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## **Paycheck Protection Program: FAQs for SMACNA Members**

**(Updated November 5, 2020. Updates include FAQs 84 which introduces the proposed new Loan Forgiveness Questionnaires and discusses what will generally be covered by them.)**

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The following FAQs address the Paycheck Protection Program (“PPP”), as amended by the Paycheck Protection Program Flexibility Act of 2020 (“PPP Flexibility Act”). These FAQs are based upon the information and guidance issued by the Treasury Department as of November 5, 2020, and include information from the proposed Loan Necessity Questionnaire forms. We will continue to update these FAQs as we receive additional guidance from the SBA and the Treasury Department.

## **Small Business Loans – CARES Act**

### **FAQ #1: What is the Paycheck Protection Program?**

The Paycheck Protection Program is a new loan program included in the recently adopted CARES Act that is designed to help small businesses meet their payroll costs.

### **FAQ #2: Who is eligible to participate in the Paycheck Protection Program?**

Eligible recipients include small businesses and 501(c)(3) nonprofits that employ less than 500 employees, or less than the normal size standard that the SBA uses for the applicant’s primary industry (determined by NAICS number). For example, for NAICS number 332322—Sheet Metal Work Manufacturing, the normal SBA size standard is also 500 employees, but some industries have different size standards. A business can qualify for a PPP loan so long as they meet either the 500 employees standard, or the standard for their respective industry, regardless of whether it’s an employee-based or revenue-based size standard. Note, however, that non-profit organizations must meet the employee-based standard and cannot look to revenue size standards.

Employees include all persons employed on a full-time, part-time, or other basis. Sole-proprietors, independent contractors, and certain self-employed individuals are also eligible recipients. Importantly, the CARES Act waives the “credit available elsewhere” test that SBA loans normally have, so eligible businesses are not required to seek credit elsewhere before applying. The CARES Act also eliminates the personal guaranty and collateral typically required to obtain an SBA loan.

Note, however, that some small businesses are ineligible even if they satisfy the foregoing criteria. Businesses are ineligible for a PPP loan if: (i) they engaged in any activity that is illegal under federal, state, or local law; (ii) they are a household employer (individuals who employ household employees such as nannies or housekeepers); (iii) an owner of 20% or more of the equity of the applicant is incarcerated, on probation, on parole, presently subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction, or has been convicted of a felony within the last five years; or



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(iv) they are a business deemed ineligible by 13 CFR 120.110 (e.g., among others, financial businesses, passive businesses, insurance companies, government-owned entities).

### **FAQ #3: How much can eligible businesses borrow?**

Eligible recipients can receive loans for up to the lesser of (i) 2.5x their average monthly payroll costs over the prior twelve (12) months plus any amounts outstanding under an Economic Injury Disaster Loan, or (ii) \$10 million.

### **FAQ #4: What counts as “payroll costs”?**

“Payroll costs” are determined by the twelve (12) months prior to the application, and include the following items: (i) salary, wages, commissions, or similar compensation; (ii) payment of cash tips or equivalent, (iii) payment for vacation, parental, family, medical, or sick leave, (iv) allowance for dismissal or separation, (v) payment required for the provision of group health care benefits, including insurance premiums, (vi) payment of any retirement benefit, and (vii) payment of State and local taxes assessed on the compensation of employees. The Treasury Department has not released guidance expanding the definition of “Payroll costs” to include non-listed fringe benefits.

### **FAQ #5: What does “payroll costs” exclude?**

“Payroll costs,” as defined in the CARES Act, specifically cannot include salary, wages, commission or similar compensation of an individual employee in excess of \$100,000 annualized (but the first \$100,000 of such employee’s salary would count as payroll costs). The \$100,000 limitation applies only to salaries, i.e. an individual employee’s compensation for purposes of calculating payroll costs can exceed \$100,000 when non-cash benefits are included, provided that no salary in excess of \$100,000 is included in such calculation. Payroll costs also cannot include (i) compensation paid to employees whose principal place of residence is outside of the United States, (ii) federal employment taxes imposed or withheld between February 15, 2020 and June 30, 2020, including the employer’s share of FICA and income taxes required to be withheld from employees, and (iii) qualified sick and family leave wages for which a credit is allowed under the Families First Coronavirus Response Act.

### **FAQ #6: Does “payroll costs” include fringe union benefits?**

Whether or not a business has to pay fringe benefits to its employees is determined by its Collective Bargaining Agreement and past practice. But it is unclear whether fringe benefits may be included in the calculation of payroll costs for purposes of determining the amount of a PPP loan or loan forgiveness. The guidance from the SBA specifically lists certain categories, i.e. (i) salary and wages, (ii) payments for vacation, parental, family, medical, or sick leave, (iii)



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allowance for separation or dismissal, (iv) payment for group health care coverage, including insurance premiums, and retirement, and (v) payment of state and local taxes assessed on compensation of employees. Other fringe benefits that may be included in a CBA are not included in that list.

So, even if your CBA requires that that fringe benefits be paid out to employees, it is possible that the SBA will interpret the statute as not permitting them to be included in payroll costs when determining whether a loan recipient is eligible for forgiveness.

A business's obligation to pay fringes may be impacted by whether the business is paying the employee to work or simply paying the employee to take advantage of loan forgiveness. In areas with a CBA requiring payment of fringes on "hours worked" rather than "hours paid," hours paid by a business to an employee who is not rendering any service for the benefit of the business would be not be considered "hours worked" and would not require payment of fringes.

The CARES Act specified that regulations regarding loan forgiveness must be issued by April 26, 2020. Hopefully, this issue is among those dealt with in that guidance.

#### **FAQ #7: How does an applicant calculate the amount they can borrow?**

Per the SBA's Interim Final Rule, you can calculate the maximum amount you can borrow by using the following guide:

1. Total payroll costs from the last twelve months for employees who live in the United States.
2. Subtract any salary or wages paid to an employee in excess of an annual salary of \$100,000. For example, if an employee makes \$130,000 a year in salary (excluding non-cash benefits), then for these purposes, only include \$100,000 for that employee.
3. Calculate average monthly payroll costs by dividing the amount from Step 2 above by 12.
4. Take that number and multiply it by 2.5.
5. Finally, add the outstanding amount of an Economic Injury Disaster Loan (EIDL) made between January 31, 2020 and April 3, 2020, less the amount of any "advance" under an EIDL COVID-19 loan (because it does not have to be repaid).

For example:

1. Assume total payroll costs from the last twelve (12) months of \$1,200,000 (including \$100,000 of non-cash benefits like vacation, health care, and retirement benefits).
2. If four (4) employees make \$150,000, then we subtract the amount above \$100,000 for each of them ( $\$1,200,000 - \$200,000 = \$1,000,000$ ) (Recall that only an employee's salary and wages are relevant to the \$100,000 cut off; non-cash benefits can exceed \$100,000 when combined with salary less than \$100,000.)



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3. Divide \$1,000,000 by 12 = \$83,333.33
4. Multiply \$83,333.33 by 2.5 = \$208,333.33
5. Add in the amount of an outstanding EIDL (but not any emergency advance), if any, and that is the total amount of money you could borrow under the PPP.

**FAQ #8: What effect, if any, does qualified sick and family leave under the Families First Coronavirus Response Act have on Paycheck Protection Program loans?**

Qualified sick and family leave wages for which a tax credit is allowed under the Families First Coronavirus Response Act cannot be counted as payroll costs for determining loan amounts under a Paycheck Protection Program loan.

**FAQ #9: What can recipients spend loan proceeds on?**

During the period from February 15, 2020 through June 20, 2020, loan recipients may spend loan proceeds on (i) payroll costs, (ii) costs associated with continuation of group healthcare benefits and insurance premiums, (iii) interest payments on mortgage debt incurred prior to February 15, 2020 (not including principal or prepayments), (iv) rent payments, (v) utility payments, and (vi) interest on any other debt obligations incurred prior to February 15, 2020. Amounts not spent within the eight (8) weeks following origination of the loan will convert into a term loan (see FAQ #17). The statute itself does not indicate whether there are limitations on what the loan proceeds can be spent on after June 30, 2020, but note that the loan application requires that borrowers certify that the funds will be used on business-related costs consistent with the PPP.

Note that 75% of the loan proceeds must be spent on payroll costs. Recall also that the definition of “payroll costs” in the CARES Act does not include employee salaries above \$100,000.

Also note that only some of the above are eligible for loan forgiveness. See FAQ #11.

**FAQ #10: Do recipients need to start paying back the loans right away?**

No. The program allows for deferral of all payments for at least six (6) months. Please note the changes to the deferral period in FAQ #51.

**FAQ #11: Are PPP loans eligible for forgiveness?**



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Yes. Recipients of Paycheck Protection Program loans may apply to have their loans forgiven. While there may be other things a loan recipient is permitted to spend loan proceeds on, the statute and regulations only list certain things as being eligible for loan forgiveness. Recipients are eligible for forgiveness in the amount equal to what the recipient spends on (i) payroll costs, (ii) mortgage interest, (iii) rent, and/or (iv) utilities (all of which must have been incurred or begun service prior to February 15, 2020) in the eight (8) week period after origination of the loan. Only 25% of the amount spent over the eight (8) week period can have been for non-payroll costs.

After the eight (8) week period, borrowers will be able to apply to their lenders for forgiveness. Lenders will have sixty (60) days in which to make a determination.

For example, if a PPP loan originates on April 20, 2020, then the eight (8) week period will run from April 20, 2020 until June 15, 2020. Let's assume the borrower received \$100,000. During that eight (8) weeks, if the borrower spends \$80,000 on payroll costs, \$10,000 on rent or mortgage interest, and \$10,000 on utilities, then 100% of the loan is eligible for forgiveness because the borrower (i) only spend the funds on approved costs eligible for forgiveness, (ii) spent 75% or more of the funds on payroll costs, and (iii) spent 100% of the funds within the eight (8) week period.

#### **FAQ #12: Is the amount of the loan that is forgiven reduced by any factors?**

Yes. There are two factors that can reduce the portion of the loan that is forgiven: (i) reduction of employees, and (ii) reduction in salaries.

#### **FAQ #13: How is the loan forgiveness reduced if a recipient has laid off employees?**

The amount of the loan that is forgiven is reduced by multiplying (i) the average number of full-time equivalent employees by (ii) the quotient obtained by dividing the average number of full-time equivalent employees per month during the Covered Period by either, at the election of the borrower, (a) the average number of full-time equivalent employees per month employed during February 15, 2019 through June 30, 2019 or (b) the average number of full-time equivalent employees per month during January 1, 2020 through February 29, 2020. Recipients will be required to submit documentation when applying for loan forgiveness to demonstrate the amount of loan forgiveness for which they are eligible, e.g. payroll tax filings reported to the IRS, state income, payroll, and unemployment insurance filings, canceled checks for mortgage interest payments, etc.

For example, let's assume the following:

- A loan recipient called ABC, LLC received a loan for \$100,000 and spent 100% of it on approved, forgivable costs.



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- During the eight (8) weeks following origination, ABC has an average of ten (10) full-time equivalent employees per month.
- During January 1, 2020 through February 29, 2020, ABC had an average of twelve (12) full-time equivalent employees per month.
- Using the formula above, ABC divides 10 by 12 = .83 and multiplies that number by the amount spent on forgivable costs (\$100,000) = \$83,000.

So in that example, ABC would be eligible for forgiveness of \$83,000 of the loan.

#### **FAQ #14: How is the loan forgiveness reduced if a recipient has reduced salaries?**

The portion of the loan that is forgiven is also reduced by the amount of any reduction in total salary or wages of any employee in excess of 25% of the total salary or wage of such employee (excluding employee salaries in excess of \$100,000 annually). As noted above, recipients will be required to submit documentation when applying for loan forgiveness to demonstrate the amount of loan forgiveness for which they are eligible, e.g. payroll tax filings reported to the IRS, state income, payroll, and unemployment insurance filings, canceled checks for mortgage interest payments, etc.

For example, if ABC, LLC had two (2) employees making \$100,000 annually, and reduced their salaries to \$50,000 annually, then the amount of forgiveness that ABC could receive would be reduced by \$50,000 (the first 25% reduction was allowable, so only the combined reductions from \$75,000 to \$50,000 are penalized).

#### **FAQ #15: What if a recipient has already laid off employees or reduced salaries? Are those recipients still eligible for loan forgiveness?**

Yes. The amount of loan forgiveness is determined without regard to a reduction in the number of full-time equivalent employees of a recipient or to the reduction of one or more employees' total salary and wages that occurred between February 15, 2020 and April 26, 2020, if the recipient eliminates the reduction in full-time equivalent employees and/or eliminates the reduction in total salary not later than June 30, 2020.

For example, if ABC, LLC laid off three (3) of its twenty (20) employees between February 15, 2020 and April 26, 2020, the law provides that the amount of loan forgiveness will be determined without regard to that reduction, so long as ABC "eliminates the reduction" in full-time equivalent employees before June 30, 2020. Likewise, if ABC had reduced two (2) employees' salaries from \$100,000 to \$50,000, but then eliminated such reductions prior to June 30, 2020, then the amount of loan forgiveness ABC was eligible for would be determined without regard to that salary decrease.



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How this will work in practice is a little unclear still, given that we are all still waiting on further loan forgiveness guidance from the SBA.

**FAQ #16: Are forgiven loans considered taxable income?**

Not by the IRS. Loan amounts forgiven under this program will not be considered taxable income by the federal government. Individual states may treat them differently.

**FAQ #17: If any amount of the loan is not forgiven, what are the loan terms?**

If any amount of the loan is not forgiven, lenders may charge a maximum of one percent (1%), and the loan matures two (2) years from the date that the borrower applies for loan forgiveness.

**FAQ #18: Is there any more information or guidance coming out about this program?**

Yes. The SBA stated in its Interim Final Rule that it will issue additional guidance on loan forgiveness, and that it may provide further guidance as needed. This guidance will be important to watch, as it will affect each recipient's ability to apply for and receive loan forgiveness under the program.

**FAQ #19: What if a business did not apply for a Paycheck Protection Loan before the SBA indicated that applications could no longer be accepted?**

Businesses should still be speaking with their existing lender, or any approved SBA lender, about whether that lender is accepting applications for Paycheck Protection loans. The program is first-come first-served, so it is preferable to have an application already submitted or ready to be submitted as soon as possible. To that end, businesses should gather their payroll information from the prior twelve (12) months and begin calculating their average monthly payroll costs, since that will determine the size of the loan they may eligible to receive.

**FAQ #20: What was covered in the latest guidance issued on April 28, 2020?**

The Treasury Department issued its new Interim Final Rule on Disbursements, which covers how recipients of the loans may receive the funds.

**FAQ #21: How can PPP loans be disbursed?**

The Rule clarifies that PPP recipients must take their loans as a one-time lump sum payment within ten (10) calendar days of the loan being approved.



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**FAQ #22: What if my business received a PPP loan, but our bank only made a partial disbursement?**

For any loans that were approved but not yet fully disbursed, they must be fully disbursed by May 8, 2020. Moreover, the eight (8) week period relevant for loan forgiveness purposes will be deemed to have begun on the date of the first disbursement.

**FAQ #23: What if the delay in disbursement is because my business has not been able to get everything to our lender?**

This is very important, and all recipients of these loans must get the required documentation to their lenders as soon as possible. The latest guidance says that loans for which funds have not been disbursed because a borrower has not submitted required loan documentation within twenty (20) days of loan approval shall be canceled by the lender, subject only to the above-referenced transition period ending on May 8, 2020. That is, even if twenty (20) days has elapsed since your business received its loan approval, there will be a transition period until May 8, 2020 in which recipients can provide their lenders with the required documents. This deadline does not apply to businesses that are still within the twenty (20) day window. Note, however, that despite the Rule not requiring that loans be canceled until twenty (20) days after approval, it also requires that monies should be disbursed within ten (10) days of approval. Businesses with approved loans should endeavor to provide their lenders with all required documentation as soon as possible.

**FAQ #24: What if part of my PPP loan includes funds to refinance an existing EIDL?**

Lenders are required to send any amount of loan proceeds designated for the refinance of an EIDL directly to the SBA.

**FAQ #25: I saw a news report that the SBA is now going to audit PPP loan recipients, is that true?**

Partly. A new FAQ issued by the Treasury Department poses the question of whether “businesses owned by large companies with adequate sources of liquidity to support the business’ ongoing operations qualify for a PPP loan?” In response to this, the Treasury Department reiterates that borrowers must be able to certify that “[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.” That’s the same language from the Act, and the same certification borrowers have already made when applying for their loans.

The response goes on say that borrowers must take into account their current business activity and their ability to access other sources of liquidity “sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business.” The response makes



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specific reference to public companies “with substantial market value and access to capital markets” and states that such companies are unlikely to qualify.

In a subsequent interview, Secretary Mnuchin stated that the SBA would perform an audit of any company receiving more than \$2 million from the PPP. The SBA has indicated that additional guidance will be issued regarding this process, but there is not timeline for when it may be issued, leaving the possibility that it will be issued after the May 14, 2020 grace period has passed (see FAQ #27).

The answer to whether a specific borrower is able to make the above certification in good faith depends entirely on that borrower’s circumstances.

**FAQ #26: The example given by Treasury references publicly-traded companies. Is this something I need to consider if my company is privately held?**

Yes. Subsequent guidance issued in the Treasury’s ongoing FAQs indicates that private companies must look to the same requirements issued by Treasury for publicly-traded companies (see above FAQ #25).

**FAQ #27: What if my business received a PPP loan, but did not experience the anticipated loss in revenue, and now I think my business should return the funds?**

The FAQ states that any borrowers that return funds in full by May 14, 2020 will be deemed by the SBA to have made the certification in good faith, and therefore no further inquiry would be made.

**FAQ #28: Will a borrower’s PPP loan forgiveness amount be reduced if the borrower laid off an employee, offered to rehire the same employee, but the employee declined the offer?**

No. The SBA and Treasury intend to issue additional guidance regarding how this will be implemented, but for now have stated that there will be no reduction in loan forgiveness for borrowers that make a good faith, written offer to rehire laid off employees, and that have documented the employee’s rejection of that offer.

**FAQ #29: Is there any additional information on how the SBA will review the certifications made by loan applicants?**

Yes, on May 13, 2020 Treasury issued a new FAQ that gives a little more information on the review of the certification by borrowers. The guidance states that borrowers that, combined with their affiliates, received less than \$2 million, will be deemed to have made the certification in good faith. That means that any recipient, when considered in combination with their affiliates,



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that did not receive more than a \$2 million PPP loan is automatically deemed to have acted in good faith when submitting the application. This is consistent with Treasury's prior guidance that their review would focus on PPP loan recipients of more than \$2 million.

Treasury also clarified that borrowers that received more than \$2 million may still have made the certification in good faith depending on their individual circumstances. However, if the SBA determines in the course of its review that a borrower lacked an adequate basis to make the certification regarding the necessity of the loan request, then the SBA will seek repayment of the loan and will notify the borrower's lender that the borrower is not eligible for loan forgiveness.

Importantly, the guidance also states that if the improper loan is paid back after the borrower receives notice from the SBA, then the SBA will not pursue additional administrative enforcement or referrals to other agencies.

**FAQ #30: Is there any guidance about the loan forgiveness process yet?**

Yes, the Treasury Department posted a loan forgiveness application that includes some instructions for borrowers. You can find the form [here](#).

**FAQ #31: Does the loan forgiveness application explain how to calculate how much of a PPP loan is eligible to be forgiven?**

Yes, on pages one (1) and two (2) of the form, there is a line by line explanation of the amounts to enter in order to calculate the amount of the loan that is eligible for forgiveness.

**FAQ #32: Is the Covered Period for purposes of loan forgiveness still the eight (8) weeks following disbursement of the loan? What is the Alternative Payroll Covered Period?**

Yes, the standard Covered Period for measuring costs that the loan is spent on is still the eight (8) weeks following disbursement of the loan, but the application also addresses a common concern of borrowers by introducing the Alternative Payroll Covered Period. Borrowers with a biweekly (or more frequent) payroll schedule may choose to calculate eligible payroll costs using the eight (8) week period that begins on the first day of their first pay period following the disbursement date of their PPP loan. For example, if a borrower received its PPP loan proceeds on Monday, April 20, and the first day of its first pay period following its PPP loan disbursement is Sunday, April 26, then the first day of the Alternative Payroll Covered Period is April 26 and the last day of the Alternative Payroll Covered Period is Saturday, June 20. Borrowers who choose to use the Alternative Payroll Covered Period must apply it consistently throughout the application wherever there is a reference to "the Covered Period or the Alternative Payroll Covered Period." However, borrowers must apply only the Covered Period (not the Alternative



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Payroll Covered Period) wherever there is a reference in the application to just the “Covered Period”.

**FAQ #33: Did the costs eligible for forgiveness change?**

No, the application still lists the following as costs eligible for forgiveness: (i) [eligible payroll costs](#), (ii) mortgage interest payments on any business mortgage obligation on real or personal property incurred before February 15, 2020, (iii) lease payments pursuant to lease agreements for real or personal property in force before February 15, 2020, and (iv) utility payments, including business payments for electricity, gas, water, transportation, telephone, and/or internet access, for which service began before February 15, 2020. As before, eligible payroll costs must comprise seventy-five percent (75%) of the total forgiveness amount.

**FAQ #34: Does the loan forgiveness application require any new certifications?**

Yes, when submitting the application, borrowers will have to certify to several things, including but not limited to: (i) that the amount requested for forgiveness was spent on costs eligible for forgiveness; (ii) that the borrower has accurately verified those costs; (iii) that the information in the application is true and correct, and that the borrower understands the consequences for making false statements when seeking loan forgiveness; and (iv) that the tax documents submitted to the lender when applying for loan forgiveness are consistent with those that the borrower has submitted or will submit to the IRS and/or the applicable state tax agency.

Borrowers who are owner-employees or self-employed will also have to certify that the amount included for compensation to owner-employees or self-employed individuals does not exceed eight (8) weeks' worth of 2019 compensation.

**FAQ #35: Does the loan forgiveness application explain how to calculate FTEs?**

Yes, for each employee, borrowers should: (i) enter the average number of hours paid per week; (ii) divide by 40; and (iii) round the total to the nearest tenth. The maximum for each employee is capped at 1.0. Borrowers may also choose to use a simplified method and use a 1.0 for employees who work 40 hours or more per week and 0.5 for employees who work fewer hours.

**FAQ #36: Does the loan forgiveness application clarify how the forgiveness reduction works if there are salary/wage reductions?**

Yes, the actual amount of loan forgiveness the Borrower will receive will be reduced if the salary or hourly wages of certain employees during the Covered Period or the Alternative Payroll Covered Period was more than twenty-five percent (25%) less than during the period from



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January 1, 2020 to March 31, 2020. Borrowers have to complete the application worksheet to determine what level of reduction they will receive.

**FAQ #37: Are there any exceptions for reductions in FTEs that do not count against the loan forgiveness amount?**

Yes, the application directs borrowers to indicate the FTE of (i) any positions for which the borrower made a good-faith, written offer to rehire an employee during the Covered Period or the Alternative Payroll Covered Period which was rejected by the employee; and (ii) any employees who during the Covered Period or the Alternative Payroll Covered Period (a) were fired for cause, (b) voluntarily resigned, or (c) voluntarily requested and received a reduction of their hours. Any FTE reductions in these cases will not reduce the borrower's loan forgiveness amount.

**FAQ #38: In what instances does the loan forgiveness reduction safe harbor apply to reductions in FTEs?**

The application reiterates that borrowers are exempt from the FTE reduction penalty if they satisfy both of the following conditions: (i) the borrower reduced its FTE levels in the period beginning February 15, 2020 and ending April 26, 2020; and (ii) the borrower then restored its FTE levels by not later than June 30, 2020 to its FTE levels in the borrower's pay period that included February 15, 2020.

**FAQ #39: Are there any other new requirements or information in the loan forgiveness application?**

Yes. Borrowers are strongly encouraged to review the entire application themselves, but one additional obligation the application places on borrowers is to maintain all records relating to their PPP loans, including the loan forgiveness application, related worksheets, and documentation for six (6) years after the date the loan is forgiven or repaid in full. Borrowers must provide such copies to the SBA and/or its Office of the Inspector General upon request.

**FAQ #40: What is the process to obtain loan forgiveness?**

Borrowers must complete the Loan Forgiveness Application and then submit it to their lender, and their lender will then have sixty (60) days from receipt of the completed application to submit a decision to the SBA. The lender is responsible for notifying the borrower of the approved forgiveness amount.

Note that the SBA may conduct its own review, in its discretion, of the Loan Forgiveness Application for any PPP loan, including with regard to borrower eligibility, the loan amounts and



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use of the proceeds, and whether the loan is eligible for forgiveness. If the SBA has concerns regarding a borrower's eligibility, they will require the lender to seek additional information from the borrower. If the SBA requests additional information, borrowers are obligated to respond, but will continue to provide documents and information through their lender.

In the event that the SBA determines that a borrower is ineligible for a PPP loan or for loan forgiveness, borrowers may appeal that decision. The SBA and Treasury Department have indicated that they will issue additional guidance regarding that process.

**FAQ #41: When should payroll costs be paid and/or incurred in order for them to be eligible for forgiveness?**

Payroll costs that are either paid or incurred during the eight (8) week period following disbursement of the loan will be eligible for forgiveness (or the eight (8) weeks following the first day of the first payroll cycle after disbursement if the borrower has chosen to use the Alternative Payroll Covered Period). The SBA has clarified that payroll costs are considered paid on the day that paychecks are distributed, or the day that an ACH credit transaction is initiated.

The SBA has further clarified that any payroll costs incurred, but not paid, before the end of the Covered Period are still eligible for forgiveness if they are paid on or before the next regular payroll date. Payroll costs are deemed "incurred" on the day that an employee's pay is earned. However, in the case of employees currently being paid but not performing work, the payroll costs are deemed incurred based on the schedule established by the borrower, e.g. on a day that the employee would normally have worked.

**FAQ #42: Is compensation paid to furloughed employees eligible for loan forgiveness?**

Yes, so long as the compensation is paid to the furloughed employees during the Covered Period or Alternative Payroll Covered Period.

**FAQ #43: Are there any limits on the amount of loan forgiveness for compensation to owner-employees and self-employed individuals?**

Yes. As noted in FAQ #34, and among other restrictions applicable to general partners and self-employed individuals, owner-employees and self-employed individuals can only seek loan forgiveness for the lesser of eight (8) weeks' worth of 2019 compensation or \$15,385 (the eight (8) week pro rata amount for \$100,000 annual compensation). The SBA notes that no additional forgiveness above that amount is provided for retirement or health insurance contributions for self-employed individuals and general partners, because such expenses are paid out of their net self-employment income.



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**FAQ #44: When should non-payroll costs be paid and/or incurred to be eligible for loan forgiveness?**

Non-payroll costs are eligible for loan forgiveness if they are paid during the Covered Period, or if they are incurred during the Covered Period and paid prior to the next regular billing date. Note, however, that advance payments of mortgage interest are not eligible for loan forgiveness.

**FAQ #45: How do borrowers need to make and document good faith offers to rehire laid off employees?**

As previously noted, borrowers are not penalized for the reduction in FTEs if they make good faith offers to rehire employees and are rejected. In these circumstances, the following conditions must be satisfied: (i) make a good faith, written offer to rehire the laid off employee (or restore the employee's reduced hours) during the Covered Period or Alternative Payroll Covered Period; (ii) the offer must be for the same pay and hours as the last pay period prior to the termination or reduction in hours; (iii) the employee rejects the offer; (iv) the borrower maintains records documenting the offer and its rejection; (v) the borrower must also inform the applicable state unemployment insurance office of the offer and rejection within thirty (30) days of the rejection.

**FAQ #46: If a borrower has reduced the hours of some of its employees, is its loan forgiveness amount reduced by both the reduction in FTEs and the reduction in wages resulting from the reduction in hours?**

No, the SBA has clarified that borrowers will not be doubly penalized: the salary/wage reduction in loan forgiveness only applies to the portion of the decline in salary/wages that is not attributable to a reduction in FTEs (i.e. if an hourly employee receives less wages because his/her hours were cut from 40 to 20, but his/her rate of pay was the same, then the borrower is only penalized for the reduction in FTEs from 1.0 to 0.5, and not for the reduction in wages received as a result of the reduction in hours (since the hourly rate of pay was the same)).

**FAQ #47: What changes to the PPP does the PPP Flexibility Act make regarding loan maturity dates?**

The PPP Flexibility Act makes several key changes. Among them is that the minimum maturity date for PPP loans that are not forgiven is now five (5) years. Note, however, that this provision only effects PPP loans made on or after the enactment of the PPP Flexibility Act (June 5, 2020), though borrowers and lenders may choose to modify to maturity date of an existing PPP loan.



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**FAQ #48: What changes to the PPP does the PPP Flexibility Act make regarding loan forgiveness?**

Perhaps most significantly, the PPP Flexibility Act changes the Covered Period—during which loan recipients must spend loan funds in order to be eligible for loan forgiveness—from eight (8) weeks after origination of the loan to twenty-four (24) weeks after origination of the loan. Note, however, that borrowers that received their loan prior to enactment of the PPP Flexibility Act may still elect to utilize an eight (8) week Covered Period if they choose.

**FAQ #49: What changes to the PPP does the PPP Flexibility Act make regarding the rehiring exemptions for loan forgiveness?**

Another significant change is that employers will now have until December 31, 2020 (instead of June 30, 2020) in order to eliminate the reduction in FTEs or wages that would otherwise reduce the amount of loan forgiveness for which a borrower is eligible.

The PPP Flexibility Act also formally codifies what previous guidance had indicated: that loan forgiveness will be calculated without regard to any proportional reduction in FTEs attributable to instances in which the borrower can document, in good faith, (i) an inability to rehire employees that were employees on February 15, 2020, and (ii) an inability to hire similarly qualified employees for unfilled positions on or before December 31, 2020, or (iii) that the borrower is unable to return to the same level of business activity as the business was operated at as of February 15, 2020 due to compliance with sanitation or social distancing 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 from March 1, 2020 to December 31, 2020.

**FAQ #50: What changes to the PPP does the PPP Flexibility Act make regarding the requirement that a certain percentage of loan proceeds be spent on payroll costs?**

The previous requirement that 75% of loan proceeds must be spent on payroll costs has been dropped to 60%. Therefore, up to 40% of proceeds may now be spent on mortgage interest (still no prepayments), rent obligations, and covered utility payments, but borrowers must spend 60% of their loan proceeds on payroll costs in order to be eligible for forgiveness.

**FAQ #51: What changes to the PPP does the PPP Flexibility Act make regarding the PPP loan payment deferral period?**

In addition, the deferral period for payments of principal and interest on PPP loans was changed from a minimum of six (6) months to until the amount of loan forgiveness is remitted to the lender. Note, however, that if a borrower does not apply for loan forgiveness before ten (10)



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months after the end of their Covered Period, then they will be required to begin principal and interest payments, i.e. borrowers cannot indefinitely delay the end of the deferral period by not applying for loan forgiveness.

**FAQ #52: What changes to the deferral of payroll taxes does the PPP Flexibility Act make?**

Section 2302 of the CARES Act, which allows for the delay of payment of certain payroll taxes, originally included a prohibition against companies delaying their payroll taxes if they received loan forgiveness for a PPP loan. That prohibition has been deleted, and loan forgiveness through the PPP is no longer a factor in whether that borrower can also delay payment of their payroll taxes pursuant to the CARES Act.

**FAQ #53: What if I do not spend all of the PPP loan proceeds during the Covered Period?**

In the joint statement issued by Treasury Secretary Mnuchin and SBA Administrator Jovita Carranza on June 8, 2020, some ambiguity around this issue was resolved. It was made clear that if a borrower spends less than 60% percent of the PPP loan proceeds on payroll costs during the Covered Period, the borrower will still be eligible for partial loan forgiveness, provided that at least 60% of the amount forgiven was used for payroll costs.

**FAQ #54: What if I received a PPP loan of \$100,000 and only spent \$54,000 on payroll costs?**

Among other things, the Interim Final Rule issued on June 11, 2020 reinforces the June 8 joint statement. It explains that the 60% threshold for payroll costs should be understood as a proportional limit for non-payroll costs, i.e. that the amount of loan forgiveness a borrower receives must include not more than 40% of non-payroll costs (rather than spending less than 60% on payroll costs being an absolute bar to forgiveness).

To use the example in the question, if a borrower receives a \$100,000 PPP loan, and spends \$54,000 on payroll costs (i.e., 54% of loan proceeds) and \$46,000 on non-payroll costs, then they have obviously spent less than the 60% threshold on payroll costs. This is not a bar to loan forgiveness, but results in a proportional reduction in the forgiveness amount. Because the borrower spent less than 60% of the loan proceeds on payroll costs, the borrower can only receive loan forgiveness of \$90,000 (because \$54,000 is 60% of \$90,000, and the loan forgiveness amount must be comprised of at least 60% payroll costs).

**FAQ #55: Did the PPP Flexibility Act change any of the certifications borrowers need to make?**

Yes, but only to conform to the new 24-week Covered period and 60% payroll costs threshold. The borrower certifications are otherwise the same.



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**FAQ #56: Are any of the other Interim Final Rules going to change as a result of the PPP Flexibility Act?**

Yes, the SBA indicated that it is going to issue revisions to the interim final rules on loan forgiveness and loan review procedures, and that it will be issuing more guidance relevant to lenders.

**FAQ #57: Is my business eligible to use the “EZ” Loan Forgiveness Application Form?**

The SBA is now allowing some businesses to use a simplified loan forgiveness application, called Form 3508EZ. Borrowers can use this form if they satisfy one of the following three conditions:

1. The Borrower is a self-employed individual, independent contractor, or sole proprietor that did not have any employees when it applied for the PPP loan, and did not include any employee salaries in the loan application; or
2. The Borrower did not reduce salaries or wages of any employee by more than 25% during the Covered Period, and did not reduce the number of employees or average paid hours of employees during the Covered Period (excluding reductions that arose from an inability to rehire employees or similarly qualified workers); or
3. The Borrower did not reduce salaries or wages of any employee by more than 25% during the Covered Period, and the borrower was unable to operate during the Covered Period at the same level of business activity as before February 15, 2020 due to compliance with requirements and/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, or the Occupational Safety and Health Administration, related to the maintenance of standards of sanitation, social distancing, or any other work or customer safety requirement related to COVID-19.

**FAQ #58: Is there any benefit to using the EZ Form?**

Yes, the EZ Form makes the application easier to complete. Because the borrower is certifying that they fall into one of the three (3) categories outlined in FAQ #57, the EZ Form does not require calculations or adjustments for reductions in FTEs or salaries.

**FAQ #59: Now that the Covered Period has been changed to 24 weeks, can borrowers include more than \$15,385 of cash compensation per employee?**

Yes. The new Loan Forgiveness Application Instructions make it clear that borrowers using the 24-week Covered Period can include up to \$46,154 of cash compensation per employee (the equivalent of a \$100,000 salary prorated over 24 weeks). For borrowers electing to keep the 8-



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week Covered Period, they must maintain the \$15,385 limit. Note that very few borrowers will reach the \$46,154 limit because the amount of loan proceeds from PPP loans has not changed and is still limited to 2.5 times average monthly payroll costs. Because of that, unless there is a reduction in FTEs, most borrowers will spend all of their loan proceeds before they reach \$46,154 in cash compensation for any individual employee.

**FAQ #60: How much compensation can owners include in their Loan Forgiveness Applications?**

For borrowers using the 24-week Covered Period, owners can include the lesser of 2.5 months of their 2019 compensation or \$20,833. For borrowers using the 8-week Covered Period, that amount is still capped at \$15,385. Note that the SBA considers this the total compensation that can be included for owners (this is consistent with prior guidance—see FAQ #43 above). The instructions include notes to: (i) not add employer health insurance contributions made on behalf of a self-employed individual, general partners, or owner-employees of an S-corporation, because such payments are already included in their compensation; and (ii) not add employer retirement contributions made on behalf of self-employed individuals or general partners, because such payments are already included in their compensation.

**FAQ #61: What if a borrower spends all of their loan proceeds before the end of the Covered Period? Does that borrower still have to wait to apply for loan forgiveness?**

The most recent guidance from the Treasury Department indicates that a borrower may submit a loan forgiveness application any time 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. Therefore, even though the Covered Period was increased to 24 weeks, borrowers that spend all of their loan proceeds prior to the end of the 24-week period are not obligated to wait out the entire 24 weeks before they submit their loan forgiveness application.

Note, however, that if a borrower that applies for loan forgiveness before the end of the Covered Period has reduced employee salaries or wages by more than 25%, then they must apply that reduction for the remainder of the Covered Period when applying for loan forgiveness. The Treasury Department provides the following 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 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. The first \$250 (25% of \$1,000) is exempted from the loan forgiveness reduction, but the borrower would have to list \$1,200 as the salary/hourly wage reduction for that employee (the extra \$50 weekly reduction multiplied by 24 weeks) when submitting its application. If the borrower applies for forgiveness before the end of the Covered



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Period, it must account for the salary reduction for the full 24-week Covered Period (totaling \$1,200).

Therefore, if a borrower has made salary or wage reductions, or has reduced its number of FTEs, then it is better to wait to apply for loan forgiveness until the borrower has eliminated the reductions in salary and FTEs, even if the borrower has already spent all of its loan proceeds.

**FAQ #62: Which loan forgiveness application form should sole proprietors, independent contractors, and self-employed individuals with no employees use?**

Sole proprietors, independent contractors, and self-employed individuals with no employees automatically qualify for the “EZ” loan forgiveness application form, as long as no employee salaries were included in their loan application.

**FAQ #63: If a borrower applies for loan forgiveness, does the borrower have to make any loan payments before a forgiveness decision is rendered?**

No. As long as a borrower applies for forgiveness within ten (10) months of the end of their Covered Period, then the borrower does not have to make any loan payments until the amount of loan forgiveness is determined. The lender is responsible for notifying borrowers of the amount of loan forgiveness approved, and the date on which the borrower’s first payment is due (if any).

**FAQ #64: When determining cash compensation, should borrowers use the gross amount of compensation or the net amount paid to employees?**

Borrowers should use the gross amount of compensation paid to employees.

**FAQ #65: What contributions for retirement benefits will be considered payroll costs that are eligible for loan forgiveness?**

Any retirement contributions and benefits paid or incurred by the borrower during the Covered Period are eligible as payroll costs but employee-paid contributions are not. Note also that forgiveness is not provided for employer contributions for retirement benefits accelerated from periods outside the Covered Period.

**FAQ #66: Has the SBA clarified what owner compensation is eligible for forgiveness?**

In the guidance released on August 4, 2020, the SBA elaborates on how the compensation of owners is treated. The maximum amount of payroll compensation for owners is still capped at \$15,385 and \$20,833 for 8-week and 24-week Covered Periods, respectively. Overall, the treatment of owner compensation depends on the type of business in question.



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**FAQ #67: How is owner compensation in a C-corporation treated?**

In a C-corporation, an owner-employee's cash compensation can be up to 2.5/12 of their 2019 employee cash compensation. Outside of cash compensation, the owner-employee of a C-corporation can also seek forgiveness for borrower-payments of state and local taxes assessed on their compensation, for borrower contributions to their employee health insurance, and for borrower contributions to their employee retirement plans capped at the amount of 2.5/12 of the 2019 employer retirement contribution. Only the cash compensation is capped by the \$20,833 figure.

**FAQ #68: How is owner compensation in an S-corporation treated?**

In an S-corporation, owners that are also employees are eligible for loan forgiveness on their cash compensation up to 2.5/12 of their 2019 employee cash compensation. Similar to C-corporations, borrowers can also seek forgiveness for borrower-payments of state and local taxes assessed on their compensation, and for borrower contributions to their employee retirement plans capped at the amount of 2.5/12 of the 2019 employer retirement contribution. However, employer contributions for health insurance are not eligible for additional forgiveness for S-corporation employees with at least a two percent (2%) ownership interest in the borrower, including employees who are family members of an individual with at least a two percent (2%) ownership interest. Again similar to the C-corporation, only the cash compensation is limited by the \$20,833 ceiling.

**FAQ #69: How is owner compensation for self-employed (Schedule C or F filers) treated?**

Self-employed individuals (Schedule C or F filers) can apply for loan forgiveness in the amount of 2.5/12 of 2019 net profit as reported on IRS Form 1040 Schedule C line 31 (or 2.5/12 of 2019 net farm profit, as reported on IRS Form 1040 Schedule F line 34). If the borrower is a new business, then they must use the estimated 2020 Schedule C or F. For these borrowers, separate payments for health insurance, retirement, and state and local taxes are not eligible for additional loan forgiveness.

**FAQ #70: How is owner compensation for general partners treated?**

General partners may include in their compensation calculations 2.5/12 of their 2019 net earnings from self-employment that is subject to self-employment tax (see IRS Form 1065 Schedule K-1 box 14a, and reduced by box 12, section 179), multiplied by 0.9235. For these borrowers, separate payments for health insurance, retirement, and state and local taxes are not eligible for additional loan forgiveness. Note also that cash compensation to general partners is



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only eligible for loan forgiveness if the payments to partners were made during the Covered Period.

**FAQ #71: How is owner compensation in an LLC treated?**

LLC owners must follow the instructions that apply to how their business was organized for tax filing purposes for 2019.

**FAQ #72: Are non-payroll costs that are incurred prior the Covered Period eligible for forgiveness?**

Yes. If incurred prior to the Covered Period but paid during it, these costs may be included in the application.

**FAQ #73: Are non-payroll costs incurred during the Covered Period but not paid until after the Covered Period ends eligible for forgiveness?**

Yes, so long as they are paid on or before the next regular billing date.

**FAQ #74: For borrowers using the Alternative Covered Period, does it also apply to non-payroll costs?**

No. For non-payroll costs, the Covered Period always starts on the date of the first disbursement, regardless of whether the borrower elects to use the Alternative Covered Period for their payroll.

**FAQ #75: Are payments made on renewed leases or interest payments on refinanced mortgage loans eligible for loan forgiveness?**

Yes, but only if the original lease or mortgage existed prior to February 15, 2020.

**FAQ #76: Are vision and dental benefits included as a part of group health care benefits when determining payroll costs?**

Yes.

**FAQ #77: Are any individuals exempt from the owner-employee compensation rules when applying for loan forgiveness?**

Yes. The owner-employee compensation rules (see FAQs 66-71) do not apply to individuals with a less than five percent (5%) stake in a c- or s-corporation borrower.



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**FAQ #78: Can a borrower include amounts attributable to the business operation of a tenant or sub-tenant of the borrower in its non-payroll costs?**

No. If a borrower leases out a portion of its space that it either owns or leases, then the amounts of mortgage interest, rent, and utilities attributable to the tenant and/or sub-tenant cannot be included in the borrower's non-payroll costs. For example, if a borrower leases an office for \$1,000 per month, and subleases part of the office to another business for \$250 per month, then only \$750 per month of the rent is eligible for forgiveness. The SBA provides the following additional example: if a borrower has a mortgage on an office building it uses, and it leases part of the building to other businesses, then the portion of mortgage interest that is eligible for loan forgiveness is limited to the percent share of the fair market value of the space that is not leased out to other businesses.

**FAQ #79: Are rent payments to a related entity eligible for loan forgiveness?**

Yes, but only if (i) the amount of loan forgiveness requested for rent payments is less than or equal to the amount of mortgage interest owed on the property during the Covered Period and attributable to the leased space, and (ii) the lease and mortgage were both in place prior to February 15, 2020.

Note that any common ownership means the parties are related for this purpose. Borrowers will be required to submit relevant documentation to their lenders if this is the case.

Note also that mortgage interest payments to a related party are not eligible for forgiveness.

**FAQ #80: When the PPP Flexibility Act changed the deferral period for borrower payments on PPP loans, did that obligate lenders and borrowers to amend already existing promissory notes?**

No. The change to the deferral period (see FAQ #51) automatically applied to all PPP loans. The SBA has tasked lenders with notifying their borrowers of the change in the deferral period (and thus when borrowers' first payments of principal and interest are due). Recall that the deferral period lasts until the SBA remits the borrower's loan forgiveness amount to the lender, or until ten (10) months after the end of borrower's Covered Period if the borrower does not apply for loan forgiveness.

**FAQ #81: Are there any accommodations for borrowers who received PPP loans of \$50,000 or less?**

Yes. The SBA has released a new application form and instructions for borrowers who received PPP loans of \$50,000 or less. The new form further simplifies the forgiveness application



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process and exempts borrowers of these smaller PPP loans from any reductions to loan forgiveness based on FTE reductions or salary reductions that would otherwise apply. The application can be found here: <https://home.treasury.gov/system/files/136/PPP-Loan-Forgiveness-Application-Form-3508S.pdf>, and the instructions here: <https://home.treasury.gov/system/files/136/PPP-Loan-Forgiveness-Application-Form-3508S-Instructions.pdf>.

**FAQ #82: What is the deadline for submitting a loan forgiveness application? Is it the date displayed in the upper right hand corner of the loan forgiveness application forms?**

The SBA specifically noted in its recent guidance that the expiration date displayed in the upper right hand corner of the loan forgiveness application forms is not the deadline for applying for loan forgiveness. That date is only so that the SBA complies with an unrelated law. Borrowers may submit a loan forgiveness application for their PPP loan at any time prior to their loan maturing. The maturity date is different for each individual loan, but may be between two (2) and five (5) years after the loan originated. Note, however, as discussed in FAQs #51 and #80 above, that the deferral period for PPP loan payments is ten (10) months from the end of the Covered Period. Therefore, borrowers would have to begin making loan payments on their PPP loan if they have not submitted their loan forgiveness application by then. It would be preferable for the vast majority of borrowers to submit their loan forgiveness applications prior to the end of the deferral period.

**FAQ #83: Are there any change of ownership restrictions on PPP borrowers?**

Yes. The SBA published procedural guidance for lenders on what must occur when a PPP borrower wishes to sell its business or otherwise change ownership. The guidance may be relevant to borrowers too because it sets forth what changes of ownership can occur without SBA approval. In this context, a change of ownership means any of: (i) twenty percent (20%) of the stock or membership interests of a PPP borrower is sold or transferred, including to an affiliate or existing owner; (ii) fifty percent (50%) of the assets of a PPP borrower are sold or transferred; or (iii) a PPP borrower merges with another entity. If a borrower is contemplating any of the foregoing, then they must notify their PPP lender before the transaction closes (and provide the lender with their proposed agreements).

Note that there are no change of ownership restrictions if either (i) the PPP loan has been repaid in full, or (ii) the loan forgiveness process has been completed and the SBA has remitted funds to the lender in full satisfaction of the PPP loan.

However, if the PPP loan has not been repaid or forgiven, then some restrictions on changes of ownership may apply. Most importantly from a borrower's perspective, no SBA approval is required if the change of ownership is a sale of stock or membership interests of fifty percent



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(50%) or less of the total stock or membership interests of the borrower, or the borrower submits all of its loan forgiveness application documentation and establishes an escrow account with the lender to pay any amounts not forgiven. Similarly, a borrower may sell fifty percent (50%) or more of its assets without SBA approval if the borrower completes its forgiveness application and establishes an escrow account in the amount of the outstanding balance of the loan. Under both of the prior circumstances, the escrow funds would pay down any remaining balance after the forgiveness process is completed. For any changes of ownership that do not fall into the foregoing categories, prior SBA approval may be required. Borrowers should consult with their attorneys and their lenders to make sure they are complying with all applicable restrictions.

#### **FAQ #84: What are the loan necessity questionnaires?**

The SBA has started to roll out two questionnaires for borrowers (one for for-profit borrowers and one for non-profit borrowers) that received PPP loans of \$2 million or more (including affiliates' loan amounts). While these forms have not yet been posted to the SBA's dedicated PPP website, the SBA has published a notice in the Federal Register indicating that these forms are in the works. The notice stated that the purpose of the forms will be to evaluate the required certification of necessity that borrowers made when applying for their PPP loans. If a borrower receives one of these forms from their lender, then they must complete the form and return it to their lender within ten (10) business days, along with a certification as to the accuracy of the information.

While the forms could still change before they are officially published, for now they contain two primary sections: (i) business activity for the specified period (e.g., comparative quarterly revenue, capital projects, whether there were shutdown orders, etc.); and (ii) a liquidity assessment (e.g., cash and cash equivalents on hand, any dividends or distributions, prepayment of debt, etc.). There are numerous other financial questions on the forms as well, including but not limited to whether the borrower or its owner(s) are publicly traded, whether the borrower paid any employee or owner more than \$250,000 on an annualized basis, and whether the borrower was owned by a private equity or hedge fund firm. These questions suggest the areas of emphasis that the SBA will focus on when evaluating the necessity certifications of these larger PPP loans.

For now, borrowers who received less than \$2 million will not have to complete these forms. We expect to receive more guidance and instructions about how to complete the forms once they are officially published.