigns, or voluntarily requests a schedule reduction?**

No. When an employee of the borrower is fired for cause, voluntarily resigns, or voluntarily requests a reduced schedule during the covered period or the alternative payroll covered period (FTE reduction event), the borrower may count such employee at the same full-time equivalency level before the FTE reduction event when calculating the section 1106(d)(2) FTE employee reduction penalty. The Administrator and the Secretary have decided to exempt such employees from the calculation of the FTE reduction penalty.

Section 1106 is silent concerning how to account for employees who are fired for cause, voluntarily resign, or voluntarily request a reduced schedule. The Administrator and the Secretary have determined that such an exemption is de minimis, because a limited number of borrowers will face an FTE reduction event during the covered period or the alternative payroll covered period. Further, borrowers should not be penalized for changes in employee headcount that are the result of employee actions and requests. Borrowers that avail themselves of this de minimis exemption shall maintain records demonstrating that each such employee was fired for cause, voluntarily resigned, or voluntarily requested a schedule reduction. The borrower shall provide such documentation upon request.

**NEW: 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)?**

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.

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

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

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for any potential reduction in loan forgiveness, and the statutory authority for SBA and the Department of the Treasury to grant de minimis exemptions from this requirement, if the borrower meets the requirements for the FTE reduction safe harbor, it will not be subject to any loan forgiveness reduction based on a reduction in FTE employees.

wage of a covered employee<sup>8</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 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

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<sup>8</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.

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.

**NEW:** 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?

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

### **LOAN FORGIVENESS NONPAYROLL COSTS Q&As**

**When must nonpayroll costs be incurred and/or paid to be eligible for forgiveness?**

A nonpayroll cost is eligible for forgiveness if it was:

- i. paid during the covered period; or
- ii. 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 that received a loan before June 5, 2020 uses a 24-week covered period that begins on June 1 and ends on November 15. The borrower pays its electricity bills for June through October during the covered period and pays its November electricity bill on December 10, which is the next regular billing date. The borrower may seek loan forgiveness for its June through October electricity bills, because they were paid during the covered period. In addition, the borrower may seek loan forgiveness for the portion of its November electricity bill through November 15 (the end of the covered period), because it was incurred during the covered period and paid on the next regular billing date. The Administrator believes that this simplified approach to calculation of forgivable nonpayroll costs is also supported by considerations of administrative convenience for borrowers, and the Administrator notes that the 40 percent cap on nonpayroll costs as a portion of the total loan forgiveness will avoid excessive inclusion of nonpayroll costs.

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

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.

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

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).

**NEW: Are amounts attributable to the business operation of a tenant or sub-tenant of the PPP borrower or, in the context of home-based businesses, household expenses, eligible for forgiveness?**

No, the amount of loan forgiveness requested for nonpayroll costs may not include any amount attributable to the business operation of a tenant or sub-tenant of the PPP borrower or, for home-based businesses, household expenses. The examples below illustrate this rule.

Example 1: A borrower rents an office building for \$10,000 per month and subleases out a portion of the space to other businesses for \$2,500 per month. Only \$7,500 per month is eligible for loan forgiveness.

Example 2: A borrower has a mortgage on an office building it operates out of, and it leases out a portion of the space to other businesses. The portion of mortgage interest that is eligible for loan forgiveness is limited to the percent share of the fair market value of the space that is not leased out to other businesses. As an illustration, if the leased space represents 25% of the fair market value of the office building, then the borrower may only claim forgiveness on 75% of the mortgage interest.

Example 3: A borrower shares a rented space with another business. When determining the amount that is eligible for loan forgiveness, the borrower must prorate rent and utility payments in the same manner as on the borrower's 2019 tax filings, or if a new business, the borrower's expected 2020 tax filings.

Example 4: A borrower works out of his or her home. When determining the amount of nonpayroll costs that are eligible for loan forgiveness, the borrower may include only the share of covered expenses that were deductible on the borrower’s 2019 tax filings, or if a new business, the borrower’s expected 2020 tax filings.

**NEW: Are rent payments to a related party eligible for loan forgiveness?**

Yes, as long as (1) the amount of loan forgiveness requested for rent or lease payments to a related party is no more than the amount of mortgage interest owed on the property during the Covered Period that is attributable to the space being rented by the business, and (2) the lease and the mortgage were entered into prior to February 15, 2020.<sup>9</sup> Any ownership in common between the business and the property owner is a related party for these purposes. The borrower must provide its lender with mortgage interest documentation to substantiate these payments. While rent or lease payments to a related party may be eligible for forgiveness, mortgage interest payments to a related party are not eligible for forgiveness. PPP loans are intended to help businesses cover certain nonpayroll obligations that are owed to third parties, not payments to a business’s owner that occur because of how the business is structured. This will maintain equitable treatment between a business owner that holds property in a separate entity and one that holds the property in the same entity as its business operations.

**What “utility costs” can be forgiven?**

Covered utility payments include payments for a service for the distribution of electricity, gas, water, transportation, telephone, or internet access for which service began before February 15, 2020.

**NEW: 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?**

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.

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

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.

**Are advance payments of interest on mortgage obligations eligible for loan forgiveness?**

No. Advance payments of interest on a covered mortgage obligation are not eligible for loan

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<sup>9</sup> In this context, the related party itself would not also be eligible to request forgiveness for this amount.

forgiveness because the CARES Act's loan forgiveness provisions regarding mortgage obligations specifically exclude "prepayments." Principal on mortgage obligations is not eligible for forgiveness under any circumstances.

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

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.

**NEW: Is interest on unsecured credit eligible for loan forgiveness?**

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.

**NEW: 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?**

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.

### **ECONOMIC INJURY DISASTER LOAN (EIDL) Q&As**

**NEW: SBA will deduct the amount of any Economic Injury Disaster Loan (EIDL) advance received by a PPP borrower from the forgiveness amount remitted to the lender. How will a lender know the amount of the EIDL advance that will be automatically deducted by SBA?**

If a borrower received an EIDL advance, SBA is required to reduce the borrower's loan forgiveness amount by the amount of the EIDL advance. SBA will deduct the amount of the EIDL advance from the forgiveness amount remitted by SBA to the lender. The lender will be able to confirm the amount of the EIDL advance that will be automatically deducted by SBA from the forgiveness payment by reviewing the borrower's EIDL advance information in the

PPP Forgiveness Platform.

**NEW: How should a lender handle any remaining balance due on a PPP loan after SBA remits the forgiveness amount to the lender?**

If a PPP loan is not forgiven in full (including if there has been a reduction in the forgiveness amount for an EIDL advance), any remaining balance due on the PPP loan must be repaid by the borrower. The lender is responsible for notifying the borrower of the loan forgiveness amount remitted by SBA and the date on which the borrower's first loan payment is due. The lender must continue to service the loan. The borrower must repay the remaining loan balance by the maturity date of the PPP loan (either two or five years). If a borrower is determined to have been ineligible for a PPP loan for any reason, SBA may seek repayment of the outstanding PPP loan balance or pursue other available remedies.

**NEW: What should a lender do if a borrower received an EIDL advance in excess of the amount of its PPP loan?**

A borrower that received an EIDL advance in excess of the amount of its PPP loan will not receive any forgiveness on the PPP loan, because the amount of an EIDL advance is deducted from the PPP loan forgiveness amount. The lender is responsible for notifying the borrower of the date on which the borrower's first loan payment is due. The lender must continue to service the loan. The borrower must repay the remaining loan balance by the maturity date of the PPP loan (either two or five years). If a borrower is determined to have been ineligible for a PPP loan for any reason, SBA may seek repayment of the outstanding PPP loan balance or pursue other available remedies.

**If a borrower had received an EIDL loan, should the lender submit the entire PPP loan amount to SBA for a forgiveness determination or first subtract the EIDL loan amount from the PPP loan amount and submit the lower PPP loan amount?**

Lenders should not subtract any EIDL grant or loan amount from the PPP loan forgiveness amount. Lenders should submit the entire PPP loan amount for forgiveness to SBA. SBA will make any adjustments based on whether a borrower had an EIDL grant or loan when responding back to the lender with a final decision.

**If a borrower had received both an EIDL loan and PPP loan, and SBA will not repay the lender for the amount of the PPP loan equal to the EIDL loan, will the borrower have to pay accrued interest on that amount of PPP loan proceeds since origination of the PPP loan?**

Yes, in this scenario, the borrower will be responsible to repay interest on portion of the PPP loan that is not repaid due to the existence of the EIDL loan going back to loan origination.

**FORGIVENESS PROCESS-RELATED Q&As**

**What is the general process to obtain loan forgiveness?**

To receive loan forgiveness, a borrower must complete and submit the Loan Forgiveness Application (SBA Form 3508, 3508EZ, 3508S or lender equivalent) to its lender (or the lender servicing its loan). As a general matter, the lender will review the application and make a

decision regarding loan forgiveness. The lender has 60 days from receipt of a complete application to issue a decision to SBA. If the lender determines that the borrower is entitled to forgiveness of some or all of the amount applied for under the statute and applicable regulations, the lender must request payment from SBA at the time the lender issues its decision to SBA. SBA will, subject to any SBA review of the loan or loan application, remit the appropriate forgiveness amount to the lender, plus any interest accrued through the date of payment, not later than 90 days after the lender issues its decision to SBA. If applicable, SBA will deduct EIDL Advance Amounts from the forgiveness amount remitted to the Lender as required by section 1110(e)(6) of the CARES Act. If SBA determines in the course of its review that the borrower was ineligible for the PPP loan based on the provisions of the CARES Act, SBA rules or guidance available at the time of the borrower's loan application, or the terms of the borrower's PPP loan application (for example, because the borrower lacked an adequate basis for the certifications that it made in its PPP loan application), the loan will not be eligible for loan forgiveness. The lender is responsible for notifying the borrower of the forgiveness amount. If only a portion of the loan is forgiven, or if the forgiveness request is denied, any remaining balance due on the loan must be repaid by the borrower on or before the maturity date of the loan. 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. If SBA determines that the full amount of the loan is eligible for forgiveness and remits the full amount of the loan to the lender, the lender must mark the PPP loan note as "paid in full" and report the status of the loan as "paid in full" on the next monthly 1502 report filed by the lender.

The general loan forgiveness process described above applies only to loan forgiveness applications that are not reviewed by SBA prior to the lender's decision on the forgiveness application. A separate interim final rule on SBA Loan Review Procedures and Related Borrower and Lender Responsibilities describes SBA's procedures for reviewing PPP loan applications and loan forgiveness applications.

**NEW: What should a lender do if a borrower submits documentation of eligible costs that exceed a borrower's PPP loan amount?**

The amount of loan forgiveness that a borrower may receive cannot exceed the principal amount of the PPP loan. Whether a borrower submits SBA Form 3508, 3508EZ, 3508S, or lender's equivalent form, a lender should confirm receipt of the documentation the borrower is required to submit to aid in verifying payroll and nonpayroll costs, and, if applicable (for SBA Form 3508, 3508EZ, or lender's equivalent form), confirm the borrower's calculations on the borrower's Loan Forgiveness Application, up to the amount required to reach the requested forgiveness amount.

**Will SBA review individual PPP loans?**

Yes. SBA may review any PPP loan at any time, at SBA's discretion. For example, SBA may review a loan if the loan documentation submitted to SBA by the lender or any other information

indicates that the borrower may be ineligible for the PPP loan, or may be ineligible to receive the loan forgiveness amount claimed by the borrower. 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. 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).

### **What borrower representations and statements will SBA review?**

The Administrator is authorized to review the following:

Borrower Eligibility: The Administrator may review whether a borrower is eligible for the PPP loan based on the provisions of the CARES Act, the rules and guidance available at the time of the borrower's PPP loan application, and the terms of the borrower's loan application. See FAQ 17 (posted April 6, 2020; <https://www.sba.gov/document/support--faq-lenders-borrowers>). These include, but are not limited to, SBA's regulations under 13 CFR 120.110 (as modified and clarified by the PPP Interim Final Rules) and 13 CFR 121.301(f) and the information, certifications, and representations on the Borrower Application Form (SBA Form 2483 or lender's equivalent form) and Loan Forgiveness Application Form (SBA Form 3508, 3508EZ or lender's equivalent form).

Loan Amounts and Use of Proceeds: The Administrator may review whether a borrower calculated the loan amount correctly and used loan proceeds for the allowable uses specified in the CARES Act.

Loan Forgiveness Amounts: The Administrator may review whether a borrower is entitled to loan forgiveness in the amount claimed on the borrower's Loan Forgiveness Application (SBA Form 3508, 3508EZ or lender's equivalent form).

### **Will borrower have the opportunity to respond to SBA's questions in a review?**

Yes. If loan documentation submitted to SBA by the lender or any other information indicates that the borrower may be ineligible for a PPP loan or may be ineligible to receive the loan amount or loan forgiveness amount claimed by the borrower, SBA will require the lender to contact the borrower in writing to request additional information. SBA may also request information directly from the borrower. The lender will provide any additional information provided to it by the borrower to SBA. SBA will consider all information provided by the borrower in response to such an inquiry.

Failure to respond to SBA's inquiry may result in a determination that the borrower was ineligible for a PPP loan or ineligible to receive the loan amount or loan forgiveness amount claimed by the borrower.

### **If SBA determines that a borrower is ineligible for a PPP loan, can the loan be forgiven?**

No. If SBA determines that a borrower is ineligible for the PPP loan, SBA will direct the lender to deny the loan forgiveness application. Further, if SBA determines that the borrower is ineligible for the loan amount or loan forgiveness amount claimed by the borrower, SBA will direct the lender to deny the loan forgiveness application in whole or in part, as appropriate. SBA may also seek repayment of the outstanding PPP loan balance or pursue other available remedies.

Section 1106(b) of the CARES Act provides for forgiveness of a PPP loan only if the borrower is an “eligible recipient.” The Administrator has determined that to be an eligible recipient that is entitled to forgiveness under section 1106(b), the borrower must be an “eligible recipient” under 15 U.S.C. § 636(a)(36)(A)(iv) and rules and guidance available at the time of the borrower’s loan application. This requirement promotes the public interest, aligns SBA’s functions with other governmental policies, and appropriately carries out the CARES Act’s PPP provisions, including by preventing evasion of the requirements for PPP loan eligibility and ensuring program integrity with respect to this emergency financial assistance program. It is also consistent with the CARES Act’s nonrecourse provision, 15 U.S.C. § 636(a)(36)(F)(v), which limits SBA’s recourse against individual shareholders, members, or partners of a PPP borrower for nonpayment of a PPP loan only if the borrower is an eligible recipient of the loan. Accordingly, the PPP Loan Forgiveness Application (SBA Form 3508, 3508EZ or lender’s equivalent form) notes that SBA may direct a lender to disapprove a borrower’s loan forgiveness application if SBA determines that the borrower does not qualify as an eligible recipient for the PPP loan.

**NEW: What is the new loan forgiveness process for lenders working with borrowers who have submitted new SBA Form 3508S for loan forgiveness?**

When a borrower submits SBA Form 3508S or lender’s equivalent form, the lender shall:

- i. Confirm receipt of the borrower certifications contained in the SBA Form 3508S or lender’s equivalent form.
- ii. Confirm receipt of the documentation the borrower must submit to aid in verifying payroll and nonpayroll costs, as specified in the instructions to the SBA Form 3508S or lender’s equivalent form.

Providing an accurate calculation of the loan forgiveness amount is the responsibility of the borrower, and the borrower attests to the accuracy of its reported information and calculations on the Loan Forgiveness Application. The borrower shall not receive forgiveness without submitting all required documentation to the lender.

As the First Interim Final Rule, 85 FR 20811, 20815-20816 (April 15, 2020), indicates, lenders may rely on borrower representations. As stated in paragraph III.3.c of the First Interim Final Rule, the lender does not need to independently verify the borrower’s reported information if the borrower submits documentation supporting its request for loan forgiveness and attests that it accurately verified the payments for eligible costs.

**What should a lender review?**

When a borrower submits SBA Form 3508 or lender's equivalent form, the lender shall:

- i. Confirm receipt of the borrower certifications contained in the SBA Form 3508 or lender's equivalent form.
- ii. Confirm receipt of the documentation the borrower must submit to aid in verifying payroll and nonpayroll costs, as specified in the instructions to the SBA Form 3508 or lender's equivalent form.
- iii. Confirm the borrower's calculations on the borrower's SBA Form 3508 or lender's equivalent form, including the dollar amount of the (A) Cash Compensation, Non-Cash Compensation, and Compensation to Owners claimed on Lines 1, 4, 6, 7, 8, and 9 on PPP Schedule A and (B) Business Mortgage Interest Payments, Business Rent or Lease Payments, and Business Utility Payments claimed on Lines 2, 3, and 4 on the PPP Loan Forgiveness Calculation Form, by reviewing the documentation submitted with the SBA Form 3508 or lender's equivalent form.
- iv. Confirm that the borrower made the calculation on Line 10 of the SBA Form 3508 or lender's equivalent form correctly, by dividing the borrower's Eligible Payroll Costs claimed on Line 1 by 0.60.

When a borrower submits SBA Form 3508EZ or lender's equivalent form, the lender shall:

- i. Confirm receipt of the borrower certifications contained in the SBA Form 3508EZ or lender's equivalent form.
- ii. Confirm receipt of the documentation the borrower must submit to aid in verifying payroll and nonpayroll costs, as specified in the instructions to the SBA Form 3508EZ or lender's equivalent form.
- iii. Confirm the borrower's calculations on the borrower's SBA Form 3508EZ or lender's equivalent form, including the dollar amount of the Payroll Costs, Business Mortgage Interest Payments, Business Rent or Lease Payments, and Business Utility Payments claimed on Lines 1, 2, 3, and 4 of the SBA Form 3508 EZ or lender's equivalent form, by reviewing the documentation submitted with the SBA Form 3508EZ or lender's equivalent form.
- iv. Confirm that the borrower made the calculation on Line 7 of the SBA Form 3508EZ or lender's equivalent form correctly, by dividing the borrower's Eligible Payroll Costs claimed on Line 1 by 0.60.

Providing an accurate calculation of the loan forgiveness amount is the responsibility of the borrower, and the borrower attests to the accuracy of its reported information and calculations on the Loan Forgiveness Application Form. Lenders are expected to perform a good-faith review, in a reasonable time, of the borrower's calculations and supporting documents concerning amounts eligible for loan forgiveness. For example, minimal review of calculations based on a payroll report by a recognized third-party payroll processor would be reasonable. By contrast, if payroll costs are not documented with such recognized sources, more extensive review of calculations and data would be appropriate. The borrower shall not receive forgiveness without submitting all required documentation to the lender.

As the First Interim Final Rule (85 FR 20811, 20815-20816 (April 15, 2020)) indicates, lenders may rely on borrower representations. 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. As stated in paragraph III.3.c of the First Interim Final Rule, the lender does not need to independently verify the borrower's reported information if the borrower submits documentation supporting its request for loan forgiveness and attests that it accurately verified the payments for eligible costs.

**What is the timeline for the lender's decision on a loan forgiveness application?**

The lender must issue a decision to SBA on a loan forgiveness application not later than 60 days after receipt of a complete loan forgiveness application from the borrower. That decision may take the form of an approval (in whole or in part); denial; or (if directed by SBA) a denial without prejudice due to a pending SBA review of the loan for which forgiveness is sought. In the case of a denial without prejudice, the borrower may subsequently request that the lender reconsider its application for loan forgiveness, unless SBA has determined that the borrower is ineligible for a PPP loan. The Administrator has determined that this process appropriately balances the need for efficient processing of loan forgiveness applications with considerations of program integrity, including affording SBA the opportunity to ensure that borrower representations and certifications (including concerning eligibility for a PPP loan) were accurate.

When the lender issues its decision to SBA approving the application (in whole or in part), it must include the following:

For applications submitted using the SBA Form 3508 or lender's equivalent form:

- a. the PPP Loan Forgiveness Calculation Form;
- b. PPP Schedule A; and
- c. the (optional) PPP Borrower Demographic Information Form (if submitted to the lender).

For applications submitted using the SBA Form 3508EZ or lender's equivalent form:

- a. The SBA Form 3508EZ or lender's equivalent form; and
- b. The (optional) Borrower Demographic Information Form (if submitted to the lender).

The lender must confirm that the information provided by the lender to SBA accurately reflects lender's records for the loan, and that the lender has made its decision in accordance with the requirements set forth in 2.a. If the lender determines that the borrower is entitled to forgiveness of some or all of the amount applied for under the statute and applicable regulations, the lender must request payment from SBA at the time the lender issues its decision to SBA. SBA will, subject to any SBA review of the loan or loan application, remit the appropriate forgiveness amount to the lender, plus any interest accrued through the date of payment, not later than 90 days after the lender issues its decision to SBA. If applicable, SBA will deduct EIDL Advance Amounts from the forgiveness amount remitted to the Lender as required by section 1110(e)(6) of the CARES Act. 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.

When the lender issues its decision to SBA determining that the borrower is not entitled to forgiveness in any amount, the lender must provide SBA with the reason for its denial, together with the following:

For applications submitted using the SBA Form 3508 or lender's equivalent form:

- a. the PPP Loan Forgiveness Calculation Form;
- b. PPP Schedule A; and
- c. the (optional) PPP Borrower Demographic Information Form (if submitted to the lender).

For applications submitted using the SBA Form 3508EZ or lender's equivalent form:

- a. the SBA Form 3508EZ or lender's equivalent form; and
- b. the (optional) Borrower Demographic Information Form (if submitted to the lender).

The lender must confirm that the information provided by the lender to SBA accurately reflects lender's records for the loan, and that the lender has made its decision in accordance with the requirements set forth in 2.a. The lender must also notify the borrower in writing that the lender has issued a decision to SBA denying the loan forgiveness application. SBA reserves the right to review the lender's decision in its sole discretion. Within 30 days of notice from the lender, a borrower may notify the lender that it is requesting that SBA review the lender's decision by reviewing the loan in accordance with 2.c. below. Within 5 days of receipt, the lender must notify SBA of the borrower's request for review. SBA will notify the lender if SBA declines a request for review. If the borrower does not request SBA review or SBA declines the request for review, the lender is responsible for notifying the borrower of the date on which the borrower's first payment is due. If SBA accepts a borrower's request for review, SBA will notify the borrower and the lender of the results of the review. If SBA denies forgiveness in whole or in part, the lender is responsible for notifying the borrower of the date on which the borrower's first payment is due.

Enabling SBA to use the statutory 90-day period to review the PPP loan and forgiveness documentation is an appropriate procedural protection to prevent fraud or misuse of PPP funds, ensure that recipients of PPP loans are within the scope of entities that the CARES Act is intended to assist, and confirm compliance with the PPP requirements set forth in the statute, rules, and guidance. This protection is also important in light of the large number and diverse types of PPP lenders, many of which were not previously SBA participating lenders and which were approved rapidly in order to enable financial assistance to be provided as rapidly as feasible to millions of small businesses. SBA will use the 90-day period to help ensure that applicable legal requirements have been satisfied.

#### **What should a lender do if it receives notice that SBA is reviewing a loan?**

SBA may begin a review of any PPP loan of any size at any time in SBA's discretion. If SBA undertakes such a review, SBA will notify the lender in writing and the lender must notify

the borrower in writing within five business days of receipt.

Within five business days of receipt of such notice, the lender shall transmit to SBA electronic copies of the following:

- i. The Borrower Application Form (SBA Form 2483 or lender's equivalent form) and all supporting documentation provided by the borrower.
- ii. The Loan Forgiveness Application (SBA Form 3508, 3508EZ or lender's equivalent form), and all supporting documentation provided by the borrower (if the lender has received such application). If the lender receives such application after it receives notice that SBA has commenced a loan review, the lender shall transmit electronic copies of the application and all supporting documentation provided by the borrower to SBA within five business days of receipt. The lender must also request that the borrower provide the lender with the applicable documentation that the instructions to the Loan Forgiveness Application Form (SBA Form 3508, 3508EZ or lender's equivalent) instruct the borrower to maintain but not submit (documentation listed under "Documents that Each Borrower Must Maintain but is Not Required to Submit"). The lender must submit documents received from the borrower to SBA within five business days of receipt from the borrower.
- iii. A signed and certified transcript of account.
- iv. A copy of the executed note evidencing the PPP loan.
- v. Any other documents related to the loan requested by SBA.

If SBA has notified the lender that SBA has commenced a loan review, the lender shall not approve any application for loan forgiveness for such loan until SBA notifies the lender in writing that SBA has completed its review.

**Are recipients of PPP loans entitled to exemptions on the grounds provided in Federal nondiscrimination laws for sex-specific admissions practices, sex-specific domestic violence shelters, coreligionist housing, or Indian tribal preferences in connection with adoption or foster care practices?**

Yes. With respect to any loan or loan forgiveness under the PPP, the nondiscrimination provisions in the applicable SBA regulations incorporate the limitations and exemptions provided in corresponding Federal statutory or regulatory nondiscrimination provisions for sex-specific admissions practices at preschools, non-vocational elementary or secondary schools, and private undergraduate higher education institutions under Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), for sex-specific emergency shelters and coreligionist housing under the Fair Housing Act of 1968 (42 U.S.C. 3601 et seq.), and for adoption or foster care practices giving child placement preferences to Indian tribes under the Indian Child Welfare Act of 1978 (25 U.S.C. 1901 et seq.). In addition, for purposes of the PPP, SBA regulations do not bar a religious nonprofit entity from making decisions with respect to the membership or the employment of individuals of a particular religion to perform work connected with the carrying on by such nonprofit of its activities.

**NEW:** Once a lender receives a final forgiveness determination from SBA and some or all of the loan is deemed unforgiven, what documentation should lender use to provide the borrower with final repayment terms including loan amount, accrued interest, and maturity date (if changed)?

Lender should use a modification document to memorialize final repayment terms of the unforgiven PPP loan amount, accrued interest, and to identify a specific maturity date now that lender and borrower know the actual forgiveness amount confirmed by SBA. Lenders may use WBA/FIPCO PPP Modification Agreement which may be found at the following link. Form instructions are also available. <http://www.fipco.com/ppp-note-modification-agreement> and <http://www.fipco.com/ppp-note-modification-agreement-instructions>

**Once a lender receives a final forgiveness decision from SBA, is the maturity date of the PPP loan calculated from date lender receives SBA's forgiveness decision?**

No, regardless of whether the PPP loan is a 2-year term or 5-year term, the maturity date is driven from date of origination of the PPP loan not the date bank receives SBA's forgiveness decision.

**What is the term for PPP loans?**

For PPP loans that originated before June 5, the lender and borrower could mutually agree to a five-year maturity date or the lender could keep the PPP loan term at a two-year maturity. PPP loans made after June 5 automatically have a five-year maturity.

**How does SBA calculate interest to be paid on PPP loan?**

SBA will pay interest from the 1<sup>st</sup> disbursement date, up to (not including) the decision date. Funds are usually posted to lenders' accounts within (2) business days of the decision date. Lenders should make sure that they are calculating from the 1<sup>st</sup> disbursement date and not the approval date. In situations whereby the lender believes their shortage is greater than the normal (2) business days, please forward the loan number to SBA for SBA to review the calculations. Please note, as a result of SBA's process, there typically will be a shortage of interest reimbursed to lenders that lenders will then need to waive. If a weekend is involved, this shortage will include more than 2 calendar days' worth of interest.

**What record retention requirements exist for borrowers and lenders?**

As noted on the Loan Forgiveness Application Form, the borrower must retain PPP documentation in its files for six years after the date the loan is forgiven or repaid in full, and permit authorized representatives of SBA, including representatives of its Office of Inspector General, to access such files upon request.

Lenders must comply with applicable SBA requirements for records retention, which for Federally regulated lenders means compliance with the requirements of their federal financial institution regulator and for SBA supervised lenders (as defined in 13 CFR 120.10 and including PPP lenders with authority under SBA Form 3507) means compliance with 13 CFR 120.461.

**Has SBA issued instruction for how to handle the PPP loan of a borrower who will be purchased by another company?**

Yes, SBA has issued Procedural Notice, 5000-20057 which outlines required procedures for changes of ownership of an entity that has received a PPP loan (a “PPP borrower”). For purposes of the PPP, a “change of ownership” will be considered to have occurred when: (1) at least 20 percent of the common stock or other ownership interest of a PPP borrower (including a publicly traded entity) is sold or otherwise transferred, whether in one or more transactions, including to an affiliate or an existing owner of the entity; (2) the PPP borrower sells or otherwise transfers at least 50 percent of its assets (measured by fair market value), whether in one or more transactions; or (3) a PPP borrower is merged with or into another entity.

Regardless of any change of ownership, the PPP borrower remains responsible for: (1) performance of all obligations under the PPP loan; (2) the certifications made in connection with the PPP loan application, including the certification of economic necessity; and (3) compliance with all other applicable PPP requirements. Additionally, the PPP borrower remains responsible for obtaining, preparing, and retaining all required PPP forms and supporting documentation and providing those forms and supporting documentation to the PPP lender or lender servicing the PPP loan or to SBA upon request. The procedural notice may be viewed at: <https://www.sba.gov/sites/default/files/2020-10/5000-20057-508.pdf>