



# FREQUENTLY ASKED QUESTIONS RE: SBA Programs Under the CAA

Updated 4/1/2021

*These FAQs cover First and Second Draw Paycheck Protection Program (PPP) loans. The authority of the SBA to guarantee PPP loans under the CARES Act expired on August 8, 2021. The CAA extended the SBA’s ability to guarantee PPP loans, which are now referred to as First Draw PPP loans, and created the new Second Draw PPP loan program.*

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# General Questions<sup>1</sup>

## 1. Question – What can First and Second Draw Paycheck Protection Program (PPP) Loans be used for?

**Answer** – PPP loans may be used for payroll costs, costs for the continuation of group health care benefits, paid sick, medical, or family leave, retirement benefits, and insurance premiums. Funds may be used for employee salaries and commission. Funds can also be used for mortgage interest, rent, utilities, and interest on other debt obligations so long as agreements for these were entered into before February 15, 2020, and the refinancing of an Small Business Administration (SBA) Economic Injury Disaster Loan (EIDL) made between January 31, 2020 and April 3, 2020. Payroll costs cannot include any compensation paid to an individual employee that receives an annual salary of more than \$100,000.

The Consolidated Appropriations Act (CAA) expanded the options for what a borrower may use a First Draw and Second Draw PPP loan for. Borrowers may also use PPP funds for:

- covered operations expenditures due to COVID-19 (i.e. new software to facilitate business operations);
- covered worker protection costs (i.e. PPE);
- uninsured property damage costs caused by looting or vandalism during 2020 that was not covered by insurance or other compensation; and
- certain supplier costs and expenses for operations.

## 2. Question – What if you use PPP Loans for costs other than listed above?

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

## 3. Question – Who can be an eligible lender under the PPP?

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

- Any federally insured depository institution or any federally insured credit union (FICU);
- Any farm credit system institution;

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<sup>1</sup>Updated 1/13/2021.

- Depository and non-depository financing providers that originate, maintain, and service business loans or other commercial financial receivables and participation interests to be an SBA lender. The entity would need to have a formalized compliance program; apply the requirements of the *Bank Secrecy Act* (BSA); been in operation since February 15, 2019; and has originated, maintained, and serviced more than \$50 million in business loans or other commercial financial receivables during a consecutive 12-month period in the past 36 months; and
  - The SBA released a [supplemental interim final rule](#) clarifying that non-bank and non-insured depository institutions can be approved as a PPP lender if they originated, maintained, or serviced – but not performed all three functions.
- Service provider to any insured depository that has a contract to support lending activities in accordance with 12. U.S.C. 1867(c).

#### **4. Question – Are First and Second Draw PPP loans forgivable under the CAA?**

**Answer** – Generally, both First and Second Draw PPP loan are eligible for loan forgiveness, similar to the initial rounds of funding. Borrowers must apply and submit documentation to their lender; however, the CAA did provide some flexibility for loans under \$150,000 in terms of application and documentation requirements. The SBA will provide a simplified loan forgiveness application as well an IFR that consolidates all the rules regarding forgiveness. Any amount of funds that are used for something other than those allowable uses will not be forgiven.

SBA's [interim final rule](#) states that at least 60% of the forgiven amount shall be for payroll costs and not more than 40% on non-payroll expenses; borrowers must maintain employee and compensation levels; and spend the loan proceeds on payroll costs and other eligible expenses.

#### **5. Question – If our credit union offers other emergency loans to members, does this disqualify them from receiving a First or Second Draw PPP loan?**

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

## 6. Question – When does the program end?<sup>2</sup>

**Answer** – Borrowers must apply for First and Second Draw PPP loans before May 30, 2021. The SBA will have an additional 30 days (until June 30, 2021) to process any pending applications after the expiration on May 30<sup>th</sup>.

## 7. Question – What software system should lenders use for First and Second Draw PPP loans?

**Answer** – Lenders will use the same platform that supports the forgiveness decisions to originate First and Second Draw PPP loans. The “platform” can be accessed at <https://forgiveness.sba.gov>. Lenders should use MS Edge or Google Chrome browsers. Lenders should be aware that the platform uses two-factor authentication upon login. Admins can create additional users in the platform and can enable the other users ability to originate loans.

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

**Answer** – In addition to the resources listed below, lenders can direct questions to the Lender Relations Specialist in their local SBA Field Office. Your local SBA Field Office can be found [here](#).

- Paycheck protection questions: [7aPaycheckLoanProgramQuestions@SBA.gov](mailto:7aPaycheckLoanProgramQuestions@SBA.gov)
- Interim Final Rule questions: [PPP-IFR@SBA.gov](mailto:PPP-IFR@SBA.gov)
- SBA Lender Hotline: [\(833\) 572-0502](tel:(833)572-0502)
  - E-Tran & CAFS Support
  - PPP Platform Access and Support
- PPP Platform Resources: <https://forgiveness.sba.gov>
- PPP Platform Technical Questions: [Platform Inbox in System](#)
- General PPP Original and Forgiveness Support: [PPPForgivenessRequests@sba.gov](mailto:PPPForgivenessRequests@sba.gov)

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

**Answer** – SBA’s PPP webpage has a list of [participating lenders](#).

## First Draw PPP Loans<sup>3</sup>

## 10. Question – Who is eligible to receive a First Draw PPP Loan?<sup>4</sup>

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<sup>2</sup> Updated 3/31/2021.

<sup>3</sup> Updated 1/13/2021.

<sup>4</sup> Updated 3/31/2021.

**Answer** – Borrowers are eligible for a First Draw PPP if they, together with their affiliates, have less than 500 employees (unless otherwise noted below), a principal place of residence in the United States, and were in operation on February 15, 2020 and are:

- A small business concern as defined in section of the *Small Business Act* that satisfies the applicable SBA Size Standards;
- An independent contractor, eligible self-employed individual, or sole proprietor;
- A tax-exempt nonprofit organization (i.e. 501(c)(3)), a tax-exempt veterans organization (i.e. 501(c)(19)), or a Tribal business concern;
- A housing cooperative; a destination marketing organization, or a tax-exempt 501(c)(6) organization that employees no more than 300 people; and
- A news organization that is owned or controlled by a business or nonprofit that begins with a NAICS code 511110 or 5151.

On March 11, 2021, the American Rescue Plan was passed and signed into law and expanded the eligibility for PPP loans. Eligibility was expanded for both First and Second Draw PPP loans, provided that the requirements for a Second Draw PPP loan are also met. Although eligibility was expanded, the same ineligibility rules apply. For PPP loans approved on or after March 11, 2021, eligibility includes:

- A business concern with a NAICS code that begins with a 72 and employs no more than 500 employees per physical location;
- An eligible 501(c)(6) organization or eligible destination marketing organization that employs no more than 300 employees per physical location;
- A tax-exempt nonprofit under any paragraph of 501(c), other than 501(c)(3),(4), (6) or (19) that employees more than 300 employees per physical location; and
- A business concern or organization assigned a NAICS code of 519130 that certified certain requirements and employs no more than 500 employees.

There are restrictions on lobbying activities by eligible nonprofits. Eligibility also includes independent contractors, self-employed individuals, and sole proprietors either with or without employees.

## **11. Question – Who is ineligible for First Draw PPP Loan?<sup>5</sup>**

**Answer** – Borrowers are ineligible, even if they meet the above eligibility requirements if:

- They are engaged in an illegal activity under federal, state, or local law;

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<sup>5</sup> Updated 3/31/2021.

- Are a household employer;
- An owner of 20 percent or more of the equity who is presently incarcerated for any felony, or a borrower who was convicted of, plead guilty or nolo contendere to, or commenced any form of parole or probation involving fraud, bribery, embezzlement, or false statements regarding a loan application or application for federal financial assistance within the last 5 years, or any other felony within the last year;
  - After March 4, 2021, there is no longer a restriction on businesses with owners who have prior non-financial fraud felony convictions. This revision is not retroactive.
- They received a direct or guaranteed loan from the SBA or other Federal agency and it is currently delinquent or the borrower defaulted within the last seven years;
  - After March 4, 2021, there is no longer a restriction on borrowers who are currently delinquent or have defaulted on Federal student loans. This revision is retroactive.
- The business was not in operation on February 15, 2020;
- The business received or will receive a grant under the shuttered venue operator grant (SVOG) program under the CAA (if you receive both a First Draw and Second Draw PPP loan after December 27, 2020 and you subsequently receive an SVO grant, then the SVO grant will be reduced by the amount of the First or Second Draw PPP loan, or the combined amounts if both were received);
- The borrower is the President, Vice President, head of the Executive Department, a member of Congress or any of their spouses, or any of these people hold a direct or indirect controlling interest in the business;
- The business is an issuer of securities listed on a registered exchange;
- The business has permanently closed;
- The business is an ineligible business listed in [13 CFR 120.110](#); or
- The owner of the business is a debtor in a bankruptcy proceeding.

## 12. Question – What are the terms of First Draw PPP Loans?

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

- Amount: the lesser of \$10 million or the sum of 2.5x the average total monthly payroll costs from either 2019 or 2020;
- Interest Rate: 1.00% fixed (simple interest);
- No fees (SBA or Lender);
- 100% guaranteed by the SBA;
- Loan Maturity: 5 years, with no pre-payment penalties; and
- All loan payments will be deferred for 10 months after the expiration of the covered loan period, with interest accruing over this period.

The CAA provides that a borrower may use either 2019 or 2020 payroll costs to determine the maximum loan amount. The CAA also provided that if a borrower submits a loan forgiveness

application within 10 months after the end of the loan forgiveness covered period (which is any date chosen by the borrower between 8 weeks and 24 weeks after loan disbursement), then no payments of principal or interest are due before the date the SBA remits the loan forgiveness amount to the lender. If the borrower does not submit a loan forgiveness application within 10 months after the covered period ends, the loan payments are due upon the expiration of the covered loan period.

## ***PPP Loan Increases***

### **13. Question – Who is eligible for a loan increase under the CAA?**

**Answer** – The CAA provides that certain borrowers are eligible for a loan increase up to the maximum amount allowed. The IFR on First and Second Draw PPP loans provides that eligible borrowers are limited to:

- Partnerships that did not previously include any compensation for its partners;
- Seasonal employers who would be eligible for a higher maximum loan under the CAA (under the new calculation methodology);
- Borrowers that returned all or part of their initial PPP loans are eligible to receive the difference between the amount retained and the amount previously approved;
- Farmer and ranchers who would be eligible for a higher maximum loan under the CAA (under the new calculation methodology), and
- Borrowers who did not accept the full amount of a PPP loan are eligible to receive an increase up to the amount previously approved. Or borrowers who fully repaid a PPP loan prior to December 27, 2020 who are eligible to receive an increase under the current rules (this only applies to loans that reported to the SBA as “cancelled” or “repaid in full”).

Loan increases may be made even if the PPP loan has been fully disbursed and a 1502 report has been made, but an increase cannot be made if the SBA has remitted any loan forgiveness. Lenders must input loan increase requests through E-Tran. Borrowers must submit documentation supporting the loan increase request. The SBA issued a [procedural notice](#) providing additional guidance on eligibility of the loan increases as well as operational instructions for lenders.

### **14. Question – May borrowers use a different lender for loan increases?**

**Answer** – Borrowers must use the original lender for any loan increase request.

### **15. Question – When can lenders start approving loan increases?**

**Answer** – Lenders can start approving loan increased beginning on January 25, 2021. Lenders must submit the loan increase electronically in E-Tran on or before March 31, 2021. If the

application is a re-application of a previous PPP loan, then lenders must use the Forgiveness Platform to originate the loan.

## **16. Question – What responsibilities do lenders have for loan increases?**

**Answer** – Lenders must comply with the same underwriting requirements of First or Second Draw PPP loans (see question 38). Lenders must disburse the loan increase amount in a single disbursement within 10 calendar days of processing the increase in E-Tran or issuance of an SBA loan number. Lenders must also submit a 1502 report for any loan increases after a loan increase is successfully processed in E-Tran or after the issuance of an SBA loan number. Lenders can include the 1502 reports for loan increases with other PPP 1502 reports.

## **17. Question – What if a lender has submitted a forgiveness decision to the SBA?**

**Answer** – If a lender has submitted a loan forgiveness decision to the SBA, but the SBA has not yet remitted a loan forgiveness payment, the lender must withdraw the forgiveness decision from the Forgiveness Platform prior to taking any actions regarding a loan increase. Lenders are entitled to fees, including any fee differentials. Lenders must ensure that they follow SBA procedural notice [5000-20036](#) to receive processing fees. If the application is for a loan increase, then a lender is entitled to fees that were in effect at the time the borrower submitted its original PPP loan application. If the application is a re-application of a prior PPP loan, then a lender is entitled to the same fees in effect for both First and Second Draw PPP loans.

## **Second Draw PPP Loans<sup>6</sup>**

### **18. Question – Who is eligible for a Second Draw PPP Loan?**

**Answer** – Borrowers who meet the eligibility requirements of the First Draw PPP loan (see question 9) are eligible for a Second Draw PPP loan if they also:

- Received a First Draw PPP loan and has used or will use the full amount of the loan on or before the expected disbursement date of the Second Draw PPP loan;
- Employ no more than 300 employee people (unless the borrower falls within the accommodation or food services sector with a NAICS code beginning with a 72, or is an eligible news organization; and
- Experienced a reduction in revenue in 2020 of at least 25 percent.

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<sup>6</sup> Updated 1/13/2021.



Lenders can approve a Second Draw PPP loan before a First Draw PPP loan has been forgiven, so long as the funds were used or will be used before disbursement of the Second Draw PPP loan. No disbursement of a Second Draw PPP loan can be made before exhaustion of First Draw PPP loan funds.

## **19. Question – Who is ineligible for a Second Draw PPP Loan?**

**Answer** – Borrowers who are ineligible for a First Draw PPP loan or did not receive a First Draw PPP loan are ineligible for Second Draw PPP loan.

The CAA added other prohibited categories of borrowers for a Second Draw PPP loan including:

- A business that is primarily engaged in political activities or lobbying activities;
- Entities organized under the laws of the People’s Republic of China or the Special Administrative Region of Hong Kong; and
- Any person registered under the *Foreign Agents Registration Act of 1938*.

## **20. Question – What are the terms of a Second Draw PPP Loan?**

**Answer** – The terms of a Second Draw PPP loan are the same as First Draw PPP loans (see question 10), with the exception of the maximum loan amount:

- Amount: the lesser of \$2 million or the sum of 2.5x the average total monthly payroll costs from either 2019 or 2020 (if accommodation or food service sectors then 3.5x mo. payroll costs);
- Interest Rate: 1.00% fixed (simple interest);
- No fees (SBA or Lender);
- 100% guaranteed by the SBA;
- Loan Maturity: 5 years, with no pre-payment penalties; and
- All loan payments will be deferred for 10 months after the expiration of the covered loan period, with interest accruing over this period.

The CAA provides that if a borrower submits a loan forgiveness application within 10 months after the end of the loan forgiveness covered period (which is any date chosen by the borrower between 8 weeks and 24 weeks after loan disbursement), then no payments of principal or interest are due before the date the SBA remits the loan forgiveness amount to the lender. If the borrower does not submit a loan forgiveness application within 10 months after the covered period ends, the loan payments are due upon the expiration of the covered loan period.

## **21. Question – How do lenders know if a new member received a First Draw PPP loan when they apply for a Second Draw PPP loan?**

**Answer** – Borrowers are not required to use the same lender for Second Draw PPP loans, so lenders may come across a situation where a new member seeks a Second Draw PPP loan from the credit union or an existing member who obtained a First Draw PPP loan from a different lender. The borrower must certify in the application that they received a First Draw PPP and must provide the SBA loan number and the amount. Lenders can rely on the borrower’s certifications. The Second Draw PPP lender will not receive any underwriting documents from the previous lender.

## **22. Question – How is the revenue reduction calculated?**

**Answer** – Borrowers are responsible for calculating a revenue reduction based on gross receipts. The calculation for a revenue reduction depends on whether the business was in operation for all of 2019 or a portion, as the reduction is calculated comparing revenue in 2020 with revenue in 2019.

- Borrowers who were in operation during all of 2019 and all of 2020 can use any calendar quarter in 2020 to compare with 2019. The borrower must use the corresponding 2019 quarter.
- Borrowers who were in operation only during Q3 or Q4 of 2019 and all of 2020, can use either Q3 or Q4 of 2020 to compare with the corresponding quarter from 2019.
- Borrowers who were only in operation during Q4 of 2019 and all of 2020, can use Q4 of 2020 to compare with Q4 of 2019.
- Borrowers who were not in operation in 2019 but were in operation in 2020 must use Q1 2020 to compare with any other quarter in 2020.

## **Lender Questions**

### ***Credit Union Participation and PPP Application Questions***

## **23. Question – Are we required to participate in the PPP?<sup>7</sup>**

**Answer** – Participation in the PPP is not mandatory. The decision to offer PPP loans is up to the credit union. If your credit union offered PPP loans during the initial rounds of funding you do not have to offer First and Second Draw PPP loans. See Question 17 for who can offer PPP loans.<sup>8</sup> Any credit union that chooses to participate in the First or Second Draw PPP loan programs must complete a one-time registration at [SAM.gov](https://sam.gov) within 30 days from the date of the first disbursement and provide the SBA with the unique entity identifier. For more information on

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<sup>7</sup> Updated 2/17/2021.

<sup>8</sup> Updated 6/15/2020.

where to obtain a SAM unique entity identifier and where to send the information, see [SBA Information Notice 5000-20094](#).

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

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

#### **25. Question – Can our credit union offer First and Second PPP Loans?<sup>9</sup>**

**Answer** – All credit unions that were authorized PPP lenders during the initial rounds of funding may provide First and Second Draw PPP loans and [do not need to reapply](#). Nor do you need to submit anything to the SBA. Any existing SBA 7(a) lender is automatically approved to make First and Second Draw PPP loans based on their delegated authority.

Any FICUs that did not participate in the earlier round of funding are eligible to become SBA lenders under the PPP program, so long as they are not currently designated in Troubled Condition by the NCUA or subject to a formal enforcement action due to unsafe or unsound lending practices. The SBA has deemed that all FICUs have met the criteria for eligibility. FICUs that wish to apply to become a lender must submit [SBA Form 3506](#) (CARES Act Section 1102 Lender Agreement) to [DelegatedAuthority@sba.gov](mailto:DelegatedAuthority@sba.gov). Credit unions should ensure that they are using the most up to date lender agreement form. The lender agreement form asks that the lender also provide a Certificate of Incumbency. Upon transmission of the form, the FICU will have automatic delegated authority to offer PPP loans. Delegated authority means the lender can process, close, service and liquidate guaranteed loans without SBA’s prior review.

Credit unions must have an account set up with E-Tran through Capital Access Financial Systems (CAFS) and can set up a [new account through CAFS](#). More instructions on how to use CAFS can be found [here](#). Information on updating your profile and setting up roles can be found [here](#). For assistance, credit unions can contact [cls@sba.gov](mailto:cls@sba.gov). Lenders who need assistance accessing SBA’s E-Tran system to process loan guarantee requests may call SBA’s Lender Customer Service Line at 1-833-572-0502. The SBA has warned that repeated password attempts can result in temporary account suspension, which then require a password reset.

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<sup>9</sup> Updated 1/13/2021.

## 26. Question – Does the SBA have a Certificate of Incumbency form?

**Answer** – Lenders should submit [Treasury FS Form 1014, Certificate of Incumbency of Officers](#).

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

## 27. Question – Can credit unions apply for a First or Second Draw PPP Loan?

**Answer** – Credit unions cannot be a borrower under either the First or Second Draw PPP loan programs. The SBA’s regulations for all ineligible businesses under standard 7(a) loans applies ([see 13 C.F.R. 120.110](#)), which excludes financial businesses primarily engaged in the business of lending from receiving a loan.

Credit unions may be eligible to apply for EIDLs. In order to be apply for an EIDL loan, the SBA has to make a disaster declaration for applicant states. Currently, the SBA has declared a disaster in all U.S. states and Washington D.C. EIDL loans are available to all non-profits designated under 501(c), (d), or (e). The SBA has an updated and [streamlined application process](#) for EIDL. The CAA extended the [“emergency grant”](#) or EIDL Advance program. There are some eligibility restrictions for the EIDL advances to assist those applicants who applied and did not receive a grant because the funding had run out.

## 28. Question – Can our CUSO apply to be a lender under the First or Second Draw PPP?

**Answer** – The same entities are allowed to become lenders for First and Second Draw PPP loans as the initial waves of funding. The [IFR on First and Second Draw PPP loans](#) lists lenders who have been determined by the SBA and Treasury to be eligible lenders. The list also includes any depository or non-depository financing provider that originates, maintain, and services business loans, along with additional criteria. The list also includes service provider to any insured depository institution that has a contract to support such institution’s lending activities in accordance with 12 U.S.C. 1867(c) and is in good standing with the appropriate Federal banking agency. The SBA’s guidance references the *Bank Service Company Act*, which does not include the NCUA as a Federal banking agency.

A CUSO may not be an eligible lender if they can meet the requirements listed in 3. a. iii. III. of the SBA’s interim final rule. This category allows depository and non-depository financing providers that originate, maintain, and service business loans or other commercial financial receivables and participation interests to be an SBA lender (the SBA has previously clarified that the CUSO does not need to perform all three functions). However, the entity would need to have a formalized

compliance program; apply the requirements of the *Bank Secrecy Act* (BSA); been in operation since February 15, 2019; and has originated, maintained, and serviced more than \$50 million in business loans or other commercial financial receivables during a consecutive 12-month period in the past 36 months. CUSOs that meet the required volume in either originating, maintaining, or servicing business loans or other commercial receivables may be eligible as a lender.

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

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

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

CUSOs that enter into loan service provider agreements with credit unions that have not yet been reviewed by the SBA should submit their LSP agreements to the SBA at [lspagreements@sba.gov](mailto:lspagreements@sba.gov).

## **29. Question – Can a lender provide PPP Loans to nonmembers?**

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

## **30. Question – Can other credit unions act as Agents under the PPP?<sup>10</sup>**

**Answer** – Treasury's earlier guidance provided that an agent can include someone who assists a lender with originating, disbursing, servicing, liquidating, or litigating SBA loans. Credit unions that assist a lender with any of these stated activities could qualify as an agent. However, the recent [IFRs on First and Second Draw PPP loans](#) states that credit unions are only required to pay agent fees if they entered into contract with the agent.

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<sup>10</sup> Updated 1/12/2021.

Borrowers are only required to pay an agent if they knowingly retained the services of an agent. Any agent fees cannot be paid out of the proceeds of the First or Second Draw PPP loan. The amount an agent may receive cannot exceed:

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

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

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

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

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

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

**Answer** – The [Treasury’s previous guidance](#) makes it clear that lenders may not collect ANY fees from the applicant. The lender agreement form states that other than the fixed 1 percent interest rate, lenders are not permitted to “charge or receive any bonus, fee, prepayment penalty, commission or other payment or benefit from a borrower in connection with the making or servicing of any covered loan under the PPP.”

### **34. Question – Can a lender structure the loan disbursements, or do the loans have to be in a lump-sum?**

**Answer** – Lenders must make a one-time, full disbursement of the First or Second Draw PPP loan within ten calendar days of the loan approval. A loan is considered approved once a loan number is assigned by the SBA. Lenders should be mindful that First and Second Draw PPP loans will not receive an instantaneous SBA loan number. The SBA has implemented certain guardrails on the front-end to mitigate fraud, therefore lenders should expect a delay in receiving an SBA loan number and should communicate this to the borrower.

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

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

**Answer** – As with the previous rounds of funding, lenders are required to comply with their [existing BSA requirements](#). If a First or Second Draw PPP loan is made for an existing member and the lender has collected and verified the necessary information, then they do not need to re-verify the information, unless your credit unions’ risk-based BSA compliance program requires otherwise. Credit unions that provide a First or Second Draw PPP loan to a new member must adhere to their BSA policies and procedures for any new member account.

### **36. Question – Does Regulation B apply?**

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

### **37. Question – Can we lend to a Board Member?**

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

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

**Answer** – The SBA will pay lenders fees owed within 5 days of the First or Second Draw PPP loan being disbursed.

## ***Underwriting Requirements and Required Documentation Questions***

### **39. Question – What are the underwriting requirements for First and Second Draw PPP Loans?<sup>11</sup>**

**Answer** – Lenders underwriting requirements for First and Second Draw PPP loans remains the same as initial PPP loans provided. Lenders must:

- Confirm receipt of the borrower’s certifications contained in their application (either SBA Form 2483-SD, SBA Form 2483, SBA Form-SD-C, or SBA Form 2483-C);
- Confirm receipt of information demonstrating that a borrower had employees that they paid a salary and payroll taxes on or around February 15, 2020, or was an eligible self-employed individual, independent contractor, or sole proprietorship that had no employees;
- Confirm the dollar amount of average monthly payroll costs for either 2019 or 2020 by reviewing the payroll documentation that was submitted by the borrower; and
- Follow existing *Bank Secrecy Act* requirements.

Lenders’ underwriting obligations are limited to the above items and reviewing the applicable SBA Application Form. In addition, Lenders are permitted to rely on the borrower’s certifications to determine eligibility, use of loan funds, and that the borrower received and used the funds from an initial or First Draw PPP loan. Lenders may use their own lender application forms as long as it captures the same information in the SBA’s forms ([see SBA/Treasury FAQ Q. 13](#)).

For Second Draw PPP loans greater than \$150,000, or a loan of \$150,000 or less where the borrower provides documentation of a revenue reduction, the lender shall confirm the dollar amount and revenue reduction percentage by performing a good faith review. For Second Draw PPP loans less than \$150,000 where the borrower does not provide documentation regarding the revenue reduction, then the lender shall perform this review when the borrower provides such documentation.

The SBA’s IFRs indicate that lenders may rely on the documents provided by the borrower and do not need verification if the documents support the borrower’s request. In addition, lenders are held harmless if they rely on the borrower’s documents and attestation.

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

**Answer** – The SBA’s guidance states that lenders may rely on the borrower’s certification for eligibility. Eligible businesses are deemed “small businesses” according to the [SBA’s published size standards](#). Size standards are established by North American Industry Classification System

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<sup>11</sup> Updated 1/13/2021.



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

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

#### **41. Question – What promissory note should lenders use?**

**Answer** – The SBA reiterates in the [IFR on First and Second Draw PPP](#) loans that lenders may use their own promissory notes to close PPP loans. Alternatively, lenders may use [SBA Form 147 \(Standard Loan Note\)](#) which is the SBA 7(a) standard promissory note and include the term language from the IFR. The SBA is not requiring a separate SBA Authorization at this time in order to guarantee the loan.

#### **42. Question – What documents do lenders send to the SBA for applicants?<sup>12</sup>**

**Answer** – Approved lenders have delegated authority, so loans may be processed without prior SBA approval. For First Draw PPP loans, lenders are required to submit [SBA Form 2484 \(Paycheck Protection Program Lender’s PPP Loan Guaranty\)](#) electronically and maintain the forms and supporting borrower documentation on file. No paper applications are required. For Second Draw PPP loans, lenders are required to submit [SBA Form 2484-SD \(Paycheck Protection Program Lender’s Application for Second Drawn Loan Guaranty\)](#). Lenders must also submit this electronically and maintain the forms and supporting borrower documentation on file. Lenders should view the SBA’s program guide on how to submit loan applications electronically.

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

**Answer** – Lenders do not need to submit a separate SBA Authorization form in order to issue a loan.

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<sup>12</sup> Updated 1/13/2021.

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

**Answer** – A lender may use e-signatures or e-consents, regardless of the number of owners of the borrower. In addition, lenders are permitted to use their own online portals and electronic forms.

### ***Loan Forgiveness Questions***

#### 45. Question – What should lenders review when a borrower submits SBA Form 3508?<sup>13</sup>

**Answer** – According to the [SBA’s updated loan forgiveness interim final rule](#), Lenders shall:

- Confirm receipt of the borrower certifications contained in the loan forgiveness application form (*SBA Form 3508, or lender equivalent form*);
- Confirm receipt of the documentation borrower must submit to aid in verifying payroll and nonpayroll costs, as specific in the instructions in the loan forgiveness application form (*SBA Form 3508, or lender equivalent form*);
- Confirm the borrower’s calculations on the borrower’s loan forgiveness application (*SBA Form 3508, or lender equivalent form*), including the dollar amount of the (A) Cash Compensation, Non-Cash Compensation, and Compensation to Owners claimed on Lines 1, 4, 6, 7, 8, and 9 on the PPP Schedule A and (B) Business Mortgage Interest Payments, Business Rent or Lease Payments, Business Utility Payments, Covered Operations Expenditures, Covered Property Damage Costs, Covered Supplier Costs, and Covered Worker Protection Expenditures claimed on Lines 2 through 8 on the PPP loan forgiveness calculation form, by reviewing the documentation submitted with the loan forgiveness application (*SBA Form 3508, or lender equivalent form*); and
- Confirm that the borrower made the calculation on Line 14 of the loan forgiveness calculation form correctly, by dividing the borrower’s eligible payroll costs claimed on Line 1 by 0.60.

#### 46. Question – What should lenders review when a borrower submits SBA Form 3508EZ?<sup>14</sup>

**Answer** – According to the [SBA’s updated loan forgiveness interim final rule](#), Lenders shall:

- Confirm receipt of the borrower certifications contained in *SBA Form 3508EZ*, or lender equivalent form;

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<sup>13</sup> Updated 2/17/2021.

<sup>14</sup> Updated 2/17/2021.

- Confirm receipt of the documentation borrower must submit to aid in verifying payroll and nonpayroll costs, as specific in the instructions in the *SBA Form 3508EZ*, or lender equivalent form;
- Confirm the borrower's calculations on the borrower's *SBA Form 3508EZ*, or lender equivalent form, including the dollar amount of the Payroll Costs, Business Mortgage Interest Payments, Business Rent or Lease Payments, Business Utility Payments, Covered Operations Expenditures, Covered Property Damage Costs, Covered Supplier Costs, and Covered Worker Protection Expenditures claimed on Lines 1 through 8 of *SBA Form 3508EZ*, or lender equivalent form by reviewing the documentation submitted with the *SBA Form 3508EZ* or lender equivalent form; and
- Confirm that the borrower made the calculation on Line 11 of *SBA Form 3508EZ* or lender's equivalent form correctly, by dividing the borrower's eligible payroll costs claimed on Line 1 by 0.60.

#### **47. Question – What should lenders review when a borrower submits SBA Form 3508S?<sup>15</sup>**

**Answer** – The SBA's [updated loan forgiveness interim final rule](#) states that Lenders shall:

- Confirm receipt of the borrower certifications contained in [SBA Form 3508S](#) or lender's equivalent form; and
- In the case of a Second Draw PPP loan for which the borrower did not provide documentation of revenue reduction with its application and the lender did not conduct a review of the documentation at the time of application, confirm the dollar amount and percentage of the borrower's revenue reduction by performing a good faith review, in a reasonable time, of the borrower's calculations and supporting documents concerning the borrower's revenue reduction.

A lender is not expected to independently verify the borrower's information if the borrower submits documentation supporting the request and attests that they accurately verified the payments.

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

**Answer** – Borrowers are responsible for accurately calculating the loan forgiveness amount regardless of what loan forgiveness application form is submitted. The [SBA's updated loan forgiveness interim final rule](#) states that lenders are expected to “perform a good faith review, in a reasonable time, of the borrower's calculations and supporting documents concerning amounts eligible for loan forgiveness.” As previous, lenders may rely on borrower representations and does

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<sup>15</sup> Updated 2/17/2021.

not need to independently verify the borrower's reported information. A good faith review is only required by a lender for *SBA Forms 3508 and 3508EZ*.

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

#### **49. Question – What documentation do lenders need for loan forgiveness requests?<sup>16</sup>**

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

The SBA's [updated loan forgiveness interim final rule](#) indicates that lenders are held harmless for relying on borrower documents and attestation. The SBA's guidance also states that the agency will not take enforcement action or impose penalties against a lender if the lender receives the borrower's attestation.

If the lender identifies any errors in the borrower's calculation or a material lack of substantiation in supporting documents, then the lender should work with the borrower to remedy the issue.

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

**Answer** – The SBA has provided in their FAQs that all loans over \$2 million will be reviewed once the lender submits the borrower's loan forgiveness application. The outcome of the SBA's review of the loan file will not affect the SBA guarantee on any loan for which the lender has complied with the lender obligations as laid out in the [initial interim final rule, paragraphs 3.B \(i\)-\(iii\)](#). (See [SBA/Treasury FAQ Q. 39](#)). However, if a lender is found guilty of an act of fraud in connection with a PPP loan, then the loan is no longer eligible for an SBA guarantee.

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

**Answer** – Once a borrower submits [SBA Form 3508](#), [SBA Form 3508EZ](#), [SBA Form 3508S](#), or a lender equivalent loan forgiveness application, the lender has 60 days from receipt of a complete application to render a decision to the SBA. The decision may be an approval (in whole or in part),

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<sup>16</sup> Updated 8/6/2020

a denial (if directed by the SBA), or a denial without prejudice due to a pending SBA review of the loan.

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

## **52. Question – What documents do lenders need to submit to the SBA for loan forgiveness?<sup>17</sup>**

**Answer** – For borrowers submitting *SBA Form 3508*, lenders must include the PPP Loan Forgiveness Calculation Form, the PPP Schedule A, the optional PPP Borrower Demographic Information Form, and *SBA Form 3508D if applicable*.

For borrowers submitting *SBA Form 3508EZ*, *SBA Form 3508S*, or *lender's equivalent*, lenders must include the *SBA Form 3508EZ*, *SBA Form 3508S*, or *lender's equivalent* form, the optional PPP Borrower Demographic Information Form, and *SBA Form 3508D if applicable*.

Lenders must confirm that the information provided by the lender to the SBA accurately reflects the lender's records for the PPP loan and that the decision was made according to the requirements in V.2.a. [of the SBA's updated loan forgiveness interim final rule](#).

For Second Draw PPP loans of \$150,000 or less, the lender must review the revenue reduction documentation and confirm the dollar amount and the percentage of the borrower's revenue reduction.

## **53. Question – What do lender's need to submit to the SBA in the case of a denial of forgiveness?<sup>18</sup>**

**Answer** – In addition to the documents required in Q 45-47, lenders must also provide the reason for the denial. The lender must also provide written notification to the borrower regarding the denial and include the reasons for the denial and inform the borrower of their ability to request an SBA review of the lender's denial within 30 days of the decision. If a borrower exercises their right to an SBA review, the lender must notify the SBA within 5 days of receipt of the borrower's request.

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<sup>17</sup> Updated 2/17/2021.

<sup>18</sup> Updated 2/17/2021.

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

**Answer** – The [SBA’s updated loan forgiveness interim final rule](#) states that the lender must remit the excess amount, including accrued interest to the borrower.

**55. Question – What should a lender do if a borrower submits documentation of eligible costs that exceed a borrower’s PPP loan amount?<sup>19</sup>**

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

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

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

**57. Question – What do lenders need to do if they receive notice that the SBA is reviewing a PPP loan?<sup>20</sup>**

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

- The Borrower Application Form ([SBA Form 2483](#), [2483-SD](#), [2483-C](#), [2483-SD-C](#)) or lender form) and all supporting documentation provided by the borrower, including documentation supporting a revenue reduction for a Second Draw PPP loan;
- The Loan Forgiveness Application Form ([SBA Form 3508](#), [3508EZ](#), [3508S](#), or lender equivalent form) and all supporting documentation provided by the borrower, including revenue reduction documentation for a Second Draw PPP loan of \$150,000 or less if not provided at the time of the loan application.
  - If the lender receives the application after it receives notice that the SBA has commenced a loan review, the lender shall transmit electronic copies of the application and all supporting documentation provided by the borrower to the SBA within 5 business days of receipt. The lender must also request that the borrower

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<sup>19</sup> Updated 10/16/2020.

<sup>20</sup> Updated 2/17/2021.

provide the lender with the applicable documentation that the instructions to the Loan Forgiveness Application Forms ([SBA Form 3508](#), [3508EZ](#), [3508S](#), or lender equivalent form) instruct the borrower to maintain but not submit. The lender must submit documents received from the borrower to the SBA within 5 business days of receipt from the borrower.

- For Second Draw PPP loans of \$150,000 or less where a loan forgiveness application has not been submitted, the lender must also request that the borrower provide the revenue reduction documentation, if it was not previously provided to the lender.
- A signed and certified transcript of the account;
- A copy of the executed note evidencing the PPP loan;
- Any memorandum or analysis that the lender prepared in making its loan forgiveness decision; and
- Any other documents related to the loan requested by the SBA.

## **58. Question – What do lenders need to do if the SBA declines a request for review or denies forgiveness?<sup>21</sup>**

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

## **59. Question – When can lenders submit loan forgiveness applications to the SBA?<sup>22</sup>**

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

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<sup>21</sup> Updated 6/24/2020.

<sup>22</sup> Updated 8/6/2020.

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

#### **60. Question – How do I submit a loan forgiveness application via the PPP Forgiveness Platform?<sup>23</sup>**

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

#### **61. Question – Can an agent submit loan forgiveness applications to the SBA on a credit unions behalf?<sup>24</sup>**

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

#### **62. Question – Do we have to amend our promissory notes?<sup>25</sup>**

**Answer** – The SBA does not require lenders to formally modify promissory notes due to the change in the deferral period. However, if lenders do formally modify the promissory note to reflect the required statutory deferral period (10 months) under H.R. 7010, it will have no effect on the SBA’s guarantee of a PPP loan (see [SBA/Treasury FAQ Q. 52](#)).

### ***Hold/Error Codes<sup>26</sup>***

#### **63. Question – Can we rectify our own Hold/Error Codes?**

**Answer** – There are four ways to rectify error/hold codes placed on First or Second Draw PPP loans. First Draw PPP loans obtained in 2020 will receive a “hold code,” while any new First or Second Draw PPP loan will receive a “compliance check error” message. A lender may rectify a hold/error code according to one of the four following methods:

- Resolution through lender certification;

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<sup>23</sup> Updated 8/6/2020.

<sup>24</sup> Updated 8/6/2020.

<sup>25</sup> Updated 10/16/2020.

<sup>26</sup> Updated 2/17/2021.



- Resolution through SBA review;
- Duplicate and DUNS issues;
- Other hold code not covered.

Depending on the type of hold/error code in the Platform, the lender may use the first method and resolve the error on their own.

#### 64. Question – If I have a Table 1 Hold/Error Code, do I have to resolve on my own?

**Answer** – The SBA requires lenders to resolve Table 1 hold/error codes on their own or withdraw the PPP loan. You cannot use the SBA review resolution method to resolve a Table 1 error.

Table 1 hold/error codes include:

**TABLE 1: Resolution through Lender Certification (Delegated Authority)**

Compliance Check Error Message	Hold Code	Description
501	1	Disqualifying Criminal History Identified/Criminal Record
502	2	Disqualifying Bankruptcy Identified/Bankruptcy
504	4	Potential Match to Sanctions List Identified/Other Adverse Information (OFAC)
505	5	Applicant Potentially Deceased/Potential Decedent Application
506	6	Dormant Business Identified/Inactive Business
507	7	Applicant Tax ID Discrepancy/Mismatch of TIN (EIN/SSN)
508	8	Applicant Name Discrepancy/Mismatch of Entity Name (Individual or Company)
509	9	Disqualifying Business Formation Date Identified/In Operation After Feb 15, 2020
516	16	Large Number of Employees at Residential Location/Large Number of Employees at Residential Business Address
546	46	Do Not Pay - Death Sources
547	47	Do Not Pay – SAM
548	48	Do Not Pay - TOPS and CAIVRS
549	49	Do Not Pay - TOPS Education

[Procedural Notice 5000-20092](#) provides lenders with an explanation of each error message and hold code and examples of documentation that can be used to clear the issue. All Table 1 hold/error codes must be resolved first before any other type of error can be resolved. Lenders do not need to submit any documents to the SBA when resolving a Table 1 hold/error code. Documentation will be submitted at the time the lender submits the loan forgiveness or guaranty purchase request, or when requested by the SBA.

#### 65. Question – What do lenders have to certify in resolving a Table 1 Hold/Error Code?

**Answer** – Lenders are able to resolve Table 1 Hold/Error codes on their own through their delegated SBA authority. When using this method, lenders are certifying that:

- They have obtained from the borrower and/or other sources, and have reviewed all information and documentation necessary to resolve the issue of each Hold/Error code;
- Except for any Hold/Error code that requires SBA resolution, the lender has resolved all Hold/Error codes;
- The Hold/Error code has been resolved in accordance with the PPP guidance;
- The lender will retain the information and documentation supporting the certification for the period required by the PPP document retention requirements. The lender will provide the information and documentation to the SBA when the lender submits a forgiveness decision or guaranty purchase request, or upon SBA request, so that SBA can review the information and documentation in connection with a loan or lender review or a guaranty purchase review;
- The lender acknowledges that the SBA is allowing the loan guaranty application to proceed in reliance upon this certification; and
- The Authorized Lender Official is authorized to issue the certification on behalf of the lender.

#### **66. Question – Can lenders obtain a borrower’s certification to resolve a Table 1 Hold/Error Code?<sup>27</sup>**

**Answer** – Lenders may also resolve a Table 1 hold/error code by obtaining a borrower certification. [Procedural Notice 5000-808216](#) provides details on the certification. A borrower certification must be written and signed under penalty of perjury and must attest to the accuracy of both the certification and the supporting documentation. Once the lender obtains the certification and supporting documentation sufficient to clear the hold/error code, the lender may execute the certification in the Platform. Lenders should keep the borrower certification and supporting documentation as part of their loan file and provide it to the SBA upon request. Failure to provide the borrower certification or supporting documentation may result in the loss of the loan’s guaranty.

#### **67. Question – If I have a Table 2 Hold/Error Code, can I resolve it on my own?**

**Answer** – Only the SBA can resolve Table 2 hold/error codes, and these will only be associated with 2020 PPP loans. Table 2 errors requires lenders to upload the supporting documentation into the Platform. Lenders should use the Platform Reference Guide to assist with resolution of Table 2 hold/error codes. Table 2 hold/error codes include:

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<sup>27</sup> Updated 3/31/2021.

**TABLE 2: Resolution through SBA Review**

<b>Hold Code</b>	<b>Description</b>
12	SBA Franchise Directory Review
15	Potential Ineligible Business Size
18	Aggregate Data Mismatch
21	Employee Count Threshold
24	Business Address is Currently Vacant
26	Cannabis – Marijuana/Cannabis Sales
28	Compliance - Debarred Businesses
29	Compliance - Defaulted SBA loan in the last 7 years
30	Compliance - DOL OFCCP Violations
31	NAICS 522 - Credit Intermediation
32	Payday Lender
33	Potential Affiliation Issue
34	Data Anomaly Issue
35	Research Duplicate 9 Digit Tax ID Issue
37	SBA - Potential Affiliation Issue
38	Foreign Country-related entities
39	State or Local Government
40	Eligibility - Lobbying

**68. Question – What if I have an error regarding a TIN/SSN mismatch, how do I resolve?**

**Answer** – Lenders must resolve a TIN/SSN error by notifying their Commercial Loan Service Center. The Commercial Loan Service Center will make changes in the system. A borrower must provide the correct and supporting documentation to the lender. Lenders should not send any encrypted email to the Commercial Loan Service Center or anything with Personally Identifying Information (PII), therefore lenders should upload any documentation supporting the TIN/SSN into E-Tran.

Information on Commercial Loan Service Centers can be found [here](#).

***Fraud Questions<sup>28</sup>***

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

**Answer** – Lenders that suspect fraudulent activity related to a PPP loan should follow their policies and procedures regarding fraud. In addition, lenders should contact the SBA’s Office of Inspector General (OIG) Hotline at 800-767-0385; [OIGHotline@sba.gov](mailto:OIGHotline@sba.gov); or complete the online OIG complaint submission form found [here](#). The Department of Justice has asked anyone with

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<sup>28</sup> Updated 8/6/2020.

information on fraudulent PPP loan activity to notify them by calling their National Center for Disaster Fraud Hotline at 866-720-5721 or complete an online complaint form found [here](#).

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

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

## ***Secondary Market Questions***

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

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

The SBA has issued two procedural notices, regarding [whole loan sales](#), and sales of [participating interests](#).

## ***PPP Liquidity Facility Questions***

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

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

A credit union does not need to have a master account at a Federal Reserve Bank in order to borrow from the PPPLF; however, it must execute the necessary legal agreements included on the PPPLF website (the PPPLF Letter of Agreement and Borrower Certification). The website also

has a series of Q&As to help borrowers understand how to access the facility through a correspondent arrangement.

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

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

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

The NCUA Board approved an [interim final rule](#) that amends the agency's capital adequacy and member business loans and commercial lending regulations to establish a zero percent risk weight for PPP loans under the current risk-based net worth requirement.

## **72. Question – Can a credit union pledge collateral in advance without drawing PPPLF credit?**

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

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

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

#### **74. Question – Will the PPLF accept First and Second Draw PPP loans?<sup>29</sup>**

**Answer** – The PPLF will be expanded to accept both First and Second Draw PPP loans as collateral. Second Draw PPP loans may be pledged once they have been distributed. The PPLF facility is set to expire on March 31, 2021.

### ***1502 Reporting Questions<sup>30</sup>***

#### **75. Question – How do I enroll to submit 1502 reports?**

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

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

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

If you are a loan service provider, you must also enroll by sending an email to [Enrollment@colsonservices.com](mailto:Enrollment@colsonservices.com) with the following information:

- Name of LSP;
- LSP CAFS Partner ID;
- Individual user contact information:
  - Name;
  - Email address; and
  - Phone number;

For each credit union partner, provide the following information:

- Credit union partner’s information:
  - Name of credit union;
  - E-Tran Main Location ID;
- One of SBA’s PPP GP loan numbers:

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<sup>29</sup> Updated 1/13/2021.

<sup>30</sup> Updated 5/26/2020.

- Colson Lender ID (if known);
- Bank Authorizing Official;
  - Name;
  - Email address; and
  - Phone number.

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

See the [SBA Procedural Notice 5000-20028](#) for more details on how to get access.

## **76. Question – Who should I contact if I have 1502 reporting questions?**

**Answer** – A lender portal user guide is [available here](#). You can also call Colson Customer Service at 877-245-6159.

## **77. Question – How do I submit a 1502 report?**

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

To submit the report, lenders may use any of the following methods:

- Email the 1502 spreadsheet to [1502@colsonservices.com](mailto:1502@colsonservices.com);
- Upload the 1502 spreadsheet (“e-file”) in the 1502 dashboard;
- PPP 1502 Data Entry (this method is still under construction); or
- Deliver the 1502 spreadsheet via Secure File Transfer Protocol (which requires additional enrollment – lenders must email [SFTPaccess@colsonservices.com](mailto:SFTPaccess@colsonservices.com) for additional instructions.

If you are an existing SBA lender (with an *SBA Form 750* in place) you must use a separate 1502 report for PPP loans and regular 7(a) loans.

## **78. Question – When do I need to submit the initial 1502 report?**

**Answer** – Lenders must electronically upload SBA Form 1502 information within 10 calendar days after a PPP loan has been fully disbursed.<sup>31</sup> The SBA issued [Procedural Notice 5000-20091](#) that updated previous SBA Procedural Notice 5000-20036 that was effective on July 13, 2020.

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<sup>31</sup> Updated 2/17/2021.

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

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

**80. Question – How do lenders report loan increases for purposes of 1502 reporting?<sup>32</sup>**

**Answer** – Lenders must submit SBA Form 1502 information as required in the instructions provided by the FTA. The instructions can be found in the “Section 1102 of the CARES Act – PPP” section of the FTA’s Downloads and Resources page (see [Procedural Notice 5000-20076](#) for more information).

## **Borrower Questions**

### ***Application Questions<sup>33</sup>***

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

**Answer** – Eligible nonprofits include those organizations that are designated as 501(c)(3) organizations, 501(c)(19) organizations, and 501(c)(6) if they have less than 300 employees. Only those nonprofits listed as eligible recipients in the CAA or SBA’s IFR on First and Second Draw PPP loans may apply for a PPP loan.

For PPP applications received on or after March 11, 2021, the American Rescue Plan expanded the eligibility for nonprofits to obtain both First and Second Draw PPP loans. Eligibility now includes a tax-exempt nonprofit under any paragraph of 501(c), other than 501(c)(3),(4), (6) or (19) that employees more than 300 employees per physical location.

There are restrictions on lobbying activities by eligible nonprofits and the same ineligibility rules apply, so any organization described in [13 CFR 120.100](#) (other than those organizations described in paragraphs (a) or (k)).

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<sup>32</sup> Updated 2/17/2021.

<sup>33</sup> Updated 3/31/2021.



## 82. Question – Can a CUSO apply for a PPP Loan?

**Answer** – CUSOs may or may not be eligible as borrowers depending on their structure and size. Eligibility for the PPP is limited to small businesses and certain non-profits. CUSOs that are structured for-profit would need to be a “small business” according to the SBA’s size standards, not be an ineligible entity, and have less than 500 employees (including any affiliates). CUSOs that are structured as non-profits would not be eligible unless they are designated 501(c)(3), (c)(6), or (c)(19) entities. If a CUSO is a designated 501(c)(6) entity, they would need to have less than 300 employees. CUSOs must determine eligibility just as any other small business borrower would by looking at the eligibility requirements in the [IFR on First and Second Draw PPP loans](#).

First, a CUSO would need to determine if they are considered a “small business” according to the SBA’s [size standards](#). If the CUSO meets the standard, then they should continue determining eligibility by ensuring that they are not an ineligible entity as listed in the IFR or in section [13 C.F.R. 120.110](#). The list of ineligible businesses includes financial businesses primarily engaged in the business of lending. There are limited circumstances when a business engaged in lending may be eligible. The SBA references [SOP 50 10 5\(k\)](#) (see page 104) for more information on ineligible businesses that can apply for a loan.

Once eligibility is determined, a CUSO would then need to determine if they have any affiliates by referring to the [SBA’s guidance on PPP affiliate rules](#). Affiliation occurs when there is ownership or management of the CUSO by another. There are other affiliation tests; however, these are the most likely in the context of a CUSO. If affiliation is determined, then the CUSO needs to determine whether the affiliate is considered a “small business” and whether the affiliate and the CUSO have less than 500 employees.

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

**Answer** – A borrower may apply for both a PPP loan and an EIDL loan but cannot use the funds for the same purposes. For example, a borrower cannot seek both a PPP loan and an EIDL loan and use the proceeds from both to cover payroll costs. Borrowers should be aware of what the loan proceeds will cover under both programs ([see the SBA’s EIDL FAQs](#)).

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

**Answer** – Generally, borrowers must submit the applicable required borrower application form and sufficient documentation to show expenses and payroll costs. Documentation required may vary by lender. Documentation to show payroll costs could include payroll processor records, payroll tax filings, *IRS Form 1099-MISC*, income and expenses from sole proprietors, and bank

records of payroll amounts. Documents to show other costs could include rental agreements, utility statements, mortgage interest statements (*IRS Form 1098*).

#### **85. Question – Can a self-employed member apply for PPP Loan?**

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

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

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

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

**Answer** – Self-employed borrowers must submit:

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

If the self-employed borrower also has employees (such as a general partnership), then the borrower must provide:

- 2019 or 2020 IRS Form 1040 Schedule C;
- *SBA Form 2483* or *SBA Form 2483-C* (if using gross income) borrower application form;
- 2019 or 2020 IRS Form 941 (or other tax forms or equivalent payroll processor records containing similar information);
- state quarterly wage unemployment insurance tax reporting forms from each quarter in 2019 or 2020, or equivalent payroll processor records;
- Evidence of any retirement and health insurance contributions, if applicable; and
- A payroll statement of similar document from the pay period that covered February 15, 2020 must be provided to establish you were in operation on February 15, 2020.

## 88. Question – What documentation do self-employed borrowers need to provide to lenders for a Second Draw PPP Loan?

**Answer** – Self-employed borrowers must submit:

- 2019 or 2020 IRS Form 1040 Schedule C;
- *SBA Form 2483-SD* or *SBA Form 2483-SD-C* (if using gross income) borrower application form;
- A 2019 or 2020 IRS Form 1099-MISC detailing non-employee compensation received (box 7), invoice, bank statement, or book of record that establishes you are self-employed and that you were in operation on or around February 15, 2020.

If the self-employed borrower also has employees, then the borrower must provide:

- 2019 or 2020 IRS Form 1040 Schedule C;
- *SBA Form 2483-SD* or *SBA Form 2483-SD-C* (if using gross income) borrower application form;
- A 2019 or 2020 IRS Form 1099-MISC detailing non-employee compensation received (box 7), invoice, bank statement, or book of record that establishes you are self-employed and that you were in operation on or around February 15, 2020.

If the Second Draw PPP loan is over \$150,000, then the borrower must also submit documentation that evidences the 25 percent revenue reduction at the time of application. A borrower can prove this revenue reduction by providing relevant tax forms, or a copy of the borrower’s quarterly income statements or bank statements. For Second Draw PPP loans under \$150,000, a borrower must submit documentation that evidences the 25 percent revenue reduction either at the time of application or when the borrower submits their loan forgiveness application.

## 89. Question – What do borrowers need to certify?

**Answer** – The borrower application includes several certifications, including that they were in business on February 15, 2020, that they are an eligible borrower, the funds will be used consistent with the PPP rules to retain workers and maintain payroll or make covered payments, and that the information provided in the supporting documents and forms is true and accurate.

Borrowers must also certify that “current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.” Borrowers must make this certification in good faith, taking into account their current business activity and their ability to access other sources of liquidity sufficient to support their ongoing operations in a manner that it not significantly detrimental to the business. A borrower receives a safe harbor of compliance with this certification if the PPP loan is less than \$2 million. Borrowers who receive a PPP loan over \$2 million will have to certify that the necessity of the loan request was made in good faith. If during

the SBA's review, the agency determines that the borrower did not make this certification in good faith, then the loan must be repaid. The SBA's determination will not affect the loan guarantee (see [SBA/Treasury FAQ Q. 46 & 47](#)).

## **90. Question – Can I check the status of my existing PPP loan with the SBA?<sup>34</sup>**

**Answer**– A borrower whose PPP application submitted to the SBA by their credit union can create an account in the SBA's CAFS system to monitor the status of their account. Borrowers can [enroll here](#).

## ***Loan Forgiveness***

## **91. Question – When does a borrower have to apply for loan forgiveness?<sup>35</sup>**

**Answer** – A borrower may submit a loan forgiveness application any time on or before the maturity date of the loan, so long as the PPP funds have been exhausted. Borrowers may apply for loan forgiveness prior to the expiration of the covered period if the PPP funds have fully been exhausted. Borrowers that do not apply for loan forgiveness within 10 months after the last day of the maximum covered period of 24 weeks, or if the SBA determines that the loan is not eligible for loan forgiveness, will have to begin making payments of principal and interest but can still apply for loan forgiveness until the maturity date. A borrower's deferment period is 10 months after the last day of maximum covered period of 24 weeks.

## **92. Question – What loan forgiveness application should borrowers use?<sup>36</sup>**

**Answer** – Borrowers may submit [SBA Form 3508](#), [SBA Form 3508EZ](#), [SBA Form 3508S](#), or a lender equivalent form.

Borrowers should only use the *SBA Form 3508EZ* if they are a sole proprietor, independent contractor, or self-employed and have no employees; did not reduce the salaries or wages of employees by more than 25 percent and did not reduce the hours of employees; or did not experience a reduction in business activity as a result of a COVID-19 directive and did not reduce the salaries or wages of employees by more than 25 percent.

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

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<sup>34</sup> Updated 3/31/2021.

<sup>35</sup> Updated 2/17/2021.

<sup>36</sup> Updated 2/17/2021.

Borrowers who have a PPP loan of \$150,000 or less should use *SBA Form 3508S*. Borrowers should ensure that they are using the most up-to-date applications available on the SBA’s website.

**93. Question – Will my EIDL Advance be deducted from the loan forgiveness amount?<sup>37</sup>**

**Answer** – The CAA repealed the provision that required lenders to deduct EIDL advances from loan forgiveness amounts. A borrower who seeks loan forgiveness on a First or Second Draw PPP loan does not have to deduct any amount of an EIDL advance. For loans that have already been forgiven, the [SBA will automatically remit](#) a reconciliation payment to lenders for previously-deducted EIDL amounts, plus interest through the remittance date. Borrowers and lenders do not need to apply or submit any type of request to the SBA for the reconciliation payment. Borrowers will receive these payments from their lenders.

The SBA will begin remitting EIDL reconciliation payments beginning February 9<sup>th</sup> – 19<sup>th</sup>. Payments will be made via the ACH information that was identified by the lender of record in the Platform. Credit unions are not responsible for submitting anything to the SBA to receive the reconciliation payment, but they are responsible for notifying borrowers of the payment and then re-amortizing the loan and notifying the borrower the amount due for the next payment or whether the loan has been repaid in full. The SBA has not provided any details on how borrowers must be notified. If the reconciliation payment is in excess of the remaining balance of the PPP loan, the credit union must remit the excess amount to the borrower (see [Procedural Notice 5000-20091](#) for more information).

**94. Question – Will my loan be reviewed by the SBA?<sup>38</sup>**

**Answer** – The SBA will review all loans in excess of \$2 million, and other loans “as appropriate.” This review process will occur after the lender’s submission of the borrower’s loan forgiveness application. The SBA has the discretion to review a PPP loan of any size. PPP loans approved on or after March 4, 2021 for schedule C filers that use gross income to calculate the total loan amount and report more than \$150,000 in gross income may be reviewed by the SBA concerning the necessity of the loan and whether the borrower complied with the eligibility criteria.

**95. Question – When must payroll costs be incurred or paid to be forgiven?<sup>39</sup>**

**Answer** – In general, payrolls costs are paid or incurred the covered period are eligible for forgives. For purposes of loan forgiveness the covered period is any date between 8 and 24

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<sup>37</sup> Updated 2/17/2021.

<sup>38</sup> Updated 3/31/2021.

<sup>39</sup> Updated 1/13/2021.

weeks after disbursement. There is no longer an “alternative payroll covered period.” The covered periods of First and Second Draw PPP loans cannot overlap.

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 to be eligible for forgiveness. Payroll costs that were incurred before the covered period but not paid during the covered period are eligible for loan forgiveness ([see SBA FAQs re Loan Forgiveness for examples](#)).

For employees who are not performing work but are still on the borrower’s payroll, payroll costs are incurred based on the schedule established by the borrower. The SBA’s interim final rule provides that this is typically each date that the employee would have performed work.

## **96. Question – When are non-payroll costs incurred to be eligible for forgiveness?<sup>40</sup>**

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

- Paid during the covered period;
- Incurred during the covered period and paid on or before the next regular billing date, even if the billing date is after the covered period;

Non-payroll costs may not include any amount attributable to the business operation of a tenant or sub-tenant of the PPP borrower, or for home-based businesses, household expenses (see the [interim final rule re treatment of owners for additional examples](#) and the [updated interim final rule re loan forgiveness](#)).

## **97. Question – Are there caps on the amount of loan forgiveness for owner-employees or self-employed individuals?<sup>41</sup>**

**Answer** – Forgiveness is capped at 2.5 months’ (2.5/12) of an owner-employee or self-employed individual’s 2019 or 2020 compensation. For example, if the borrower elects to use an 8-week covered period, loan forgiveness is capped at the lesser of 8/52 of 2019 or 2020 compensation (or 15.38%) or \$15,385 per individual in total across all businesses. If the borrower elects to use a 10-week covered period, loan forgiveness is capped at the lesser of 10/52 of 2019 or 2020 compensation (or 19.23%) or \$19,231 per individual in total across all businesses. Covered periods that are longer than 2.5 months (a borrower can elect a covered period up to 24 weeks), the

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<sup>40</sup> Updated 2/17/2021.

<sup>41</sup> Updated 3/31/2021.

amount of compensation is capped at 2.5 months' (2.5/12) of 2019 or 2020 compensation (up to \$20,833) in total across all businesses.

C-Corporations owner-employees are capped by the prorated amount of their 2019 or 2020 employee cash compensation, employer retirement and health, life, disability, vision and dental insurance contributions made on their behalf. Employer health, life, disability, vision and dental insurance contributions made on their behalf cannot be separately added; those payments are already included in their net self-employment income. A Schedule C filer is capped by the prorated amount of their owner compensation replacement, calculated based on 2019 or 2020 net profit or gross income, see below for more details.

S-Corporations owner-employees are capped by the prorated amount of their 2019 or 2020 employee cash compensation and employer retirement contributions made on their behalf. Employer health, life, disability, vision, and dental insurance contributions made on their behalf cannot be separately added, those payments are already included in their employee cash compensation.

\*Owner-employees with less than a 5 percent ownership stake in a C- or S-corporation are not subject to the owner-employee compensation rule. Therefore, these owner-employees are exempt from the caps listed above. This exemption is intended to cover owner-employees who have no meaningful ability to influence decisions over how loan proceeds are allocated (see the [interim final rule re treatment of owners](#) and [updated interim final rule re loan forgiveness](#)).

Schedule C filers are capped by the prorated amount of their 2019 or 2020 net profit as reported on their IRS Form 1040 Schedule C line 31, or gross income reported on line 7. For PPP loans approved [after March 4, 2021, schedule C filers](#) may use gross or net income to determine owner compensation if they have employees or not. This applies to single-member LLCs and qualified joint ventures that are schedule C-filers. The ability to use gross income does not extend to partnerships. Payments for health insurance, retirement, or state and local taxes are not eligible for forgiveness. If a borrower did not submit their 2019 IRS Form 1040 Schedule C with their PPP application, it must be included in the borrower's forgiveness application.

General partners are capped by the prorated amount of their 2019 or 2020 net earnings from self-employment subject to self-employment tax (reduced by claimed section 179 expense deductions, unreimbursed partnership expenses, and depletion from oil and gas properties) multiplied by 0.9235. Retirement and health, life, disability, vision or dental insurance contributions are included in net self-employment income cannot be separately added to the payroll calculation.

LLC owners are subject to the rules based on their LLC's tax filing status in the reference year used to determine their loan amount.

See the [SBA's FAQs on Loan Forgiveness](#) for more detail.

## **98. Question – Can I appeal my loan forgiveness decision to the SBA?<sup>42</sup>**

**Answer** – Only final SBA loan review decision can be appealed to the SBA's Office of Hearings and Appeals (OHA). A borrower cannot appeal a decision made by a lender to the OHA. The OHA has specific procedural [rules that must be followed](#). An SBA loan review decision is any official written decision by the agency, after a review of a PPP loan is completed. A review may occur because the loan amount is over \$2 million, or the SBA utilized their discretion and reviewed a loan.

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

## **99. Question – When will loan forgiveness be reduced?<sup>43</sup>**

**Answer** – In general, reductions are required for a reduction in full-time equivalent (FTE) employees or salary and wages; however, there are certain exemptions for any reduction in a borrower's loan forgiveness amount. There are four exemptions from reductions in loan forgiveness for: (1) borrowers that have offered to restore employee hours at the same salary or wages, even if the employees have not accepted; (2) borrowers that fired an employee for cause or have an employee that voluntarily resigns or voluntarily requests a schedule reduction; (3) those who have eliminated any reductions by December 31, 2020, or for a PPP loan made after December 27, 2020, the last day of the loan's covered period; or (4) borrowers with a PPP loan of \$50,000 or less.

### Borrower Reduced Employee Hours, Re-Offered Hours, and Offer is Refused:

The SBA is allowing an exemption to the required reduction for borrowers who have offered to restore previously-reduced hours, and the employee has not accepted. A borrower is not required to reduce the amount of forgiveness if:

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

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<sup>42</sup> Updated 10/16/2020.

<sup>43</sup> Updated 2/17/2021.



- The borrower has maintained records documenting the offer and its rejection; and

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

#### Borrower Previously Reduced FTE but Restored Levels

In order to determine whether a borrower is exempt from a reduction in loan forgiveness they must first select a reference period from the following options:

- February 15, 2019 through June 30, 2019;
- January 1, 2020 through February 29, 2020; or
- In the case of a seasonal employer, either of the two preceding methods or a consecutive 12-week period between February 15, 2019 and February 15, 2020.

If the average number of FTE employees during the covered period is less than that during the chosen reference period, then the loan forgiveness amount is proportionally reduced by the percentage reduction in FTE employees.

#### Borrower is Unable to Re-hire Employees and Similarly Qualified Individuals

A borrower is exempt from a reduction if the borrower is able to document in good faith:

- An inability to rehire individuals who were employees of the borrower on February 15, 2020; and
- An inability to hire similarly qualified individuals for unfilled positions on or before December 31, 2020 (or, for a PPP loan made on or after December 27, 2020, not later than the last day of the loan's covered period).

Borrowers are required to inform applicable state unemployment insurance offices of any employee's rejected offer within 30 days of the rejection. Borrowers must retain documents to show compliance with this exemption, this should include:

- A written record offer to rehire an individual;
- A written record of the rejection; and
- A written record of efforts to hire a similarly qualified individual.

#### Borrower Unable to Return to Same Level of Business Activity

A borrower may be exempt from a reduction of loan forgiveness if they are able to document in good faith, the inability to return to the same level of business activity as the operating level at or before February 15, 2020, due to requirements or guidance issued by the Secretary of Health and Human Services, the Director of the Centers for Disease Control and Prevention, or the Occupational Safety and Health Administration related either directly or indirectly from compliance with COVID-19. Borrowers must provide documentation, which should include:

- Copies of applicable COVID-19 requirements or guidance for each business location, and
- Relevant borrower financial records.

### Employee Voluntarily Leaves or Requests a Scheduling Reduction or is Fired for Cause

A borrower's loan forgiveness amount will not be reduced if an employee is fired for cause, voluntarily resigns, or voluntarily requests a schedule reduction during the covered period. Borrowers must keep records that demonstrate the employee's request for a change, leave, or that the employee was fired for cause.

### Borrower Restores Reductions to Salary or FTE Employees

A borrower's loan forgiveness amount will not be reduced for salary reductions made between February 15, 2020 and April 26, 2020 that are restored by December 31, 2020 (or for a PPP loan made on or after December 27, 2020, by the last day of the loan's covered period).

Similarly, a borrower's loan forgiveness amount will not be reduced if the borrower restores any FTE reductions by December 31, 2020 (or for a PPP loan made on or after December 27, 2020, by the last day of the loan's covered period).

### Borrower has a Loan of \$50,000 or Less

A borrower with a loan of less than \$50,000 is exempt from any reductions to the loan forgiveness amount that would apply otherwise.

## **100. Question – How do you calculate a reduction of loan forgiveness when there has been a reduction in employee salary or wages?<sup>44</sup>**

**Answer** – Generally, if a borrower has reduced employee salary or hourly wages by more than 25 percent, then the loan forgiveness amount will be proportionally reduced. This reduction applies to any new employee in 2020 and 2021, as well as existing employees who did not receive more than \$100,000 annually in any pay period in 2019. The borrower must reduce the loan forgiveness amount by the total dollar or salary amount in excess of the 25 percent base salary or wages of the most recent full quarter during which the employee was employed during the covered period. (See the SBA's [updated interim final rule re loan forgiveness](#) for examples on calculations).

This reduction is only attributable to a reduction in salary or wages.

## **101. Question – What documentation do borrowers need to submit for forgiveness?<sup>45</sup>**

**Answer** – Each loan forgiveness application provides the list of documents borrowers must submit to the lender and retain but not submit. Borrowers with loans of \$150,000 or less should use *SBA Form 3508S* and are not required to submit any additional documentation. Borrowers

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<sup>44</sup> Updated 2/17/2021.

<sup>45</sup> Updated 2/17/2021.

of Second Draw PPP loans must submit documentation proving a revenue reduction if they have not provided it at the time of application.

**102. Question – Are their payroll costs that are not eligible for forgiveness?<sup>46</sup>**

**Answer** – The American Rescue Plan Act revised the rules regarding eligible payroll costs for loan forgiveness. For loan forgiveness applications submitted on or after March 11, 2021, the following payroll costs are not eligible for loan forgiveness:

- Qualified wages taken into account in determining the Employee Retention Credit under section 2301 of the CARES Act, the Employee Retention Credit under section 3134 of the Internal Revenue Code (IRC), or the disaster credit under section 3030 of the Taxpayer Certainty and Disaster Tax Relief Act of 2020; and
- Premiums for COBRA continuation coverage taken into account in determining the credit under section 6432 of the IRC.

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<sup>46</sup> Updated 3/31/2021.

## SBA Interim Final Rules and Resources:

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

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

## NCUA Resources:

- The NCUA published a Letter to Credit Unions regarding the SBA’s Loan Programs to Help Small Businesses and Members During the COVID-19 Pandemic, see [Letter to Credit Unions 20-CU-06](#).
  - This letter to credit unions states that the NCUA will not criticize credit unions’ good faith efforts to prudently use the SBA programs with members affected by COVID-19.
- The NCUA published a Letter to Credit Unions regarding the Regulatory Treatment for PPP Loan, see [Letter to Credit Unions 20-CU-11](#).

## Appendix:

Existing SBA Office Codes are as follows:

0100	BOSTON REGIONAL OFFICE	0248	SYRACUSE DISTRICT OFFICE
0101	MASSACHUSETTS DISTRICT OFFICE	0252	PUERTO RICO AND USVI DISTRICT OFFICE
0130	SPRINGFIELD BRANCH OFFICE	0296	BUFFALO DISTRICT OFFICE
0150	VERMONT DISTRICT OFFICE	0299	NEW JERSEY DISTRICT OFFICE
0156	CONNECTICUT DISTRICT OFFICE	0300	PHILADELPHIA REGIONAL OFFICE
0165	RHODE ISLAND DISTRICT OFFICE	0303	PHILADELPHIA DISTRICT OFFICE
0172	MAINE DISTRICT OFFICE	0304	RICHMOND DISTRICT OFFICE
0189	NEW HAMPSHIRE DISTRICT OFFICE	0316	HARRISBURG BRANCH OFFICE
0200	NEW YORK REGIONAL OFFICE	0318	WILKES BARRE BRANCH OFFICE
0202	NEW YORK DISTRICT OFFICE	0325	CHARLESTON BRANCH OFFICE
0206	ELMIRA BRANCH OFFICE	0341	DELAWARE DISTRICT OFFICE
0219	ROCHESTER BRANCH OFFICE	0353	WASHINGTON DISTRICT OFFICE
0235	MELVILLE BRANCH OFFICE		

0358	PITTSBURGH DISTRICT OFFICE	0547	MARQUETTE BRANCH OFFICE
0373	BALTIMORE DISTRICT OFFICE	0549	CLEVELAND DISTRICT OFFICE
0390	WEST VIRGINIA DISTRICT	0562	INDIANA DISTRICT OFFICE
OFFICE		0563	WISCONSIN DISTRICT OFFICE
0400	ATLANTA REGIONAL OFFICE	0593	COLUMBUS DISTRICT OFFICE
0405	GEORGIA DISTRICT OFFICE	0600	DALLAS REGIONAL OFFICE
0438	GULFPORT	0610	DALLAS / FT WORTH DISTRICT
0455	SOUTH FLORIDA DISTRICT	OFFICE	
OFFICE		0637	CORPUS CHRISTI BRANCH
0457	KENTUCKY DISTRICT OFFICE	OFFICE	
0459	ALABAMA DISTRICT OFFICE	0639	LOWER RIO GRANDE VALLEY
0460	NORTH CAROLINA DISTRICT	DISTRICT OFFICE	
OFFICE		0669	ARKANSAS DISTRICT OFFICE
0464	SOUTH CAROLINA DISTRICT	0671	HOUSTON DISTRICT OFFICE
OFFICE		0677	EL PASO DISTRICT OFFICE
0470	MISSISSIPPI DISTRICT OFFICE	0678	LUBBOCK DISTRICT OFFICE
0474	TENNESSEE DISTRICT OFFICE	0679	LOUISIANA DISTRICT OFFICE
0491	NORTH FLORIDA DISTRICT	0680	OKLAHOMA DISTRICT OFFICE
OFFICE		0681	SAN ANTONIO DISTRICT
0500	CHICAGO REGIONAL OFFICE	OFFICE	
0507	ILLINOIS DISTRICT OFFICE	0682	NEW MEXICO DISTRICT OFFICE
0508	MINNESOTA DISTRICT OFFICE	0700	KANSAS CITY REGIONAL
0515	MICHIGAN DISTRICT OFFICE	OFFICE	
0517	SPRINGFIELD BRANCH OFFICE	0709	KANSAS CITY DISTRICT OFFICE
0545	CINCINNATI BRANCH OFFICE	0721	SPRINGFIELD BRANCH OFFICE

0736 OFFICE	CEDAR RAPIDS BRANCH	0951	HAWAII DISTRICT OFFICE
0761	DES MOINES DISTRICT OFFICE	0954	SAN DIEGO DISTRICT OFFICE
0766	NEBRASKA DISTRICT OFFICE	0988	ARIZONA DISTRICT OFFICE
0767	WICHITA DISTRICT OFFICE	0995	GUAM BRANCH OFFICE
0768	ST. LOUIS DISTRICT OFFICE	1000	SEATTLE REGIONAL OFFICE
0800	DENVER REGIONAL OFFICE	1013	SEATTLE DISTRICT OFFICE
0811	COLORADO DISTRICT OFFICE	1084	ALASKA DISTRICT OFFICE
0875 OFFICE	NORTH DAKOTA DISTRICT	1086	PORTLAND DISTRICT OFFICE
0876 OFFICE	SOUTH DAKOTA DISTRICT	1087	BOISE DISTRICT OFFICE
0883	UTAH DISTRICT OFFICE	1094	SPOKANE BRANCH OFFICE
0885	MONTANA DISTRICT OFFICE		
0897	WYOMING DISTRICT OFFICE		
0900 OFFICE	SAN FRANCISCO REGIONAL		
0912 OFFICE	SAN FRANCISCO DISTRICT		
0914 OFFICE	LOS ANGELES DISTRICT		
0920	SANTA ANA DISTRICT OFFICE		
0931 OFFICE	SACRAMENTO DISTRICT		
0942	FRESNO DISTRICT OFFICE		
0944	NEVADA DISTRICT OFFICE		