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When will I have to begin paying principal and interest on my PPP loan?

If you submit to your lender a loan forgiveness application within 10 months after the end of your loan forgiveness covered period, you will not have to make any payments of principal or interest on your loan before the date on which SBA remits the loan forgiveness amount on your loan to your lender (or notifies your lender that no loan forgiveness is allowed).

Your “loan forgiveness covered period” is the 24-week period beginning on the date your PPP loan is disbursed; however, if your PPP loan was made before June 5, 2020, you may elect to have your loan forgiveness covered period be the covered period. Your lender must notify you of remittance by SBA of the loan forgiveness amount (or notify you that SBA determined that no loan forgiveness is allowed) and the date your first payment is due. Interest continues to accrue during the deferment period.

If you do not submit to your lender a loan forgiveness application within 10 months after the end of your loan forgiveness covered period, you must begin paying principal and interest after that period. For example, if a borrower’s PPP loan is disbursed on June 25, 2020, the 24-week period ends on December 10, 2020. If the borrower does not submit a loan forgiveness application to its lender by October 10, 2021, the borrower must begin making payments on or after October 10, 2021.

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 percent of the PPP loan for payroll costs, and not more than 40 percent of the loan forgiveness amount may be attributable to nonpayroll costs. For example, if a borrower uses 59 percent 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 percent 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 percent) of its loan on payroll costs, then because the borrower used less than 60 percent 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 percent of the forgiveness amount and \$36,000 in nonpayroll costs constituting 40 percent of the forgiveness amount).

Do independent contractors count as employees for purposes of PPP loan forgiveness?

No, independent contractors have the ability to apply for a PPP loan on their own so they do not count for purposes of a borrower's PPP loan forgiveness.

What happens if PPP loan funds are misused?

If you use PPP funds for unauthorized purposes, SBA will direct you to repay those amounts. If you knowingly use the funds for unauthorized purposes, you will be subject to additional liability such as charges for fraud. If one of your shareholders, members, or partners uses PPP funds for unauthorized purposes, SBA will have recourse against the shareholder, member, or partner for the unauthorized use.

How can PPP loans be used?

The proceeds of a PPP loan are to be used for:

- i. payroll costs (as defined in the Act and in 2.f.);
- ii. costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums;
- iii. mortgage interest payments (but not mortgage prepayments or principal payments);
- iv. rent payments;
- v. utility payments;
- vi. interest payments on any other debt obligations that were incurred before February 15, 2020; and/or
- vii. refinancing an SBA EIDL loan made between January 31, 2020 and April 3, 2020. If you received an SBA EIDL loan from January 31, 2020 through April 3, 2020, you can apply for a PPP loan. If your EIDL loan was not used for payroll costs, it does not affect your eligibility for a PPP loan. If your EIDL loan was used for payroll costs, your PPP loan must be used to refinance your EIDL loan. Proceeds from any advance up to \$10,000 on the EIDL loan will be deducted from the loan forgiveness amount on the PPP loan.

At least 60 percent of the PPP loan proceeds shall be used for payroll costs. For purposes of determining the percentage of use of proceeds for payroll costs, the amount of any EIDL refinanced will be included. For purposes of loan forgiveness, however, the borrower will have to document the proceeds used for payroll costs in order to determine the amount of forgiveness. While the Act provides that PPP loan proceeds may be used for the purposes listed above and for other allowable uses described in section 7(a) of the Small Business Act (15 U.S.C. 636(a)), the Administrator believes that finite appropriations and the structure of the Act warrant a requirement that borrowers use a substantial portion of the loan proceeds for payroll costs, consistent with Congress' overarching goal of keeping workers paid and employed. This percentage is consistent with the limitation on the forgiveness amount set forth in the Flexibility Act. This limitation on use of the loan funds will help to ensure that the finite appropriations available for these loans are directed toward payroll protection, as each loan that is issued depletes the appropriation, regardless of whether portions of the loan are later forgiven.

Are there any other restrictions on how I can use PPP loan proceeds?

Yes. At least 60 percent of the PPP loan proceeds shall be used for payroll costs. For purposes of determining the percentage of use of proceeds for payroll costs (but not for forgiveness purposes), the amount of any refinanced EIDL will be included. The rationale for this 60 percent floor is contained in the First PPP Interim Final Rule and SBA's interim final rule posted on June 11, 2020.

What amounts shall be eligible for forgiveness?

The amount of loan forgiveness can be up to the full principal amount of the loan plus accrued interest. The actual amount of loan forgiveness will depend, in part, on the total amount spent over the 24-week period beginning on the date your PPP loan is disbursed 3 ("covered period") on:

- i. Payroll costs including salary, wages, and tips, up to \$100,000 of annualized pay per employee (for 24 weeks, a maximum of \$46,154 per individual, or for eight weeks, a maximum of \$15,385 per individual), as well as covered benefits for employees (but not owners), including health care expenses, retirement contributions, and state taxes imposed on employee payroll paid by the employer (such as unemployment insurance premiums);
- ii. owner compensation replacement, calculated based on 2019 net profit as described in Paragraph 1.b. above, with forgiveness of such amounts limited to eight weeks' worth (8/52) of 2019 net profit (up to \$15,385) for an eight-week covered period or 2.5 months' worth (2.5/12) of 2019 net profit (up to \$20,833) for a 24-week covered period, but excluding any qualified sick leave equivalent amount for which a credit is claimed under section 7002 of the Families First Coronavirus Response Act (FFCRA) (Pub. L. 116–127) or qualified family leave equivalent amount for which a credit is claimed under section 7004 of FFCRA;
- iii. payments of interest on mortgage obligations on real or personal property incurred before February 15, 2020, to the extent they are deductible on Form 1040 Schedule C (business mortgage payments);
- iv. rent payments on lease agreements in force before February 15, 2020, to the extent they are deductible on Form 1040 Schedule C (business rent payments); and
- v. utility payments under service agreements dated before February 15, 2020 to the extent they are deductible on Form 1040 Schedule C (business utility payments).

The Administrator, in consultation with the Secretary, has determined that it is appropriate to limit the forgiveness of owner compensation replacement for individuals with self-employment income who file a Schedule C or F to either eight weeks' worth (8/52) of 2019 net profit (up to \$15,385) for an eight week covered period or 2.5 months' worth (2.5/12) of 2019 net profit (up to \$20,833) for a 24-week covered period per owner in total across all businesses. This approach is consistent with the structure of the CARES Act and its overarching focus on keeping workers paid, and will prevent windfalls that Congress did not intend. Specifically, Congress determined that the maximum loan amount is generally based on 2.5 months of the borrower's average total monthly payroll costs during the one-year period preceding the loan. 15 U.S.C. 636(a)(36)(E). For example, a borrower with one other employee would receive a maximum loan amount equal to five months of payroll (2.5 months of payroll for the owner plus 2.5 months of payroll for the employee). If the owner laid off the employee and availed itself of the safe harbor in the Flexibility Act from reductions in loan forgiveness for a borrower that is unable to return to the same level of business activity the business was operating at before February 15, 2020, the owner could treat the entire amount of the PPP loan as payroll, with the entire loan being forgiven. This would not only result in a windfall for the owner,

by providing the owner with five months of payroll instead of 2.5 months, but also defeat the purpose of the CARES Act of protecting the paycheck of the employee. For borrowers with no employees, this limitation will have no effect, because the maximum loan amount for such borrowers already includes only 2.5 months of their payroll. Finally, at least 60 percent of the amount forgiven must be attributable to payroll costs, for the reasons specified in the First PPP Interim Final Rule and SBA's interim final rule posted on June 11, 2020.

Can lenders rely on borrower documentation for loan forgiveness?

Yes. The lender does not need to conduct any verification if the borrower submits documentation supporting its request for loan forgiveness and attests that it has accurately verified the payments for eligible costs. The Administrator will hold harmless any lender that relies on such borrower documents and attestation from a borrower. The Administrator, in consultation with the Secretary, has determined that lender reliance on a borrower's required documents and attestation is necessary and appropriate in light of section 1106(h) of the Act, which prohibits the Administrator from taking an enforcement action or imposing penalties if the lender has received a borrower attestation.

How can PPP loans be used by individuals with income from self-employment who file a 2019 Form 1040, Schedule C?

The proceeds of a PPP loan are to be used for the following.

- i. Owner compensation replacement, calculated based on 2019 net profit as described in Paragraph 1.b. above.
- ii. Employee payroll costs (as defined in the First PPP Interim Final Rule) for employees whose principal place of residence is in the United States, if you have employees.
- iii. Mortgage interest payments (but not mortgage prepayments or principal payments) on any business mortgage obligation on real or personal property (e.g., the interest on your mortgage for the warehouse you purchased to store business equipment or the interest on an auto loan for a vehicle you use to perform your business), business rent payments (e.g., the warehouse where you store business equipment or the vehicle you use to perform your business), and business utility payments (e.g., the cost of electricity in the warehouse you rent or gas you use driving your business vehicle). You must have claimed or be entitled to claim a deduction for such expenses on your 2019 Form 1040 Schedule C for them to be a permissible use during the covered period. For example, if you did not claim or are not entitled to claim utilities expenses on your 2019 Form 1040 Schedule C, you cannot use the proceeds for utilities during the covered period.
- iv. Interest payments on any other debt obligations that were incurred before February 15, 2020 (such amounts are not eligible for PPP loan forgiveness).
- v. Refinancing an SBA EIDL loan made between January 31, 2020 and April 3, 2020. If you received an SBA EIDL loan from January 31, 2020 through April 3, 2020, you can apply for a PPP loan. If your EIDL loan was not used for payroll costs, it does not affect your eligibility for a PPP loan. If your EIDL loan was used for payroll costs, your PPP loan must be used to refinance your EIDL loan. Proceeds from any advance up to \$10,000 on the EIDL loan will be deducted from the loan forgiveness amount on the PPP loan.

The Administrator, in consultation with the Secretary, determined that it is appropriate to limit self-employed individuals' (who file a Form 1040 Schedule C) use of loan proceeds to those types of allowable uses for which the borrower made expenditures in 2019. The Administrator has determined that this limitation on self-employed individuals who file a Form 1040 Schedule C is consistent with the borrower certification required by the Act; specifically, that the PPP loan is necessary "to support the ongoing operations" of the borrower. The Administrator and the Secretary thus believe that this limitation is consistent with the structure of the Act to maintain existing operations and payroll and not for business expansion. This limitation on the use of PPP loan proceeds will also help to ensure that the finite appropriations available for these loans are directed toward maintaining existing operations and payroll, as each loan that is made depletes the appropriation. Finally, although the Act makes businesses in operation on February 15, 2020 eligible for PPP loans, the Administrator, in consultation with the Secretary, has determined that self-employed individuals will need to rely on their 2019 Form 1040 Schedule C, which provides verifiable documentation on expenses between January 1, 2019 and December 31, 2019. For individuals with income from self-employment from 2019 for which they have filed or will file a 2019 Form 1040 Schedule C, expenses incurred between January 1, 2020 and February 14, 2020 may not be considered because of the lack of verifiable documentation on expenses in this period. SBA will issue additional guidance for those individuals with self-employment income who: (i) Were not in operation in 2019 but who were in operation on February 15, 2020, and (ii) will file a Form 1040 Schedule C for 2020.

What documentation will I be required to submit to my lender with my request for loan forgiveness?

In addition to the borrower certification required by Section 1106(e)(3) of the Act, to substantiate your request for loan forgiveness, if you have employees, you should submit Form 941 and state quarterly wage unemployment insurance tax reporting forms or equivalent payroll processor records that best correspond to the covered period (with evidence of any retirement and health insurance contributions). Whether or not you have employees, you must submit evidence of business rent, business mortgage interest payments on real or personal property, or business utility payments during the covered period if you used loan proceeds for those purposes.

The 2019 Form 1040 Schedule C that was provided at the time of the PPP loan application must be used to determine the amount of net profit allocated to the owner for the covered period. The Administrator, in consultation with the Secretary, determined that for purposes of loan forgiveness it is appropriate to require self-employed individuals to rely on the 2019 Form 1040 Schedule C to determine the amount of net profit allocated to the owner during the covered period for the reasons described in Paragraph 1.d. above.

General

Section 1106(b) of the CARES Act provides that, subject to several important limitations, borrowers shall be eligible for forgiveness of their PPP loan in an amount equal to the sum of the following costs incurred and payments made during the covered period (as described in section III.3. below):

- (1) Payroll costs;
- (2) Interest payments on any business mortgage obligation on real or personal property that was incurred before February 15, 2020 (but not any prepayment or payment of principal);

(3) Payments on business rent obligations on real or personal property under a lease agreement in force before February 15, 2020; and

(4) Business utility payments for the distribution of electricity, gas, water, transportation, telephone, or internet access for which service began before February 15, 2020.

This interim final rule uses the term “nonpayroll costs” to refer to the payments described in (2), (3), and (4). As set forth in the First Interim Final Rule (85 FR 20811), eligible nonpayroll costs cannot exceed 40 percent of the loan forgiveness amount.

Loan Forgiveness Process

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, 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.

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 10 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.

Payroll Costs Eligible for Loan Forgiveness

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 period beginning on the date the lender disburses the PPP loan. 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.

Are there caps on the amount of loan forgiveness available for owner-employees and self-employed individuals' own payroll compensation?

Yes. For borrowers that received a PPP loan before June 5, 2020 and elect to use an eight-week covered period, the amount of loan forgiveness requested for owner-employees and self-employed individuals' payroll compensation is capped at eight weeks' worth (8/52) of 2019 compensation (i.e., approximately 15.38 percent of 2019 compensation) or \$15,385 per individual, whichever is less, in total across all businesses. For all other borrowers, the amount of loan forgiveness requested for owner-employees and self-employed individuals' payroll compensation is capped at 2.5 months' worth (2.5/12) of 2019 compensation (i.e., approximately 20.83 percent of 2019 compensation) or \$20,833 per individual, whichever is less, in total across all businesses.

In particular, C-corporation owner-employees are capped by the amount of their 2019 employee cash compensation and employer retirement and health insurance contributions made on their behalf. S-corporation owner-employees are capped by the amount of their 2019 employee cash compensation and employer retirement contributions made on their behalf, but employer health insurance contributions made on their behalf cannot be separately added because those payments are already included in their employee cash compensation. Schedule C or F filers are capped by the amount of their owner compensation replacement, calculated based on 2019 net profit. General partners are capped by the amount of their 2019 net earnings from self-employment (reduced by claimed section 179 expense deduction, unreimbursed partnership expenses, and depletion from oil and gas properties) multiplied by 0.9235. For self-employed individuals, including Schedule C or F filers and general partners, retirement and health insurance contributions are included in their net self-employment income and therefore cannot be separately added to their payroll calculation.

The Administrator, in consultation with the Secretary, determined that it is appropriate to limit the forgiveness of owner compensation to either eight weeks' worth (8/52) of their 2019 compensation (up to \$15,385) for an eight-week covered period or 2.5 months' worth (2.5/12) of their 2019 compensation (up to \$20,833) for a 24-week covered period per owner in total across all businesses. This approach is consistent with the structure of the CARES Act and its overarching focus on keeping workers paid, and will prevent windfalls that Congress did not intend. Specifically, Congress determined that the maximum

loan amount is generally based on 2.5 months of a borrower's average monthly payroll costs during the one-year period preceding the loan. 15 U.S.C. 636(a)(36)(E). For example, a borrower with one other employee would receive a maximum loan amount equal to 5 months of payroll (2.5 months of payroll for the owner plus 2.5 months of payroll for the employee). If the owner laid off the employee and availed itself of the exemption in the Paycheck Protection Program Flexibility Act of 2020 (Flexibility Act) related to reductions in business activity described in e. below, the owner could treat the entire amount of the PPP loan as payroll, with the entire loan being forgiven. This would not only result in a windfall for the owner, by providing the owner with five months of payroll instead of 2.5 months, but also defeat the purpose of the CARES Act of protecting the paycheck of the employee. For owners with no employees, this limitation will have no effect, because the maximum loan amount for such borrowers already includes only 2.5 months of their payroll.

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. The Administrator, in consultation with the Secretary, has determined that this interpretation is consistent with the text of the statute and advances the paycheck protection purposes of the statute by enabling borrowers to continue paying their employees even if those employees are not able to perform their day-to-day duties, whether due to lack of economic demand or public health considerations. This intent is reflected throughout the statute, including in section 1106(d)(4) of the Act, which provides that additional wages paid to tipped employees are eligible for forgiveness. The Administrator, in consultation with the Secretary, has also determined that, if an employee's total compensation does not exceed \$100,000 on an annualized basis, the employee's hazard pay and bonuses are eligible for loan forgiveness because they constitute a supplement to salary or wages, and are thus a similar form of compensation.

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 16 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, in consultation with the Secretary, has determined that this interpretation provides an appropriate degree of borrower flexibility while remaining consistent with the text of section 1106(b). 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 amount will avoid excessive inclusion of nonpayroll costs.

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 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.

Reductions to Loan Forgiveness Amount

Section 1106 of the CARES Act, as amended by Section 3(b)(2) of the Flexibility Act, specifically requires certain reductions in a borrower's loan forgiveness amount based on reductions in full-time equivalent employees or in employee salary and wages, subject to an important statutory exemption for borrowers that have eliminated the reduction on or before December 31, 2020. Section 3(b)(2) of the Flexibility Act also adds exemptions from reductions in loan forgiveness amounts based on employee availability and business activity. In addition, SBA and Treasury have adopted a regulatory exemption to the reduction rules for borrowers that have offered to restore employee hours at the same salary or wages, even if the employees have not accepted. The instructions to the loan forgiveness applications and the guidance below explains how the statutory forgiveness reduction formulas work.

- a. 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. The Administrator and the Secretary determined that this exemption is an appropriate exercise of their joint rulemaking authority to grant a de minimis exemption under section 1106(d)(6).⁵ Section 1106(d)(2) of the CARES Act reduces the amount of the PPP loan that may be forgiven if the borrower reduces full-time equivalent employees during the covered period as compared to a base period selected by the borrower. Section 1106(d)(5) of the CARES Act waives this reduction in the forgiveness amount if the borrower eliminates the reduction in full-time equivalent employees occurring during a different statutory reference period⁶ by not later than December 31, 2020. The Administrator and the Secretary believe that the additional exemption set forth above is consistent with the purposes of the CARES Act and provides borrowers appropriate flexibility in the current economic climate. The Administrator, in consultation with the Secretary, has determined that the exemption is de minimis for two reasons. First, it is reasonable to anticipate that most employees will accept the offer of restored hours in light of current labor market conditions. Second, to the extent this exemption allows employers to cure

FTE reductions attributable to reductions in hours that occurred before February 15, 2020 (the start of the statutory FTE reduction safe harbor period), it is reasonable to anticipate those reductions will represent a relatively small portion of aggregate employees given the historically strong labor market conditions before the COVID-19 emergency.

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 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. 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. For 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 covered period divided by the average FTE employees in the relevant reference 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. 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 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, as explained further below in subsection d.

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. The Administrator considered using a 3-hour standard, but determined that 40 hours or more of work each week better reflects what constitutes full-time employment for the vast majority of American workers.

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.

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.

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.

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 40 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.

Documentation Requirements What must borrowers submit for forgiveness of their PPP loans?

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 or 3508EZ or a 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. For purposes of administrative convenience for both lenders and borrowers, the Administrator, in consultation with the Secretary, has determined that requiring borrowers to submit certain documentation, maintain certain documentation, and choose whether to submit additional documentation will reduce initial reporting burdens on borrowers and reduce initial recordkeeping burdens on lenders.

SBA Reviews of Individual PPP Loans

Will SBA review individual PPP loans?

Yes. SBA may review any PPP loan, as the Administrator deems appropriate, as described below.

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).³ 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 or 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 or 3508EZ or lender's equivalent form).

When will SBA undertake a loan review?

For a PPP loan of any size, SBA may undertake a review at any time in 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 a PPP loan, or may be ineligible to receive the loan amount or loan forgiveness amount claimed by the borrower. 13 CFR 120.524(c). 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.

Will I 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 or 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.

May a borrower appeal SBA’s determination that the borrower is ineligible for a PPP loan or ineligible for the loan amount or the loan forgiveness amount claimed by the borrower?

Yes. SBA intends to issue a separate interim final rule addressing this process.

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 the 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 3508EZ 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 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:

- i. For applications submitted using the SBA Form 3508 or lender's equivalent form:
 - (1) the PPP Loan Forgiveness Calculation Form;
 - (2) PPP Schedule A; and

- (3) the (optional) PPP Borrower Demographic Information Form (if submitted to the lender).
- ii. For applications submitted using the SBA Form 3508EZ or lender's equivalent form:
 - (1) the SBA Form 3508EZ or lender's equivalent form; and
 - (2) 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:

- i. For applications submitted using the SBA Form 3508 or lender's equivalent form:
 - (1) the PPP Loan Forgiveness Calculation Form;
 - (2) PPP Schedule A; and
 - (3) the (optional) PPP Borrower Demographic Information Form (if submitted to the lender).
- ii. For applications submitted using the SBA Form 3508EZ or lender's equivalent form:
 - (1) the SBA Form 3508EZ or lender's equivalent form; and
 - (2) 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.

Lender Fees

Is the lender eligible for a processing fee if SBA determines that a borrower is ineligible?

No. If SBA conducts a loan review and determines that the borrower was ineligible for a PPP loan, the lender is not eligible for a processing fee.

Are lender processing fees subject to claw-back if SBA determines that a borrower is ineligible?

Yes. For any SBA-reviewed PPP loan, if within one year after the loan was disbursed SBA determines that a borrower was ineligible for a PPP loan based on the provisions of the CARES Act or applicable rules or guidance available at the time of the borrower's loan application, or the terms of the loan application, SBA will seek repayment of the lender processing fee from the lender. However, SBA's determination of

borrower eligibility will have no effect on SBA's guaranty of the loan if the lender has complied with its obligations under section III.3.b of the First Interim Final Rule and the document collection and retention requirements described in the lender application form (SBA Form 2484).

Are lender processing fees subject to claw-back if a lender has not fulfilled its obligations under PPP regulations?

Yes. If a lender fails to satisfy the requirements applicable to lenders that are set forth in section III.3.b of the First Interim Final Rule or the document collection and retention requirements described in the lender application form (SBA Form 2484), SBA will seek repayment of the lender processing fee from the lender and may determine that the loan is not eligible for a guaranty.