FREQUENTLY ASKED QUESTIONS
RE: SBA Programs Under the CARES Act

Updated 10/16/2020

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General Questions

1. Question – What can Paycheck Protection Program (PPP) Loans be used for?

Answer – PPP loans may be used for payroll costs, costs for the continuation of group health care benefits, paid sick, medical, or family leave, retirement benefits, and insurance premiums. Funds may be used for employee salaries, commission. Funds can also be used for mortgage interest, rent, utilities, and interest on other debt obligations so long as agreements for these were entered into before February 15, 2020, and the refinancing on an Small Business Administration (SBA) Economic Injury Disaster Loan (EIDL) made between January 31, 2020 and April 3, 2020.

Payroll costs cannot include any compensation paid to an individual employee that receives an annual salary of more than $100,000.
2. **Question – What if you use PPP Loans for costs other than listed above?**

**Answer** – PPP loans that are used for purposes other than what is listed above will have to be repaid by the borrower. In addition, if loan funds are knowingly used for purposes other than listed above the borrower may be subject to additional liability (i.e. fraud).

3. **Question – What are the terms of PPP Loans?**

**Answer** – Loan terms are same for every borrower.

- Amount: the lesser of $10 million or the sum of 2.5x the average total monthly payroll costs for the prior year.
- Interest Rate: 1.00% fixed.
- No fees (SBA or Lender).
- 100% guaranteed by the SBA.
- Loan Maturity: 2 years (loans made prior to June 5, 2020) or 5 years (loans made on or after June 5, 2020), with no pre-payment penalties.
- All loan payments will be deferred for 10 months after the expiration of the covered period, with interest accruing over this period.

The *Paycheck Protection Program Flexibility Act* (H.R. 7010) amended the loan maturity from 2 years to 5. On June 11, 2020, the SBA amended the interim final rules to reflect H.R. 7010 changes. H.R. 7010 did not make any other changes to the terms of a PPP loan. For loans made before June 5, 2020, the lender and the borrower may mutually agree to changing the maturity date to 5 years.

Previously, all PPP loan payments would be deferred for 6 months. H.R. 7010 amended this provision and provides that if a borrower submits a loan forgiveness application within 10 months after the end of the loan forgiveness covered period (24 weeks), then no payments are due before the date the SBA remits the loan forgiveness amount to the lender. If the borrower does not submit a loan forgiveness application within 10 months after the covered period ends, the loan payments are due upon the expiration of that period (24 weeks + 10 months). This is applicable to all PPP loans, including those approved before June 5, 2020.

4. **Question – Who is eligible to apply for a PPP Loan?**

**Answer** – Eligible recipients of a PPP loan include:

- Businesses: In operation on February 15, 2020 and with less than 500 employees.

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1 Updated 6/15/2020.
• Small Business Concern as defined in section 3 of the Small Business Act and subject to SBA’s affiliation rules.
• Tax Exempt Non-profits: In operation on February 15, 2020 and with less than 500 employees.
  • If designated as a 501(c)(3) or 501(c)(19) veterans organization.
• Tribal Business Concern as defined in section 31(b)(2)(C).

See Question 14 for an explanation on why a credit union cannot be a borrower under the Paycheck Protection Program.

5. **Question – Who can be an eligible lender under the PPP?**

**Answer** – The SBA and Treasury have determined that the following lenders have been determined to meet the criteria and are eligible to make loans (the lender must not be designated as in Troubled Condition by their primary regulator, or subject to an enforcement action based on unsafe or unsound lending practices):

• Any federally insured depository institution or any federally insured credit union (FICU);
• Any farm credit system institution;
• Depository and non-depository financing providers that originate, maintain, and service business loans or other commercial financial receivables and participation interests to be an SBA lender. The entity would need to have a formalized compliance program; apply the requirements of the *Bank Secrecy Act* (BSA); been in operation since February 15, 2019; and has originated, maintained, and serviced more than $50 million in business loans or other commercial financial receivables during a consecutive 12 month period in the past 36 months;
  • The SBA released a [supplemental interim final rule](https://www.gpo.gov/fdsys/pkg/FR-2020-06-16/pdf/2020-13460.pdf) clarifying that non-bank and non-insured depository institutions can be approved as a PPP lender if they originated, maintained, or serviced - but not performed all three functions.
• Service provider to any insured depository that has a contract to support lending activities in accordance with 12. U.S.C. 1867(c) (See Question 15 for CUSO information).

6. **Question – What loans are forgiven under the CARES Act?**

**Answer** – Loans under the PPP are eligible for loan forgiveness. The forgiveness program is not automatic; borrowers must apply and submit documentation to their lender. Lenders must make a decision within 60 days of receiving a borrower’s application.

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2 Updated 6/15/2020.
In general, borrowers are eligible for loan forgiveness in an amount equal to the sum of payroll costs, mortgage interest payments, rent payments, and utilities during a “covered period.” The definition of a covered period was amended by H.R. 7010 and is now defined as the earlier of a 24-week period beginning on the date of the loan origination or December 31, 2020. Borrowers that received a PPP loan before June 5, 2020 may elect to use an 8-week covered period.

Any amount of funds that is used for something other than payroll costs, mortgage interest, rent, and utilities during the covered period will not be forgiven. There are limitations on the amount that may be forgiven, and possible reductions to the amount of forgiveness.

SBA’s interim final rule states that at least 75% of the forgiven amount shall be for payroll costs. The SBA will issue more guidance on loan forgiveness. However, H.R. 7010 amended this and provides in a revised interim final rule that in order to receive full loan forgiveness borrowers must use at least 60% of the PPP funds for payroll costs, and not more than 40% on non-payroll expenses. If 60% of the PPP funds are not spent towards payroll costs, a borrower may still be eligible to receive partial forgiveness. This change is for all PPP loans, including those approved before June 5, 2020.

7. Question – If our credit union offers other emergency loans to members, does this disqualify them from receiving a loan under the CARES Act?

Answer – If a credit union offers an emergency COVID-19 loan or other type of loan to a member, this does not disqualify the member from receiving a PPP loan. Typically, SBA 7(a) loan programs require that a small business applicant not have “credit elsewhere,” meaning the applicant could not find credit available elsewhere on reasonable terms from non-Federal sources. However, the PPP waives this requirement. A member may still apply for a PPP loan so long as they meet the other program requirements.

8. Question – Where should I go if I have additional questions?

Answer – SBA’s guidance states that questions should be directed to the Lender Relations Specialist in the local SBA Field Office. Your local SBA Field Office can be found here.

- Paycheck protection questions: 7aPaycheckLoanProgramQuestions@SBA.gov
- Interim Final Rule questions: PPP-IFR@SBA.gov
- E-Tran & CAFS Access: (833) 752-0502

9. Question – Where can I find a list of participating lenders?

Answer – SBA’s PPP webpage has a list of participating lenders. The SBA has provided an updated list of lenders participating as of April 23, 2020.
Lender Questions

Credit Union Participation and PPP Application Questions

10. Question – Are we required to participate in the PPP?

Answer – Participation in the PPP is not mandatory. The decision to offer the PPP is up to the credit union. See Question 12 for who can offer PPP loans.

11. Question – Can we offer PPP Loans if we do not currently offer business loans at our credit union?

Answer – Lenders that do not currently offer business loans must still adhere to the NCUA’s regulations. The NCUA published an interim final rule amending section 723.2 which defines “commercial loans.” The interim final rule excludes PPP loans from the definition of a commercial loan; therefore, these loans do not trigger the requirements of section 723.4. Lenders should have policies and procedures in place to manage risks associated with the PPP.

12. Question – Can our credit union offer PPP Loans?

Answer – All existing SBA 7(a) lenders are automatically approved to make these loans based on their delegated authority. All FICUs are eligible to become SBA lenders under the program, so long as they are not currently designated in Troubled Condition by the NCUA or subject to a formal enforcement action due to unsafe or unsound lending practices. The SBA has deemed that all FICUs have met the criteria for eligibility. FICUs that wish to apply to become a lender must submit SBA Form 3506 (CARES Act Section 1102 Lender Agreement) to DelegatedAuthority@sba.gov. The lender agreement form asks that the lender also provide a Certificate of Incumbency. Upon transmission of the form, the FICU will have automatic delegated authority to offer PPP loans. Delegated authority means the lender can process, close, service and liquidate guaranteed loans without SBA’s prior review.

Lenders may utilize two different systems to process PPP loans. Lenders may use the SBA’s existing lender platform and submit borrower applications through E-Tran. Credit unions must have an account set up with E-Tran through Capital Access Financial Systems (CAFS) and can set up a new account through CAFS. More instructions on how to use CAFS can be found here. Information on updating your profile and setting up roles can be found here. For assistance, credit unions can contact cls@sba.gov. Lenders who need assistance accessing SBA’s E-Tran system to process loan guarantee requests may call SBA’s Lender Customer Service Line at 1-833-572-0502. The SBA has warned that repeated password attempts can result in temporary account suspension, which then require a password reset.
Lenders that are continuing to experience difficulties accessing CAFS and E-Tran, or did not have past access, may use the SBA’s new online lender portal to process borrower applications. This portal may be accessed through the Paycheck Protection Lender Gateway. Lenders must first create an account on SBA Connect, and request authorization by providing your NCUA number as well as your local SBA offices authorization number. A list of SBA authorization numbers can be found in the Appendix in this FAQ. NAFCU is confirming with the SBA that “NCUA number” means charter number.

13. **Question – Does the SBA have a Certificate of Incumbency form?**

**Answer** – The SBA does not have a standard form available. The SBA has clarified that going forward all new lenders (those lenders that were not approved prior to exhaustion of fund on April 16th) may use their own form, or submit Treasury FS Form 1014, Certificate of Incumbency of Officers.

This document shows the SBA that the person signing the lender agreement has the authority to enter into contractual agreements on behalf of the credit union. The officer who executed SBA Form 3506 should be included on the Certificate of Incumbency.

14. **Question – Can credit unions apply for a PPP Loan?**

**Answer** – Credit unions cannot be a borrower under the PPP. Eligible recipients of the loans are limited to small business concerns as defined in section 3 of the Small Business Act and non-profit organizations that are designated as 501(c)(3) organizations. The SBA’s regulations for all ineligible businesses under standard 7(a) loans applies (see 13 C.F.R. 120.110), which excludes financial businesses primarily engaged in the business of lending from receiving a loan.

All credit unions are eligible to apply for EIDLs. In order to be apply for an EIDL loan, the SBA has to make a disaster declaration for applicant states. Currently, the SBA has declared a disaster in all U.S. states and Washington D.C. EIDL loans are available to all non-profits designated under 501(c), (d), or (e). The SBA has an updated and streamlined application process for EIDL. As part of the CARES Act, an “emergency grant” can be provided while an EIDL application is pending. An advance can be up to $10,000.

15. **Question – Can our CUSO apply to be a lender under the PPP?**

**Answer** – The SBA’s guidance lists lenders who have been determined by the SBA and Treasury to be eligible lenders. The list also includes any service provider to any insured depository institution that has a contract to support such institution’s lending activities in accordance with 12 U.S.C. 1867(c) and is in good standing with the appropriate Federal banking agency. The SBA’s
guidance references the *Bank Service Company Act*, which does not include the NCUA as a Federal banking agency.

However, a CUSO may not be entirely excluded from the list of eligible lenders if they can meet the requirements listed in 3. a. iii. III. of the SBA’s interim final rule. This category allows depository and non-depository financing providers that originate, maintain, and service business loans or other commercial financial receivables and participation interests to be an SBA lender (the CUSO does not need to perform all three functions, see FAQ Q. 5 above). However, the entity would need to have a formalized compliance program; apply the requirements of the *Bank Secrecy Act* (BSA); been in operation since February 15, 2019; and has originated, maintained, and serviced more than $50 million in business loans or other commercial financial receivables during a consecutive 12-month period in the past 36 months. The SBA published a [supplemental interim final rule](#) that clarifies that non-bank and non-insured depository institution lenders that perform the required volume ($50 million) of any one of the three functions may be approved to be a PPP lender. CUSOs that meet the required volume in either originating, maintaining, or servicing business loans or other commercial receivables may be eligible as a lender.

In addition, the [supplemental interim final rule](#) clarifies that non-bank and non-insured depository institution lenders that do not meet the stated $50 million threshold may still be eligible to participate as a lender. Non-bank or non-insured depository institution would meet the criteria if the entity has originated, maintained, or serviced more than $10 million business loans or other commercial financial receivables during a 12-month period in the past 36 months if the entity is a 1) community development financial institution (other than a federally-insured credit union), or a minority-, women-, or veteran/military-owned lender.

If a CUSO meets this definition, then they may apply using [SBA Form 3507 (CARES Act Section 1102 Lender Agreement – Non-Bank and Non-Insured Depository Institution Lenders)](#). Eligibility is not automatic upon transmission of SBA Form 3507. The SBA may need additional time to approve a service provider, such as a CUSO for the PPP. The SBA will evaluate the applicant’s ability to process, close, disburse, and service PPP loans.

Non-federally insured entities are asked to send SBA Form 3507 to [NFRLapplicationforPPP@sba.gov](mailto:NFRLapplicationforPPP@sba.gov) in order for the SBA to make a determination.

CUSOs that enter into loan service provider agreements with credit unions that have not yet been reviewed by the SBA should submit their LSP agreements to the SBA at [lspagreements@sba.gov](mailto:lspagreements@sba.gov).
16. **Question – Can a lender provide PPP Loans to nonmembers?**

**Answer** – There is no legal authority for a Federal Credit Union (FCU) to make a PPP loan (or any other loan) to a nonmember. An FCUs ability to lend is limited by section 107(5) of the FCU Act which only permits lending to members, other credit unions, and CUSOs.

17. **Question – Can other credit unions act as Agents under the PPP?**

**Answer** – Treasury’s guidance provides that an agent can include someone who assists a lender with originating, disbursing, servicing, liquidating, or litigating SBA loans. Credit unions that assist a lender with any of these stated activities could qualify as an agent.

Any agent that assists a borrower will be paid by the lender from the SBA’s reimbursement of processing fees. Agents cannot collect any fees from borrowers directly. The amount an agent may receive cannot exceed:

- 1% for loans of $350,000 or less;
- 0.5% for loans greater than $350,000 and less than $2 million; and
- 0.25% for loans of $2,000,000 million or greater.

18. **Question – Do I owe any lender fees to the SBA?**

**Answer** – There are no up-front guarantee fees, annual service fees, subsidy recoupment fees, or fees for any guarantee sold into the secondary market. The SBA has waived all lender fees that are typically payable to the SBA.

19. **Question – Are PPP Loans removed from the MBL cap?**

**Answer** – The guaranteed portion of SBA loans is removed from the MBL cap. Because PPP loans are 100 percent guaranteed, the PPP loan is effectively removed the MBL cap. In the event a PPP loan has a remaining balance after receiving SBA’s loan forgiveness, the loan remains guaranteed until maturity. The CARES Act provides that the SBA’s guarantee continues on remaining balances.

20. **Question – Can I charge the borrower any additional fees?**

**Answer** – The Treasury’s guidance makes it clear that lenders may not collect ANY fees from the applicant. The lender agreement form states that other than the fixed 1 percent interest rate, lenders are not permitted to “charge or receive any bonus, fee, prepayment penalty, commission or other payment or benefit from a borrower in connection with the making or servicing of any covered loan under the PPP.”
21. **Question – Can a lender structure the loan disbursements, or do the loans have to be in a lump-sum?**

**Answer** – The SBA released an interim final rule providing additional guidance on disbursements. According to the rule, lenders must make a one-time, full disbursement of the PPP loan within ten calendar days of the loan approval. A loan is considered approved once a loan number is assigned by the SBA.

For loans that have been approved but were not fully disbursed before April 28th, the ten calendar-day period begins on April 28, 2020, and the eight-week covered period begins on the date of the first disbursement.

In order to receive fees from the SBA, the PPP loan must be fully funded (see SBA/Treasury FAQ Q. 20).

22. **Question – What are the Bank Secrecy Act (BSA) requirements?**

**Answer** – The SBA’s interim final rule does require lenders to comply with their existing BSA requirements. The SBA did clarify in the FAQs that if a PPP loan is made for an existing member and the lender has collected and verified the necessary information, then they do not need to re-verify the information, unless your credit unions’ risk-based BSA compliance program requires otherwise (see SBA/Treasury FAQ Q. 18 & 25).

For an existing member, where beneficial ownership information has not yet been collected, the lender does not need to collect and verify the information, unless otherwise indicated in the lender’s BSA compliance program.

For a new member, the collection of beneficial ownership information is deemed to satisfy applicable BSA requirements include owner name, title, ownership percentage, tax ID number, address, and date of birth. Verification of this information is made according to the lender’s BSA compliance program.

FinCEN released a FAQ document clarifying BSA requirements, which reiterates the SBA/Treasury guidance provided.

23. **Question – Does Regulation B apply?**

**Answer** – Lenders must still comply with Regulation B and adverse actions notices must be sent if there is a denial or counteroffer. A member inquiry into the PPP would likely not trigger the adverse action notice requirements.
24. **Question – Can we lend to a Board Member?**

**Answer** – The SBA released an additional interim final rule regarding additional eligibility criteria. This interim final rule states that board members may obtain a loan from the credit union in which they serve on the board if they are not also a key employee or official of the credit union. The credit union must follow the same loan approval process for the board member as they would any other member. A PPP loan for a board member cannot receive priority or favoritism by the credit union. Credit unions must also comply with their own internal policies and procedures regarding lending to board members. The NCUA released an interim final rule providing that credit unions must comply with section 701.21 of the NCUA’s regulations, which places certain restrictions on loans to officials. Specifically, the regulations states that a board of directors must approve loans to officials that exceed $20,000.

25. **Question – When will lenders receive fees owed to them by the SBA, and how do we get those fees?**

**Answer** – Lenders will be paid fees owed when the PPP loan is fully disbursed. Lenders will have to go through the SBA’s traditional “1502 reporting” procedures. The SBA released an additional interim final rule that provides some additional information. An updated FAQ provides more guidance, and lenders must electronically upload the initial SBA Form 1502 report the later of: 1) 10 calendar days after a PPP loan is disbursed, or 2) May 29, 2020. Lenders must provide ACH information for direct payment from the SBA and must confirm that all PPP loans for which the lender is requesting a fee has been fully disbursed and in the loan amounts reported.

**Underwriting Requirements and Required Documentation Questions**

26. **Question – What are the underwriting requirements for PPP Loan?**

**Answer** – The PPP is a streamlined lending product. Lenders must:

- Confirm receipt of the borrower’s certifications contained in their application;
- Confirm receipt of information demonstrating that a borrower had employees that they paid a salary and payroll taxes on or around February 15, 2020;
- Confirm the dollar amount of average monthly payroll costs for the preceding calendar year by reviewing the payroll documentation that was submitted by the borrower; and
- Follow existing Bank Secrecy Act requirements.

Lenders’ underwriting obligations are limited to the above items and reviewing SBA Form 2483 (Paycheck Protection Application Form). In addition, Lenders are permitted to rely on the borrower’s certifications to determine eligibility and use of loan funds. Lenders may use their own lender application forms as long as it captures the same information in SBA Form 2483 (see SBA/Treasury FAQ Q. 13).
SBA Form 2484 asks lenders to certify that they have complied with paragraphs 3. b(i)-(iii) of the interim final rule, have obtained and reviewed the required borrower application (SBA Form 2483) and supporting documents, and will retain the documents on file.

The SBA’s interim guidance paragraphs 3. b(i)-(iii) requires the lender to confirm receipt of the borrower certifications in the application, confirm receipt of information demonstrating that a borrower had employees (that were paid and the employer paid payroll taxes) on or around February 15, 2020, and confirm the dollar amount of the average monthly payroll costs by reviewing the payroll document that the borrower submitted. The guidance indicates that lenders may rely on the documents provided by the borrower and do not need verification if the documents support the borrower’s request.

The guidance indicates that lenders are held harmless if they rely on the borrower’s documents and attestation.

27. Question – How do I determine if a member is an eligible small business?

Answer – The SBA’s guidance states that lenders may rely on the borrower’s certification for eligibility. Eligible businesses are deemed “small businesses” according to the SBA’s published size standards. Size standards are established by North American Industry Classification System (NAICS) codes. This includes all “affiliates” of the small business. The CARES Act waived the affiliate rules for small businesses with a NAICS code 72 and franchises. An affiliate is one who controls or has the power to control the other regardless if the power is exercised. When looking at eligibility, a borrower plus any affiliates, must meet the size standards. The SBA published guidance on affiliation rules for the PPP. According to this guidance, there are four tests for determining affiliation. The SBA’s FAQs state that lenders are not required to make an independent determination regarding the applicability of affiliation rules; it is the responsibility of the borrower to determine its affiliates and the lender may rely of the borrower’s certifications (see SBA/Treasury FAQ Q4).

Lenders must also be aware of the SBA’s list of ineligible businesses (see 13 CFR 120.110).

28. Question – What promissory note should lenders use?

Answer – The SBA has clarified in a supplemental interim final rule that lenders may use their own promissory notes to close PPP loans. Alternatively, lenders may use SBA Form 147 (Standard Loan Note) which is the SBA 7(a) standard promissory note and include the term language from the Interim Final Rule. The supplemental interim final rule states that the SBA is not requiring a separate SBA Authorization at this time in order to guarantee the loan.
29. Question – What documents do lenders send to the SBA for applicants?

Answer – Approved lenders have delegated authority, so loans may be processed without prior SBA approval. However, lenders are required to submit SBA Form 2484 (Paycheck Protection Program Lender’s Application for 7(a) Loan Guaranty) electronically and maintain the forms and supporting borrower documentation on file. No paper applications are required. The SBA’s interim final rule does not provide any further details on how to electronically submit applications but notes that an SBA Program Guide or further guidance may be provided.

30. Question – Do we have to submit a separate Authorization form to issue a PPP Loan?

Answer – Lenders do not need to submit a separate SBA Authorization form in order to issue a loan. Lenders must have executed SBA Form 2484 to issue PPP loans and receive a loan number for each originated PPP loan.

The SBA issued a supplemental interim final that clarifies that the SBA is not requiring a separate Authorization Form at this time (see 1.b. of the supplemental interim final rule).

31. Question – Can we obtain the borrower’s electronic signature?

Answer – The SBA’s interim final rule and FAQs do not include a requirement that a lender provide the physical or “wet” signature of the borrower. The interim final rule provides in 2. L, that e-signatures or e-consents may be used regardless of the number of owners of the borrower. The FAQs state that lenders are permitted to use their own online portals and electronic forms (see SBA/Treasury FAQ Q. 13). The FAQs further clarified that lenders may use scanned copies of documents. E-signatures or e-consents must comply with the E-Sign Act (see SBA/Treasury FAQ Q. 29).

Loan Forgiveness Questions

32. Question – What should lenders review when a borrower submits SBA Form 3508?

Answer – According to the SBA’s revised interim final rule, Lenders shall:

- Confirm receipt of the borrower certifications contained in the loan forgiveness application form (SBA Form 3508, or lender equivalent form);

3 Updated 6/24/2020.
4 Updated 6/24/2020.
• Confirm receipt of the documentation borrower must submit to aid in verifying payroll and nonpayroll costs, as specific in the instructions in the loan forgiveness application form (SBA Form 3508, or lender equivalent form);
• Confirm the borrower’s calculations on the borrower’s loan forgiveness application (SBA Form 3508, or lender 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 the 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 loan forgiveness application (SBA Form 3508, or lender equivalent form); and
• Confirm that the borrower made the calculation on Line 10 of the loan forgiveness calculation form correctly, by dividing the borrower’s eligible payroll costs claimed on Line 1 by 0.60.

33. **Question – What should lenders review when a borrower submits SBA Form 3508EZ?**

**Answer** – According to the SBA’s revised interim final rule, Lenders shall:

• Confirm receipt of the borrower certifications contained in SBA Form 3508EZ, or lender equivalent form;
• Confirm receipt of the documentation borrower must submit to aid in verifying payroll and nonpayroll costs, as specific in the instructions in the SBA Form 3508EZ, or lender equivalent form;
• Confirm the borrower’s calculations on the borrower’s SBA Form 3508EZ, or lender 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 SBA Form 3508EZ, or lender equivalent form by reviewing the documentation submitted with the SBA Form 3508EZ or lender equivalent form; and
• Confirm that the borrower made the calculation on Line 7 of SBA Form 3508EZ or lender’s equivalent form correctly, by dividing the borrower’s eligible payroll costs claimed on Line 1 by 0.60.

34. **Question – What should lenders review when a borrower submits SBA Form 3508S?**

**Answer** – The SBA’s interim final rule states that Lenders shall:

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5 Updated 6/24/2020.
6 Updated 10/13/2020.
• Confirm receipt of the borrower certifications contained in SBA Form 3508S or lender’s equivalent form; and
• 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.

As compared to the SBA Form 3508 and 3508EZ, the lender is not expected to “perform a good faith review” or the borrower’s calculations and supporting documents (see Q. 35 below).

35. **Question – Is it the responsibility of the lender to calculate the loan forgiveness amount?**

**Answer** – Borrowers are responsible for accurately calculating the loan forgiveness amount regardless of what loan forgiveness application form is submitted. The SBA’s interim final rule states that 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.” The SBA subsequently issued a revised interim final rule after introducing the SBA Form 3508S, clarifying that a good faith review is only required by a lender for SBA Forms 3508 and 3508EZ.

Lenders are not expected to perform a good faith review for borrowers who submitted the SBA Form 3508S. However, this does not preclude any lender from performing a good faith review.

36. **Question – What documentation do lenders need for loan forgiveness requests?**

**Answer** – Lenders can rely on the documentation the borrower submits for forgiveness. Lenders do not need to conduct any verification if the borrower submits documents that support the request for loan forgiveness and the borrower attests that they have accurately verified the payments for eligible costs. Lenders may accept scanned copies of signed loan forgiveness applications and documents containing the information and certification required. Lenders may accept any form of E-consent or E-signature that complies with the E-SIGN Act.

The SBA’s interim final rule indicates that lenders are held harmless for relying on borrower documents and attestation. The SBA’s guidance also states that the agency will not take enforcement action or impose penalties against a lender if the lender receives the borrower’s attestation.

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7 Updated 8/6/2020
If the lender identifies any errors in the borrower’s calculation or a material lack of substantiation in supporting documents, then the lender should work with the borrower to remedy the issue.

37. **Question – Do loans that are reviewed by the SBA lose their guarantee?**

**Answer** – The SBA has provided in their FAQs that all loans over $2 million will be reviewed once the lender submits the borrower’s loan forgiveness application. The outcome of the SBA’s review of the loan file will not affect the SBA guarantee on any loan for which the lender has complied with the lender obligations as laid out in the initial interim final rule, paragraphs 3.B (i)-(iii). (See SBA/Treasury FAQ Q. 39). The interim final rule provides that each lender shall:

(i) Confirm receipt of borrower certifications contained in the PPP application form;
(ii) Confirm receipt of information demonstrating that a borrower had employees for whom the borrower paid salaries and payroll taxes on or around February 15, 2020; and
(iii) Confirm the dollar amount of average monthly payroll costs for the preceding calendar year by reviewing the payroll documentation submitted with the borrower’s application.

38. **Question – When do lenders need to make forgiveness determinations by?**

**Answer** – Once a borrower submits SBA Form 3508, SBA Form 3508EZ, SBA Form 3508S, or a lender equivalent loan forgiveness application, the lender has 60 days from receipt of a complete application to render a decision to the SBA. The decision may be an approval (in whole or in part), a denial (if directed by the SBA), or a denial without prejudice due to a pending SBA review of the loan.

The lender must request payment from the SBA. The SBA must remit payment within 90 days to the lender, plus any accrued interest through the date of payment. Lenders are responsible for notifying borrowers of the forgiveness amount.

39. **Question – What documents do lenders need to submit to the SBA for loan forgiveness?**

**Answer** – For borrowers submitting SBA Form 3508, lenders must include the PPP Loan Forgiveness Calculation Form, the PPP Schedule A, and the optional PPP Borrower Demographic Information Form. These documents are all part of SBA Form 3508.

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8 Updated 10/16/2020.
For borrowers submitting SBA Form 3508EZ, SBA Form 3508S, or lender’s equivalent, lenders must include the SBA Form 3508EZ, SBA Form 3508S, or lender’s equivalent form, and the optional PPP Borrower Demographic Information Form.

Lenders must confirm that the information provided by the lender to the SBA accurately reflects the lender’s records for the PPP loan and that the decision was made according to the requirements in 2.a. of the SBA’s interim final rule.

40. Question – What do lender’s need to submit to the SBA in the case of a denial of forgiveness?

Answer – In additional to the documents required in Q 38, lenders must also provide the reason for the denial. The lender must also provide written notification to the borrower regarding the denial. The borrower may request the SBA review the lender’s denial within 30 days of the decision.

41. Question – What if the amount of loan forgiveness remitted by the SBA exceeds the remaining principal balance of the PPP loan?

Answer – The SBA’s interim final rule regarding forgiveness states that the lender must remit the excess amount, including accrued interest to the borrower.

42. Question – What should a lender do if a borrower submits documentation of eligible costs that exceed a borrower’s PPP loan amount?9

Answer – The amount of loan forgiveness that a borrower may receive cannot exceed the principal amount of the PPP loan. This is true, regardless of what loan forgiveness form a borrower submits to a lender.

43. Question – What are a lender’s record retention requirements?

Answer – Lenders must comply with record retention requirements of their federal financial institution regulator. For any “SBA supervised lender” which includes non-federally regulated lenders and Small Business Lending Companies, or those PPP lenders with authority under SBA Form 3507, the record retention requirements laid out in 13 CFR 120.461 are required.

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9 Updated 10/16/2020.
44. **Question – What do lenders need to do if they receive notice that the SBA is reviewing a PPP loan?**

**Answer** - The SBA will notify the lender in writing, and the lender must then notify the borrower in writing within 5 business days of receiving the SBA notification that the loan is being reviewed. Within 5 business days of receipt of the SBA’s written notification, the lender must electronically transmit copies of the following through the PPP Forgiveness Platform:

- The Borrower Application Form (SBA Form 2483 or lender form) and all supporting documentation provided by the borrower;
- The Loan Forgiveness Application Form (SBA Form 3508, 3508EZ, 3508S, or lender equivalent form) and all supporting documentation provided by the borrower.
  - If the lender receives the application after it receives notice that the SBA has commenced a loan review, the lender shall transmit electronic copies of the application and all supporting documentation provided by the borrower to the SBA within 5 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 Forms (SBA Form 3508, 3508EZ, 3508S, or lender equivalent form) instruct the borrower to maintain but not submit. The lender must submit documents received from the borrower to the SBA within 5 business days of receipt form the borrower. In addition, the lender must also notify the borrower that the loan forgiveness application is denied without prejudice due to the pending SBA review, and notify the SBA through the PPP Forgiveness Platform when the decision is made by the lender.
  - A signed and certified transcript of the account;
  - A copy of the executed note evidencing the PPP loan; and
  - Any other documents related to the loan requested by the SBA.

45. **Question – What do lenders need to do if the SBA declines a request for review or denies forgiveness?**

**Answer** - If the SBA notifies the lender that the agency has declined a borrower’s request for review, then the lender is responsible for notifying the borrower of the date the first payment is due. In addition, if the SBA notifies the lender that the agency has denied forgiveness (in whole or in part), then the lender must notify the borrower of the SBA’s decision and the date the first payment is due.

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10 Updated 10/16/2020.
11 Updated 6/24/2020.
46. Question – When can lenders submit loan forgiveness applications to the SBA?\textsuperscript{12}

**Answer** – Lenders may begin to submit loan forgiveness applications on August 10, 2020. The SBA is utilizing a new platform, the “PPP Forgiveness Platform.” The SBA will post a link to the PPP Forgiveness Platform on its website (see Procedural Notice 5000-20038). All PPP lender Authorizing Officials (AOs) in the E-Tran system will receive a welcome email from the SBA (specifically PPPForgivenessRequests@SBA.gov) with instructions on how to access the platform. If the AO for your credit union does not receive this welcome email with access instructions, contact the lender hotline at 833-572-0502. Each AO will have the authority to create up to 10 additional users in the platform without requesting this access from the SBA.

If you have questions about the Procedural Notice, contact the Lender Relations Specialist in your local SBA field office. A list of local field offices can be found here.

47. Question – How do I submit a loan forgiveness application via the PPP Forgiveness Platform?\textsuperscript{13}

**Answer** – Once you have access to the PPP Forgiveness Platform, the platform allows multiple submissions of applications using an automated, application programming interface (API) method. Instructions on automated submission will be published in the PPP Forgiveness Platform.

48. Question – Can an agent submit loan forgiveness applications to the SBA on a credit unions behalf?\textsuperscript{14}

**Answer** – Lenders may authorize an agent or a lender service provider (LSP) to submit information or make entries through the PPP Forgiveness Platform. The lender of record (the lender listed in the E-Tran system) acknowledges that the agent or LSP is acting within the scope of the lender’s authority and that the lender is responsible for all information submitted by another person or entity. If you use an agent or LSP, you must still provide a single point of contact and an email address for an AO to respond to inquiries. If you do not provide the contact information for an AO, all loan forgiveness submissions will be rejected and returned.

49. Question – Do we have to amend our promissory notes?\textsuperscript{15}

**Answer** – The SBA does not require lenders to formally modify promissory notes due to the change in the deferral period. However, if lenders do formally modify the promissory note to

\textsuperscript{12} Updated 8/6/2020.
\textsuperscript{13} Updated 8/6/2020.
\textsuperscript{14} Updated 8/6/2020.
\textsuperscript{15} Updated 10/16/2020.
reflect the required statutory deferral period (10 months) under H.R. 7010, it will have no effect on the SBA’s guarantee of a PPP loan (see SBA/Treasury FAQ Q. 52).

**Fraud Questions**¹⁶

50. **Question – If we suspect fraud related to a PPP loan, what should we do?**

**Answer** – Lenders that suspect fraudulent activity related to a PPP loan should follow their policies and procedures regarding fraud. In addition, lenders should contact the SBA’s Office of Inspector General (OIG) Hotline at 800-767-0385; OIGHotline@sba.gov, or complete the online OIG complaint submission form found here. The Department of Justice has asked anyone with information on fraudulent PPP loan activity to notify them by calling their National Center for Disaster Fraud Hotline at 866-720-5721 or complete an online complaint form found here.

As always, lenders should file a suspicious activity report (SAR) as necessary. FinCEN published an advisory and notice highlighting COVID-19 fraud. The advisory highlights imposter and money mule scams, where actors deceive victims by impersonating federal government agencies, international organizations, or charities. The notice highlights reporting of COVID-19-related criminal and suspicious activity.

The SBA published a notice on how to identify and report suspicious EIDL loan fraud. If your credit union detects suspicious activity related to an EIDL loan or EIDL advance, you must follow your policies and procedures regarding fraud, file a SAR, as appropriate, and contact the SBA’s OIG office.

**Secondary Market Questions**

51. **Question – Can lenders sell PPP loans to the secondary market?**

**Answer** – Lenders can sell PPP loans into the secondary market once the PPP loan has been fully disbursed to the borrower. The SBA does not need to approve sales of PPP loans to the secondary market and the SBA guarantee will remain once sold. There are no fees payable to the SBA for any guaranteed loan sold into the secondary market. The interim final rule states that loans sold into the secondary market may be sold at a premium or discount to par value.

In addition, lenders may request that the SBA purchase the expected forgiveness amount of a PPP loan or pool of PPP loans at the end of week seven of the covered period. Lenders must provide specific documentation to the SBA (see 4.E of the interim final rule). Once a complete report is submitted, the SBA will purchase the expected forgiveness amount of the PPP loan within 15 days.

¹⁶ Updated 8/6/2020.
The SBA has issued two procedural notices, regarding whole loan sales, and sales of participating interests.

*The SBA will issue additional procedures on the process for advance purchase of PPP loans.

**PPP Liquidity Facility Questions**

52. **Question – What is the Payment Protection Program Liquidity Facility (PPPLF) and how do I access it?**

**Answer** – The PPPLF was established by the Federal Reserve to extend credit to eligible financial institutions (including credit unions) on a non-recourse basis by accepting PPP loans pledged as collateral. The PPPLF does not purchase PPP loans. Extensions of credit under the facility will be made at a rate of 35 basis points and there are no fees associated with accessing the facility.

A credit union does not need to have a master account at a Federal Reserve Bank in order to borrow from the PPPLF; however, it must execute the necessary legal agreements included on the PPPLF website (the PPPLF Letter of Agreement and Borrower Certification). The website also has a series of Q&As to help borrowers understand how to access the facility through a correspondent arrangement.

A Reserve Bank will make a single extension of credit to a PPPLF borrower secured by all PPP loans submitted that mature on a single date. As a result, PPP loans pledged as collateral must be grouped by maturity date. A collateral transmittal form and loan listing must be submitted in a separate email for each request for a PPPLF extension of credit and pool of PPPLF collateral. Only one maturity pool may be submitted per collateral transmittal form. Once a maturity pool has been submitted, no additions to the pool will be accepted.

The amount of the PPPLF advance is equal to the amount of PPP loans pledged as collateral. The maturity date of an extension of credit under the PPPLF will equal the maturity date of the PPP loan pledged to secure the extension of credit. The Federal Reserve’s goal is to make the proceeds of the advance available on the business day following the day of the submission of the request.

The supplemental interim final rule clarifies that lenders do not need SBA’s prior written consent or notice to the SBA for PPP loans pledged for borrowings from the Federal Reserve.

The NCUA Board approved an interim final rule that amends the agency’s capital adequacy and member business loans and commercial lending regulations to establish a zero percent risk weight for PPP loans under the current risk-based net worth requirement.
53. **Question – Can a credit union pledge collateral in advance without drawing PPPLF credit?**

**Answer** – No. The PPPLF does not work like the discount window. Credit unions will receive the whole advance shortly after pledging the PPP loans to the facility. There are no partial advances.

54. **Question – Under what conditions will the maturity date of a PPPLF advance be accelerated?**

**Answer** – The maturity date of a PPPLF extension of credit will be accelerated (1) if the underlying PPP Loan goes into default and the eligible PPPLF borrower sells the PPP Loan to the SBA to realize the SBA guarantee; (2) if the PPP lender receives reimbursement from the SBA for any loan forgiveness amounts (to the extent of the amount of the PPP loan forgiven); or if (3) the PPP lender has misrepresented the underlying PPP loan or otherwise commits an Event of Default under the PPPLF documentation.

**1502 Reporting Questions**\(^{17}\)

55. **Question – How do I enroll to get reimbursed processing fees owed?**

**Answer** – Lenders must establish an account with the Fiscal Transfer Agent (FTA). If you do not already have an account, send an email to Enrollment@colonservices.com with the following information:

- Name of institution,
- At least two of the following:
  - E-Tran Main Location ID (CAFS Location ID under which loans were originated);
  - One of the SBA’s PPP GP loan numbers; and
  - Colson Lender ID (if known).
- Individual user contact information:
  - Name;
  - Email address; and
  - Phone number.

The SBA PPP GP loan number is the 10-digit numerical SBA assigned loan identification number.

If you are a loan service provider, you must also enroll by sending an email to Enrollment@colonservices.com with the following information:

- Name of LSP;
- LSP CAFS Partner ID;

\(^{17}\) Updated 5/26/2020.
- Individual user contact information:
  - Name;
  - Email address; and
  - Phone number;

For each credit union partner, provide the following information:
- Credit union partner’s information:
  - Name of credit union;
  - E-Tran Main Location ID;
- One of SBA's PPP GP loan numbers:
- Colson Lender ID (if known);
- Bank Authorizing Official:
  - Name;
  - Email address; and
  - Phone number.

After successfully submitting the email to the FTA, the lender will receive a separate email with login credentials, which will include the User ID and Access Code.

See the SBA Procedural Notice 5000-20028 for more details on how to get access.

56. Question – Who should I contact if I have 1502 reporting questions?

Answer – A lender portal user guide is available here. You can also call Colson Customer Service at 877-245-6159.

57. Question – How do I submit a 1502 report?

Answer – Lenders may batch multiple PPP loans in a single 1502 report, or complete the 1502 report on an individual PPP loan basis. The 1502 spreadsheet can be found here.

To submit the report, lenders may use any of the following methods:
- Email the 1502 spreadsheet to 1502@colsonservices.com;
- Upload the 1502 spreadsheet (“e-file”) in the 1502 dashboard;
- PPP 1502 Data Entry (this method is still under construction); or
- Deliver the 1502 spreadsheet via Secure File Transfer Protocol (which requires additional enrollment - lenders must email SFTPaccess@colsonservices.com for additional instructions.

If you are an existing SBA lender (with an SBA Form 750 in place) you must use a separate 1502 report for PPP loans and regular 7(a) loans.
58. Question – When do I need to submit the initial 1502 report?

Answer – The initial 1502 report is due the later of May 29, 2020 or 10 calendar days after disbursement or cancellation of the PPP loan.

59. Question – After I submit the initial 1502 report, do I need to continue to submit 1502 reports?

Answer – Lenders must continue to submit 1502 reports on a monthly basis. The monthly 1502 reports must include loan status information for PPP loans regardless of whether the borrower made a payment in the current month. Lenders must continue to report PPP loans under the lender notifies the SBA that the loan has been paid in full.

Borrower Questions

Application Questions

60. Question – Can members who are non-profits apply for PPP Loans?

Answer – The CARES Act defines eligible recipients under the PPP to include non-profit organizations that are designated as 501(c)(3) organizations. If a credit union member is a 501(c)(3) organization, then that member is eligible for a loan under the PPP if they have less than 500 employees. All other non-profits are excluded from receiving a PPP loan.

61. Question – Can a CUSO apply for a PPP Loan?

Answer – CUSOs may or may not be eligible as borrowers depending on their structure and size. Eligibility for the PPP is limited to small businesses and certain non-profits. CUSOs that are structured for-profit would need to be a “small business” according to the SBA’s size standards, not be an ineligible entity, and have less than 500 employees (including any affiliates). CUSOs that are structured as non-profits would not be eligible unless they are designated 501(c)(3) or (c)(19) entities. CUSOs must determine eligibility just as any other small business borrower would by looking at the eligibility requirements in the interim final rule.

First, a CUSO would need to determine if they are considered a “small business” according to the SBA’s size standards. If the CUSO meets the standard, then they should continue determining eligibility by ensuring that they are not an ineligible entity as listed in 13 C.F.R. 120.110. The list of ineligible businesses includes financial businesses primarily engaged in the business of lending. There are limited circumstances when a business engaged in lending may be eligible. The SBA references SOP 50 10 5(k) (see page 104) for more information on ineligible businesses that can apply for a loan.
Once eligibility is determined, a CUSO would then need to determine if they have any affiliates by referring to the SBA’s guidance on PPP affiliate rules. Affiliation occurs when there is ownership or management of the CUSO by another. There are other affiliation tests; however, these are the most likely in the context of a CUSO. If affiliation is determined, then the CUSO needs to determine whether the affiliate is considered a “small business” and whether the affiliate and the CUSO have less than 500 employees.

62. Question – Can a borrower apply for a PPP Loan and an EIDL Loan?

Answer – If a borrower received an EIDL loan before January 31, 2020, then the borrower may also receive a PPP loan for purposes other than those purposes of the EIDL loan. For example, you cannot apply for both loans to cover payroll costs.

63. Question – When can members start applying for the PPP?18

Answer – SBA began accepting applications for the PPP on April 3, 2020, for small businesses. On April 10, 2020, the application period opened for independent contractors, self-employed individuals, and sole proprietorships. Members must apply through SBA-approved enders.

The SBA will not process any new PPP loan applications as of August 8, 2020, 11:59pm EDT.

64. Question – What do borrowers need to provide to a lender in order to obtain a PPP Loan?

Answer – Borrowers must submit the required borrower application form, SBA Form 2483 (Paycheck Protection Program Borrower Application Form) and sufficient documentation to show expenses and payrolls costs. Documentation required may vary by lender. Documentation to show payroll costs could include payroll processor records, payroll tax filings, IRS Form 1099-MISC, income and expenses from sole proprietors, and bank records of payroll amounts. Documents to show other costs could include rental agreements, utility statements, mortgage interest statements (IRS Form 1098).

65. Question – Can a self-employed member apply for PPP Loan?

Answer – Borrowers who are self-employed may apply so long as they were in operation on February 15, 2020; they had self-employment income; their principal place of residence is in the U.S.; and they filed or will file an IRS form 1040, Schedule C for 2019.

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18 Updated 8/6/2020.
The SBA will be providing further guidance for self-employed members who were not in operation in 2019, but were in operation on February 15, 2020 and will file a Schedule C for 2020.

66. **Question – Can a member who is part of a partnership apply for a PPP Loan?**

**Answer** – Borrowers who are in a partnership are treated as borrowers who are self-employed. Therefore, they may apply so long as they were in operation on February 15, 2020; they had self-employment income; their principal place of residence is the U.S; and they filed or will file an IRS form 1040, Schedule C for 2019. However, the partnership may only file one application listing the income of each active general partner, up to $100,000 annualized. Each partner cannot submit their own application listing their individual self-employment income.

67. **Question – What documentation do self-employed borrowers need to provide to lenders for a PPP Loan?**

**Answer** – Self-employed borrowers must submit:
- 2019 IRS Form 1040 Schedule C;
- *SBA Form 2483* borrower application form;
- A 2019 IRS Form 1099-MISC detailing non-employee compensation received (box 7), invoice, bank statement, or book of record that establishes you are self-employed; and
- A 2020 invoice, bank statement, or book of record to establish that you were in operation on or around February 15, 2020.

If the self-employed borrower also has employees (such as a general partnership), then the borrower must provide:
- 2019 IRS Form 1040 Schedule C;
- 2019 IRS Form 941 (or other tax forms or equivalent payroll processor records containing similar information);
- state quarterly wage unemployment insurance tax reporting forms from each quarter in 2019 or equivalent payroll processor records;
- Evidence of any retirement and health insurance contributions, if applicable; and
- A payroll statement of similar document from the pay period that covered February 15, 2020 must be provided to establish you were in operation on February 15, 2020.

68. **Question – What do borrowers need to certify?**

**Answer** – The borrower application includes several certifications, including that the they were in business on February 15, 2020, the funds will be used to retain workers and maintain payroll or make covered payments, and that the information provided in the supporting documents and forms is true and accurate.
Borrowers must also certify that “current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.” Borrowers must make this certification in good faith, taking into account their current business activity and their ability to access other sources of liquidity sufficient to support their ongoing operations in a manner that it not significantly detrimental to the business. The SBA/Treasury FAQs provide the example that a public company with substantial market value and access to capital markets will not likely to able to make this certification in good faith, and that such a company should be prepared to demonstrate to the SBA, upon their request, the basis for their certification (see SBA/Treasury FAQ Q. 31).

The SBA clarified that a safe harbor will be established for review of a borrowers’ good faith certification concerning the necessity of their loan request. Any borrower that, together with its affiliates, received a PPP loan with an original principal amount of less than $2 million will be deemed to have made the required certification concerning the necessity of the loan in good faith. If during the SBA’s review, the agency determines that the borrower did not make this certification in good faith, then the loan must be repaid. The SBA’s determination will not affect the loan guarantee (see SBA/Treasury FAQ Q. 46 & 47).

**Loan Forgiveness**

69. **Question – When does a borrower have to apply for loan forgiveness?**

**Answer** – A borrower may submit a loan forgiveness application any time on or before the maturity date of the loan. Borrowers may apply for loan forgiveness prior to the expiration of the covered period if the PPP funds have fully been exhausted. Borrowers that do not apply for loan forgiveness within 10 months of the expiration of the covered period will have to begin making payments of principal and interest but can still apply for loan forgiveness until the maturity date. A borrower’s deferment period is 10 months after the expiration of the covered period (either 8 weeks of 24 weeks).

70. **Question – What loan forgiveness application should borrowers use?**

**Answer** – Borrowers may submit SBA Form 3508, SBA Form 3508EZ, SBA Form 3508S, or a lender equivalent form.

Borrowers should only use the SBA Form 3508EZ if they are a sole proprietor, independent contractors, or self-employed and have no employees; did not reduce the salaries or wages of employees by more than 25 percent and did not reduce the hours of employees; or did not

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19 Updated 6/24/2020.
20 Updated 10/16/2020.
experience a reduction in business activity as a result of a COVID-19 directive and did not reduce the salaries or wages of employees by more than 25 percent.

Borrowers should only use the SBA Form 3508S if the total amount of the PPP loan received from the lender is $50,000 or less. A borrower, that together with its affiliates received PPP loans totaling $2 million or more cannot use this form.

71. Question – What do borrowers need to provide to the lender for loan forgiveness?

Answer – All borrowers must submit SBA Form 3508, SBA Form 3508EZ, (or lender equivalent form) the loan forgiveness application. Supporting documentation will depend on the borrowers’ eligible expenses. In addition, borrowers need to submit the following documents to their respective lenders:

- Payroll: documentation verifying the cash compensation and non-cash benefit payments during the covered period or alternative covered period. This includes:
  - Banks account statements (or third-party payroll provider reports) documenting compensation paid to employees during or overlapping with the covered or alternative covered period.
  - Tax forms (or equivalent third-party payroll provider reports) for the covered or alternative covered period that show:
    - Payroll tax filings reported, or that will be reported to the IRS (typically, IRS Form 941); and
    - State quarterly business and individual employee wage reporting and unemployment insurance tax filings reported, or that will be reported to the state.
  - Payment receipts, cancelled checks or account statements documenting the amount of any employer contributions to employee health insurance and retirement plans that the borrower included in the forgiveness calculation.

- FTE: documentation showing (at the election of the borrower):
  - The average number of FTE employees on payroll per month employed by the borrower between February 15, 2019 and June 30, 2019;
  - The average number of FTE employees on payroll per month employed by the borrower between January 1, 2020 and February 29, 2020; or
  - For seasonal employers: the average number of FTE employees on payroll per month employed by the borrower between February 15, 2019 and June 30, 2019; between January 1, 2020 and February 29, 2020; or any consecutive twelve-week period between May 1, 2019 and September 15, 2019.
• Non-payroll: documentation verifying the existence of obligations and services prior to February 15, 2020 and eligible payments during the covered period. These may include:
  o Business mortgage interest payments: a copy of a lender amortization schedule and receipts or cancelled checks verifying eligible payments from the covered period, or lender account statements from February 2020 and during the months of the covered period through one month after the covered period verifying interest amounts.
  o Business rent or lease payments: copy of a current lease agreement and receipts or cancelled checks verifying eligible payments from the covered period, or lessor account statements from February 2020 through one month after the covered period verifying eligible payments made.
  o Business utility payments: copy of invoices from February 2020 for those paid during the covered period and, receipts, cancelled checks, or accounts statements verifying those eligible payments.

Borrowers must submit the PPP Loan Forgiveness Calculation Form and PPP Schedule A to the lender and should be aware of the documentation that they are required to maintain but not submit to lenders. This documentation may be looked at in further reviews by the SBA.

72. Question – What do borrowers need to provide to the lender for loan forgiveness Form 3508S?\(^{21}\)

**Answer** – In addition to the application form, borrowers must submit the following documentation to the lender:

• Payroll: documentation verifying the cash compensation and non-cash benefit payments during the covered period or alternative covered period. This includes:
  o Banks account statements (or third-party payroll provider reports) documenting compensation paid to employees during or overlapping with the covered or alternative covered period.
  o Tax forms (or equivalent third-party payroll provider reports) for the covered or alternative covered period that show:
    ▪ Payroll tax filings reported, or that will be reported to the IRS (typically, IRS Form 941); and
    ▪ State quarterly business and individual employee wage reporting and unemployment insurance tax filings reported, or that will be reported to the state.

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\(^{21}\) Updated 10/16/2020.
- Payment receipts, cancelled checks or account statements documenting the amount of any employer contributions to employee health insurance and retirement plans that the borrower included in the forgiveness calculation.

- Non-payroll: documentation verifying the existence of obligations and services prior to February 15, 2020 and eligible payments during the covered period. These may include:
  - Business mortgage interest payments: a copy of a lender amortization schedule and receipts or cancelled checks verifying eligible payments from the covered period, or lender account statements from February 2020 and during the months of the covered period through one month after the covered period verifying interest amounts.
  - Business rent or lease payments: copy of a current lease agreement and receipts or cancelled checks verifying eligible payments from the covered period, or lessor account statements from February 2020 through one month after the covered period verifying eligible payments made.
  - Business utility payments: copy of invoices from February 2020 for those paid during the covered period and, receipts, cancelled checks, or accounts statements verifying those eligible payments.

Borrowers should also be aware of the documentation that they are required to maintain but not submit to lenders. This documentation may be looked at in further reviews by the SBA. This documentation must be retained for 6 years after the date the loan is forgiven or repaid in full.

**73. Question – Will my loan be reviewed by the SBA?**

**Answer** – The SBA will review all loans in excess of $2 million, and other loans “as appropriate.” This review process will occur after the lender’s submission of the borrower’s loan forgiveness application. The SBA has the discretion to review a PPP loan of any size.

**74. Question – When must payroll costs be incurred or paid to be forgiven?**

**Answer** – In general, payrolls costs are paid or incurred the covered period are eligible for forgiveness. For purposes of loan forgiveness the covered period is 24 weeks; however, borrowers who received a PPP loan before June 5, 2020 may elect an 8 week covered period. Borrowers may seek forgiveness for payroll costs for the covered period beginning on either:

- The date of disbursement of the borrower’s PPP loan proceeds from the lender (the start of the covered period); or
- The first day of the first payroll cycle in the covered period (the alternative payroll covered period).

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22 Updated 8/6/2020.
The alternative payroll covered period only applies to payroll costs. Non-payroll costs must be paid or incurred during the covered period to be eligible for loan forgiveness.

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 or alternative covered period to be eligible for forgiveness. Payroll costs that were incurred before the covered period but paid during the covered period are eligible for loan forgiveness (see SBA FAQs re Loan Forgiveness for examples).

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. The SBA’s interim final rule provides that this is typically each date that the employee would have performed work.

H.R. 7010 amended the definition of a covered period to the earlier of earlier of a 24-week period beginning on the date of the loan origination or December 31, 2020.

75. **Question – Is there a cap on loan forgiveness for self-employed borrowers’ payroll compensation?**

**Answer** – For PPP loans approved before June 5, 2020, and the borrower elects to use an 8-week covered period, loan forgiveness is capped at the lesser of 8/52 of 2019 compensation (or 15.38%) or $15,385 per individual in total across all businesses.

For all other borrowers, the amount of self-employed payroll compensation is capped at the lesser of 2.5 months (2.5/12 or 20.83 percent) of 2019 compensation or $20,833 per individual in total across all businesses.

C-Corporations owner-employees are capped up to 2.5/12 of their 2019 employee cash compensation, employer retirement and health insurance contributions made on their behalf, and payments for employer state and local taxes paid by the borrower and assessed on their compensation.

S-Corporations owner-employees are capped up to 2.5/12 of their 2019 employee cash compensation, employer state and local taxes paid by borrowers and assessed on their compensation, and employer retirement contributions made on their behalf. Employer health insurance contributions for employees with at least a 2 percent stake in the business are not

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23 Updated 10/16/2020.
eligible for forgiveness because those payments are included in their employee cash compensation.

*Owner-employees with less than a 5 percent ownership stake in a C- or S-corporation are no subject to the owner-employee compensation rule. Therefore, these owner-employees are exempt from the caps listed above. This exemption is intended to cover owner-employees who have no meaningful ability to influence decisions over how loan proceeds are allocated (see the interim final rule re treatment of owners).

Schedule C filers are capped up to 2.5/12 of their 2019 net profit as reported on their IRS Form 1040 Schedule C line 31. Payments for health insurance, retirement, or state and local taxes are not eligible for forgiveness. If a borrower did not submit their 2019 IRS Form 1040 Schedule C with their PPP application, it must be included in the borrower’s forgiveness application.

General partners are capped up to 2.5/12 of their 2019 net earnings from self-employment subject to self-employment tax (reduced by claimed section 179 expense deductions, unreimbursed partnership expenses, and depletion from oil and gas properties) multiplied by 0.9235. Payments for health insurance, retirement, or state and local taxes are not eligible for additional loan forgiveness. If a borrower did not submit their 2019 IRS Form 1065 K-1 with their PPP application, if must be included in the borrower’s forgiveness application.

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 for 2020.

See the SBA’s FAQs on Loan Forgiveness for more detail.

76. Question – When are non-payroll costs incurred to be eligible for forgiveness?

Answer – A non-payroll cost is eligible for forgiveness if it was:

- Paid during the covered period;
- 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;
- Incurred prior to the covered period but paid during the covered period.

It is important to note that the alternative payroll covered period only applies to payroll costs, it does not apply to non-payroll costs.

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24 Updated 10/16/2020.
Non-payroll 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 (see the interim final rule re treatment of owners for additional examples).

77. **Question – When will loan forgiveness be reduced?**

**Answer** – Section 1106 of the CARES Act, as amended by H.R 7010, provides certain exemptions for any reduction in a borrower’s loan forgiveness amount.

**Borrower Reduced Employee Hours, Re-Offered Hours, and Offer is Refused:**
The SBA is allowing an exemption to the required reduction for borrowers who have offered to restore previously-reduced hours, and the employee has not accepted. A borrower is not required to reduce the amount of forgiveness if:

- The borrower made a good faith, written offer to restore reduced hours during the covered or alternative covered period;
- The offer was for the same amount of hours as earned by the employee in the last pay period prior to the reduction in hours;
- The offer was rejected by such employee;
- The borrower has maintained records documenting the offer and its rejection; and

It is important to note that previously, the SBA provided an exemption for borrowers who laid off employees, made an offer to re-hire, and the employee refused the offer. With the changes made by H.R. 7010, this de minimis exemption is no longer available.

**Borrower Previously Reduced FTE, but Restored or Employee Voluntarily Leaves:**
A borrower’s loan forgiveness amount will not be reduced if the borrower restores any previously eliminated FTE employees, or restores any previous reductions to salaries or wages by December 31, 2020 or earlier. Forgiveness will also not be reduced if an employee if fired for cause, voluntarily resigns, or voluntarily requests a schedule reduction. ([See 5.g. and h. of the SBA’s interim final rule](#)).

**Borrower is Unable to Re-hire Employees and Similarly Qualified Individuals or Unable to Return to Same Level of Business Activity:**
H.R. 7010 provides a new exemption from a reduction in the amount of loan forgiveness if an employer is able to document the inability to rehire individuals who were employees of the eligible recipient on February 15, 2020 and an inability to hire similarly qualified individuals to fill those positions on or before December 31, 2020. Borrowers are required to inform applicable state unemployment insurance offices of any employee’s rejected offer within 30 days of the rejection. Borrowers must retain documents to show compliance with this exemption, this should include:

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25 Updated 10/16/2020.
• A written record of the offer’s rejection; and
• A written record of efforts to hire a similarly qualified individual.

Or, the employer is able to document the inability to return to the same level of business activity as the operating level at or before February 15, 2020 due to requirements or guidance issued by the Secretary of Health and Human Services, the Director of the Centers for Disease Control and Prevention, or the Occupational Safety and Health Administration during March 1, 2020 and ending December 31, 2020. Borrowers must be able to document in good faith that there was a reduction in business activity during the covered period, either directly or indirectly due to COVID-19 Requirements or Guidance. Borrower must provide documentation, this should include:
• Copies of applicable COVID-19 requirements or guidance for each business location, and
• Relevant borrower financial records.

Borrower uses SBA 3508S for loan forgiveness:
A borrower that uses SBA Form 3508S is exempt from any reductions in the borrower’s loan forgiveness amount based on reductions in FTE employees or reductions in employee salary or wages that would otherwise apply. The SBA and Treasury utilized their de minimis exemption authority under the CARES Act (see section 1.b. of this SBA revised interim final rule).

78. **Question – How do you calculate a reduction of loan forgiveness when there has been a reduction in employee salary or wages?**

**Answer** – If a borrower has reduced employee salary or hourly wages during the covered period or alternative payroll covered period by more than 25 percent, the portion in excess of the 25 percent reduces the eligible forgiveness amount. This reduction occurs if the salary or hourly wages are not restored by December 31, 2020. If salary or wages are restored by December 31, 2020, this provides the borrower a safe harbor from reduction. For purposes of calculating reductions, borrowers should only take into account decreases in salary or wages. Each PPP Loan Forgiveness Application, under the Schedule A Worksheet, provides a salary/hourly wage reduction calculation that must be followed. Also see the SBA’s FAQs on Loan Forgiveness for examples.

79. **Question – Can I appeal my loan forgiveness decision to the SBA?**

**Answer** – Only final SBA loan review decision can be appealed to the SBA’s Office of Hearings and Appeals (OHA). A borrower cannot appeal a decision made by a lender to the OHA. The OHA has specific procedural rules that must be followed. An SBA loan review decision is any official written decision by the agency, after a review of a PPP loan is completed. A review may occur

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26 Updated 8/6/2020.
27 Updated 10/16/2020.
because the loan amount is over $2 million, or the SBA utilized their discretion and reviewed a loan.

A borrower may request an SBA review of a lender’s decision to deny the borrower’s loan forgiveness application in full; however, this review is by the SBA and not the OHA.

80. **Question – Will my loan forgiveness be reduced if I received an EIDL loan advance?**

**Answer** – Yes, any EIDL loan advance that was received by the borrower will be deducted from the amount of loan forgiveness requested. There is a distinction between an EIDL loan and EIDL loan advance or “EIDL grant.” An EIDL advance is the $10,000 advance payments that were made available by the CARES Act and do not have to be paid back. Section 1110(e)(6) of the CARES Act states that if a borrower receives an EIDL loan advance and then subsequently receives a PPP loan, the amount of the advance must be reduced from the loan forgiveness amount. The borrower does not have to make this calculation in any of the loan forgiveness applications, but the amount will be reduced by the SBA.

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28 Updated 10/16/2020.
SBA Interim Final Rules and Resources:

Below is a list of existing interim final rules in chronological order:

- Paycheck Protection Program
- Affiliation Rules
- Additional Eligibility Criteria and Requirements for Certain Pledges of Loans for the Paycheck Protection Program
- Promissory Notes, Authorizations, Affiliation, and Eligibility
- Seasonal Employers
- Disbursements
- Requirements - Corporate Groups and Non-Bank and Non-Insured Depository Institution Lenders
- Nondiscrimination and Additional Eligibility Criteria
- Extension of Limited Safe Harbor with Respect to Certification Concerning Need for PPP Loan Request
- Requirements for Loan Increases for Partnerships or Seasonal Employers
- Eligibility of Certain Electric Cooperatives
- Treatment of Entities with Foreign Affiliates
- Second Extension of Limited Safe Harbor with Respect to Certification Concerning Need for PPP Loan and Lender Reporting
- Requirements - Loan Forgiveness
- SBA Loan Review Procedures and Related Borrower and Lender Responsibilities
- Eligibility of Certain Telephone Cooperatives
- Revisions to First Interim Final Rule
- Additional Revisions to First Interim Final Rule
- Revisions to Third and Sixth Interim Final Rule
- Revisions to Loan Forgiveness IFRs
- Additional Eligibility Revisions to First PPP Interim Final Rule
- Certain Eligible Payroll Costs (Fishing Boat Owners)
- Appeals of SBA Loan Review Decisions Under the PPP
- Treatment of Owners and Forgiveness of Certain Nonpayroll Costs
- Additional Revisions to Loan Forgiveness and Loan Review Procedures

NCUA Resources:

- The NCUA published a Letter to Credit Unions regarding the SBA’s Loan Programs to Help Small Businesses and Members During the COVID-19 Pandemic, see Letter to Credit Unions 20-CU-06.
This letter to credit unions states that the NCUA will not criticize credit unions' good faith efforts to prudently use the SBA programs with members affected by COVID-19.

- The NCUA published a Letter to Credit Unions regarding the Regulatory Treatment for PPP Loan, see [Letter to Credit Unions 20-CU-11](https://www.ncua.gov/).

## Appendix:

Existing SBA Office Codes are as follows:

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