



PPP Forgiveness Summary

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The Paycheck Protection Program (**PPP**) was established pursuant to the CARES Act as a new business loan program under Section 7 of the Small Business Act to provide liquidity to eligible businesses impacted by the coronavirus pandemic. A key feature of the PPP is that up to 100 percent of PPP loans are eligible for forgiveness by the Small Business Administration (SBA) if and to the extent the loan proceeds were used during the covered period of the loans for forgivable purposes. On June 5, 2020, the Paycheck Protection Program Flexibility Act of 2020 (**PPP Flexibility Act**) was enacted, retroactively revising several key terms of the PPP back to the original enactment of the CARES Act, including extending the covered period for forgiveness to 24 weeks and extending principal and interest deferral periods, while also prospectively changing the term of PPP loans to a minimum of five years. Significant updated rules and guidance from SBA followed, including issuance of an updated forgiveness application and a new “EZ” forgiveness application form for certain eligible PPP borrowers. In addition, on July 4, 2020, the signed into law an extension of the authorization for issuance of PPP loans from June 30, 2020, to August 8, 2020 (**PPP Extension Act**).

What follows is a summary of the available guidance to date, organized into a series of questions and answers intended to help PPP borrowers to prepare, and PPP lenders to review, the required forgiveness application and related documentation.

This document is not an official government FAQ; it is a McGuireWoods summary based upon the following government guidance:

- (i) the Interim Final Rule – Loan Forgiveness (**Original Forgiveness IFR**), posted on May 22, 2020 at <https://home.treasury.gov/system/files/136/PPP-IFR-Loan-Forgiveness.pdf>,
- (ii) the Interim Final Rule – SBA Loan Review Procedures and Related Borrower and Lender Responsibilities (**Original Forgiveness Review IFR**), posted on May 22, 2020 at <https://home.treasury.gov/system/files/136/PPP-IFR-SBA-Loan-Review-Procedures-and-Related-Borrower-and-Lender-Responsibilities.pdf>,
- (iii) the Loan Program Temporary Changes; Paycheck Protection Program—Revisions to First Interim Final Rule posted (**First Flexibility Act IFR**) posted on June 11, 2020, at <https://home.treasury.gov/system/files/136/PPP-IFR-Revisions-to-First-Interim-Final-Rule.pdf>,
- (iv) Business Loan Program Temporary Changes; Paycheck Protection Program—Revisions to the Third and Sixth Interim Final Rule (**Second Flexibility Act IFR**) posted on June 17, 2020, at <https://home.treasury.gov/system/files/136/PPP-IFR-SBA-Loan-Review-Procedures-and-Related-Borrower-and-Lender-Responsibilities.pdf>,
- (v) Business Loan Program Temporary Changes; Paycheck Protection Program – Revisions to Loan Forgiveness Interim Final Rule and SBA Loan Review Procedures Interim Final Rule (**Updated Forgiveness IFR 1**), posted on June 22, 2020 at <https://home.treasury.gov/system/files/136/PPP--IFR--Revisions-to-Loan-Forgiveness-Interim-Final-Rule-and-SBA-Loan-Review-Procedures-Interim-Final-Rule.pdf>,

- (vi) Business Loan Program Temporary Changes; Paycheck Protection Program—Additional Eligibility Revisions to First Interim Final Rule (**Updated Forgiveness IFR 2**, and, together with the Original Forgiveness IFR, the Original Forgiveness Review IFR and Updated Forgiveness IFR 1, the **Forgiveness IFRs**) posted on June 24, 2020, at <https://home.treasury.gov/system/files/136/PPP--IFR--Additional-Eligibility-Revisions-to-First-Interim-Final-Rule.pdf>,
- (vii) the PPP Loan Forgiveness Application Form (SBA Form 3508) posted on June 16, 2020, at <https://home.treasury.gov/system/files/136/3245-0407-SBA-Form-3508-PPP-Forgiveness-Application.pdf> (**Standard Forgiveness Application**) and the related Loan Forgiveness Application Instructions for Borrowers (the **Standard Forgiveness Application Instructions**) posted on June 16, 2020, at https://home.treasury.gov/system/files/136/PPP-Loan-Forgiveness-Application-Instructions_1_0.pdf,
- (viii) the PPP Loan Forgiveness Application Form 3508EZ (SBA Form 3508EZ) (**EZ Application** and, together with the Standard Forgiveness Application, the **Forgiveness Applications**), posted on June 16, 2020, at <https://home.treasury.gov/system/files/136/PPP-Forgiveness-Application-3508EZ.pdf> and the related PPP Loan Forgiveness Application Form 3508EZ Instructions for Borrowers (**EZ Application Instructions**, and, together with the Standard Forgiveness Application Instructions, the **Forgiveness Application Instructions**) posted on June 16, 2020, at <https://home.treasury.gov/system/files/136/PPP-Loan-Forgiveness-Application-Form-EZ-Instructions.pdf>,
- (ix) the PPP Flexibility Act,
- (x) the PPP Extension Act,
- (xi) the CARES Act, and
- (xii) the rules, FAQs, guidance and other materials published at <https://home.treasury.gov/policy-issues/cares/assistance-for-small-businesses> through 5:00 p.m. Eastern Time on July 9, 2020.

The subsections in the Forgiveness Applications and Forgiveness Application Instructions are referred to by page title and/or page number thereof. The IFRs defined above are referred to as indicated in the prior paragraph. Otherwise, the initial Interim Final Rule is referred to as the “**Initial IFR**” and each interim final rule thereafter is referred to as [DATE] IFR, using the date originally posted to the Treasury website (rather than the date published in the Federal Register, which was often days or even weeks after the initial publication on the website). The government’s official Paycheck Protection Program Frequently Asked Questions (the “**FAQ**”) at <https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf> (as updated from time to time) are referred to as the FAQ and further identified by question number.

The Standard Forgiveness Application contains several subparts, referred to herein as follows: (i) Calculation Form (Page 1 of Standard Forgiveness Application), (ii) the Representations and Certifications (page 2 of Standard Forgiveness Application) Schedule A (page 3 of Standard Forgiveness Application), (iii) Schedule A Worksheet (page 4 of Standard Forgiveness Application) and (v) an optional Demographic

Information Form (page 5 of Standard Forgiveness Application). The Standard Forgiveness Application Instructions separately cover each such Standard Forgiveness Application subpart. The EZ Application only includes (i) one calculation page (page 1 of EZ Application), (ii) the Representations and Certifications (page 2 of EZ Application) and (iii) an optional Demographic Information Form (page 3 of EZ Application). Each of the Forgiveness Application Instructions also includes Documentation Instructions (note that there are important differences between the Documentation Instructions for the Standard Forgiveness Application than the EZ Application, so be sure to use the correct Documentation Instructions for your application).

1. Q: What are the basic components of forgiveness calculation?

A: Based on the Forgiveness Applications, including the Calculation Form of the Standard Forgiveness Application and related Forgiveness Application Instructions, Borrower completes a series of calculations to arrive at the Forgiveness Amount on Line 11 of the Calculation Form or Line 8 of the EZ Application. The Forgiveness Applications require significant documentation, data collection and calculations similar to preparation of a Federal tax form. For instance, on the Calculation Form of the Standard Forgiveness Application, each line item is subject to additional calculations on Schedule A thereto (subject to the related Standard Forgiveness Application Instructions) and on the Schedule A Worksheet. The original forgiveness application was followed by the Original Forgiveness IFR and the Original Forgiveness Review IFR, both of which were posted on the Treasury website late on May 22, 2020. However, the original forgiveness application was superseded and replaced by the Standard Forgiveness Application and the EZ Application as of June 16, 2020. Additionally, in late June, SBA issued (a) the First Flexibility Act IFR and the Second Flexibility Act IFR, which amended the Initial IFR, and (b) the Updated Forgiveness IFR 1 and the Updated Forgiveness IFR 2 (together, the **Updated Forgiveness IFRs**) amending the Original Forgiveness IFR and the Original Forgiveness Review IFR to conform to the PPP Flexibility Act.

The Forgiveness Application Instructions provide detailed instructions for preparation and submission of the applicable Forgiveness Applications by Borrowers, including order of operations and terms of calculation. The Original Forgiveness Review IFR, as amended by the Updated Forgiveness IFRs, describes the responsibilities of Borrowers and PPP lenders in the forgiveness application process, as well as giving expanded guidance on how and to what extent SBA will review PPP loans (with further guidance to come on that topic). The First Flexibility Act IFR and Second Flexibility Act IFR amend the Initial IFR and other prior guidance to conform to the PPP Flexibility Act. Each component of the Forgiveness Amount calculation is addressed in more detail below, as are the related responsibilities of Borrowers and PPP lenders.

2. Q: Which Borrowers may use the EZ Application?

A: The Checklist for using SBA Form 3508EZ provided on Page 1 of the EZ Application Instructions (**EZ Application Checklist**) specifies that Borrowers who

satisfy at least one of the following three conditions are eligible to use the EZ Application:

- a. The Borrower is a self-employed individual, independent contractor, or sole proprietor who had no employees at the time of the PPP loan application and did not include any employee salaries in the computation of average monthly payroll in the Borrower Application Form (SBA Form 2483).
- b. The Borrower did not reduce annual salary or hourly wages of any employee by more than 25 percent during the Covered Period or the Alternative Payroll Covered Period (as defined below) compared to the period between January 1, 2020 and March 31, 2020 (for purposes of this statement, “employees” means only those employees that did not receive, during any single period during 2019, wages or salary at an annualized rate of pay in an amount more than \$100,000); **AND** the Borrower did not reduce the number of employees or the average paid hours of employees between January 1, 2020 and the end of the Covered Period. Ignore reductions that arose from an inability to rehire individuals who were employees on February 15, 2020 if the Borrower was unable to hire similarly qualified employees for unfilled positions on or before December 31, 2020. Also ignore reductions in an employee’s hours that the Borrower offered to restore and the employee refused. See 85 FR 33004, 33007 (June 1, 2020) for more details.
- c. The Borrower did not reduce annual salary or hourly wages of any employee by more than 25 percent during the Covered Period or the Alternative Payroll Covered Period (as defined below) compared to the period between January 1, 2020 and March 31, 2020 (for purposes of this statement, “employees” means only those employees that did not receive, during any single period during 2019, wages or salary at an annualized rate of pay in an amount more than \$100,000); **AND** the Borrower was unable to operate during the Covered Period at the same level of business activity as before February 15, 2020, due to compliance with requirements established or guidance issued between March 1, 2020 and December 31, 2020 by the Secretary of Health and Human Services, the Director of the Centers for Disease Control and Prevention, or the Occupational Safety and Health Administration, related to the maintenance of standards of sanitation, social distancing, or any other work or customer safety requirement related to COVID-19.

3. Q: What costs and expenses are eligible for forgiveness?

A: Payroll costs, covered mortgage obligations, covered utilities and covered rental expenses are the only forgivable expenses and then only to the extent paid during the applicable loan period (see Question #4 below) or incurred during such period and paid as of the next regularly scheduled payroll or payment date. Each category is described in more detail herein.

4. Q: What is the covered period for purposes of forgiveness?

A: The PPP Flexibility Act retroactively extended the original 8-week covered period for forgiveness to 24 weeks, but allowed existing Borrowers to elect whether to retain the original 8-week covered period or elect the new 24-week covered period. Pursuant to the PPP Flexibility Act, to be eligible to make this election a Borrower's PPP loan must have been made before June 5, 2020.

Note that under Section III.1.b of the First Flexibility Act IFR, SBA determined that the date SBA assigns a loan number to the PPP loan is the date the loan is "made" for purposes of determining whether a Borrower is eligible to elect the original 8-week covered period.

Both the Forgiveness Application Instructions and Section III.1.c of the First Flexibility Act IFR confirm that the "**Covered Period**" is the 24-week (168 day) period (or if elected by an eligible Borrower, the 8-week (56-day) period) commencing on the date that the PPP loan is funded. But the Forgiveness Application Instructions also provide an "**Alternative Payroll Covered Period**" that permits Borrowers with biweekly or more frequent payroll schedules to use the 24-week (or, if applicable and elected, 8-week) period commencing on the first day of Borrower's first pay period following the PPP loan funding date. A Borrower with biweekly or more frequent payroll schedules may elect either period (relating only to specified calculations of payroll costs), but must consistently apply whichever period was elected wherever the applicable Forgiveness Application specifies that the Covered Period or Alternative Payroll Covered Period applies. SBA provided the following example for Borrowers with a biweekly payroll in Updated Forgiveness IFR 2 § III.1.d (amending and restating Original Forgiveness IFR § III.3.a):

Example: A borrower that received a PPP loan before June 5, 2020 and elects to use an 8-week covered period has a bi-weekly payroll schedule (with payments made every other week). The borrower's 8-week covered period begins on June 1 and ends on July 26. The first day of the borrower's first payroll cycle that starts in the covered period is June 7. The borrower may elect an alternative payroll covered period for payroll cost purposes that starts on June 7 and ends 55 days later (for a total of 56 days), on August 1. Payroll costs paid during this alternative payroll covered period are eligible for forgiveness. In addition, payroll costs incurred during this alternative payroll covered period are eligible for forgiveness if they are paid on or before the first regular payroll date occurring after August 1. Payroll costs that were both paid and incurred during the covered period (or alternative payroll covered period) may only be counted once.

Note that the Alternative Payroll Covered Period does not apply in all cases, however. Non-payroll cost calculations will be determined for the Covered Period for all Borrowers, regardless of whether the Alternative Payroll Covered Period is elected for calculation of payroll costs. In this memo, "**Applicable Covered Period**" is used to refer to whichever period is elected by a biweekly payroll Borrower with respect to payroll costs, but otherwise refers to the Covered Period.

Note also that Updated Forgiveness IFR § III.1.c permits Borrowers to submit a Forgiveness Application before the end of the Applicable Covered Period. See Question #22 below for a further discussion of this new rule.

5. Q: What qualifies as a “payroll cost” (excluding individuals with self-employment income who file a federal tax form 1040, Schedule C or Schedule F)?

A: The same definition of “payroll costs” as was used in determining the size of PPP loans in accordance with Section 1102 of the CARES Act is used for determining forgiveness under Section 1106 of the CARES Act, subject to clarifications provided in related guidance as described herein.

In the Standard Forgiveness Application, payroll costs are calculated in accordance with Schedule A and the result on Line 10 of Schedule A is entered on Line 1 of the Forgiveness Calculation Form. Lines 1 and 4 of Schedule A are calculated using Tables 1 and 2 of the Schedule A Worksheet. The Schedule A Worksheet requires that independent contractors, owner-employees, self-employed individuals and partners be excluded from Tables 1 and 2 on the Schedule A Worksheet. Independent contractors and self-employed individuals are excluded entirely from the applications of business entities because those individuals could apply separately for their own PPP loan. Compensation for owner-employees and partners is captured separately on Line 9 of Schedule A, which is then included in the total payroll costs on Line 10.

In the EZ Application, payroll costs are directly entered onto Line 1 without the requirement to complete a worksheet supporting those calculations. However, the EZ Application Instructions include detailed instructions to the Borrower on what can be included and what should be excluded when it calculates cash compensation, employee benefits and owner compensation, many of which are described later in this memorandum.

The general list of payroll costs is provided for reference below. More detailed analyses of the components of payroll costs are covered in more detail herein.

d. Included:¹

- i. Salary, hourly wages, commissions, or similar compensation,
- ii. Payment of cash tips or equivalent (see Question #6.a.i below),
- iii. Payment for vacation, parental, family, medical or sick leave,
- iv. Allowance for dismissal or separation,
- v. Payment required for the provisions of group health care benefits including insurance premiums,
- vi. Payment of any retirement benefit, and
- vii. Payment of state or local tax assessed on compensation of employees.

¹ The CARES Act provides for the inclusion of compensation or income to sole proprietors or independent contractors to be included in “payroll cost” calculations of a business concern, but subsequent guidance directed borrowers and lenders to exclude these amounts from the payroll costs of a business concern because sole proprietors and independent contractors can separately apply for a PPP loan.

e. Excluded:

- i. Cash compensation in excess of an annualized rate of \$100,000 per year,
- ii. FICA and federal tax withholding,
- iii. Compensation to an employee whose principal place of residence is outside of the United States,
- iv. Sick leave for which a tax credit is permitted under Section 7001 of the Families First Coronavirus Response Act, and
- v. Family leave for which a tax credit is permitted under Section 7003 of the Families First Coronavirus Response Act.

6. Q: What qualifies as “salary, wage, commission or similar compensation” under the definition of “payroll costs” for a business concern?

A: Salary, wages, commission, and similar compensation includes salaries of salaried employees (that are not partners or owner-employees), hourly wages of hourly employees, as well as gross tips². Based on the Loan Size Calculation FAQ³, tax filing status is used to determine how to calculate these amounts (which are subject to the cash compensation caps described in Question 7 below):

- a. for salaried and hourly employees who are not partners or owner-employees, 2019 gross wages and tips paid to such employees can be computed using 2019 IRS Form 941 Taxable Medicare wages & tips (line 5c-column 1) from each quarter (or, for very small businesses, 2019 IRS Form 944);
 - i. Section III.1 of the Original Forgiveness IFR expressly confirms that cash tips or equivalent should be determined “based on employer records of past tips, or in the absence of such records, a reasonable, good-faith employer estimate of such tips”.
- b. self-employed individuals who file Schedule C to IRS Form 1040 are directed to use Schedule C line 31 net profit amount (note that no additional forgiveness is provided for retirement or health insurance contributions for self-employed individuals such as Schedule C and Schedule F filers and general partners⁴);
- c. self-employed individuals who file Schedule F to IRS Form 1040 are directed to use Schedule F line 34 net farm profit (note that no additional forgiveness is provided for retirement or health insurance contributions for self-employed individuals);
- d. partners, who cannot file separately and so should be included in the application of the business concern in which they are a partner, refer to 2019 Schedule K-1 (IRS Form 1065) net earnings from self-employment of individual U.S. based general partners that are subject to self-employment

² See Schedule A Worksheet Instructions, “Cash Compensation”.

³ HOW TO CALCULATE MAXIMUM LOAN AMOUNTS – BY BUSINESS TYPE (originally posted April 24, 2020, and updated as of June 26, 2020), <https://home.treasury.gov/system/files/136/How-to-Calculate-Loan-Amounts.pdf>. For self-employed Borrowers who were in business as of February 15, 2020, but were not in business between February 15 and June 30 2019, question 10 of this document was added on June 26 to provide guidance for loan sizing.

⁴ See Original Forgiveness IFR III.3.c, as amended by the Updated Forgiveness IFR §III.1.d.

tax, computed from box 14a (reduced by any section 179 expense deduction claimed, unreimbursed partnership expenses claimed, and depletion claimed on oil and gas properties) multiplied by 0.9235 (note that no additional forgiveness is provided for retirement or health insurance contributions for self-employed individuals); and

- e. limited liability companies determine the calculation method based on their tax filing elections.

7. Q: How is the \$100,000 per annum cap on payroll costs applied?

A: The cash compensation portion of payroll costs in excess of \$100,000 per annum (determined on an annualized basis for each applicable pay period) is not eligible for forgiveness. Page 2 of the EZ Application Instructions directions (for Line 1 of the EZ Application) and page 4 of the Standard Forgiveness Application Instructions expressly provide that such compensation, together with paid leave and allowances and dismissal or separation paid or incurred during the Applicable Covered Period, are required to be combined as the aggregate “cash compensation” for each employee.

The forgivable amount of such compensation is limited as follows –

- no more than \$15,385 per employee for an 8-week Applicable Covered Period;
- no more than \$46,154 per employee (excluding owner-employees, self-employed individuals and general partners) for a 24-week Applicable Covered Period; and
- no more than \$20,833 per owner-employee, self-employed individual and general partner for a 24-week period (which is included as part of line 1 of the EZ Application or entered on Line 9 of the Schedule A Worksheet for the Standard Forgiveness Application) – see Question # 9 below for more details.

The cap applicable to any amount of cash compensation as a result of the foregoing restrictions is referred to herein as the “**Applicable Compensation Cap**”.

8. Q: What compensation is subject to the exclusion of ratable amounts in excess of \$100,000 per year?

A: Under FAQ #7 and Section III.1.b of the Second Flexibility Act IFR, cash compensation is limited to salary, wages, tips and similar compensation as well as various forms of leave or severance pay and other amounts deemed to be included as similar to such amounts pursuant to guidance, including hazard pay and bonuses to employees who are not owner-employees or partners (see Question #13 below); with respect to employees other than owner-employees and partners, employer contributions for health insurance and retirement plans and employer paid state and local taxes on employee compensation are not subject to the \$100,000 per annum limitation. However, employer retirement contributions made on behalf of a self-employed individual or general partner are not included in

payroll costs because such amounts are already assumed to be included in their net profit calculation.⁵

9. Q: How is forgiveness calculated for individual with self-employment income?

A: Owner compensation⁶ of individuals with self-employment income who file a Schedule C to the form 1040 is limited to the lesser of (a) (i) the net profit amount reported on such person's 2019 IRS Form 1040 Schedule C line 31 up to \$100,000 per annum times (ii) either 2.5 (for a 24-week Applicable Covered Period) or 8/52 (for an 8-week Applicable Covered Period) and (b) \$20,833 (for a 24-week Applicable Covered Period) or \$15,385 (for an 8-week Applicable Covered Period) for such individuals across all businesses⁷. As previously noted, no additional forgiveness is provided for retirement or health insurance contributions for such self-employed individuals. Forgiveness of payroll costs for any employees of a self-employed applicant is determined in accordance with the rules applicable to employees of a business concern.⁸

10.Q: What qualifies as a “covered mortgage obligation”?

A: A covered mortgage obligation is the interest on any indebtedness or debt instrument incurred in the ordinary course of business that is a liability of Borrower, is a mortgage on real or personal property and was incurred before February 15, 2020.⁹ Line 2 of each Forgiveness Application uses the term “Business Mortgage Interest Payments” and confirms that any such payments, other than prepayments, made during the Covered Period may be included as a forgivable expense. While the CARES Act and related guidance, including Section III.1(2) of the Original Forgiveness IFR, expressly prohibits prepayment of covered mortgage obligations, it does not expressly prohibit (nor does it expressly permit) payments of mortgage interest that was incurred but not paid in a prior period.

In order to verify the amount entered on Line 2 of either Forgiveness Application

⁵ See.

⁶ See EZ Application Instructions, page 2, Standard Forgiveness Application Instructions, page 3, Section III.1.b of the Second Flexibility Act IFR and Updated Forgiveness IFR § III.1.d.

“The Administrator, in consultation with the Secretary, determined that it is appropriate to limit the forgiveness of owner compensation to either eight weeks’ worth (8/52) of their 2019 compensation (up to \$15,385) for an 8-week covered period or 2.5 months’ worth (2.5/12) of their 2019 compensation (up to \$20,833) for a 24-week covered period per owner in total across all businesses. ... For example, a borrower with one other employee would receive a maximum loan amount equal to 5 months of payroll (2.5 months of payroll for the owner plus 2.5 months of payroll for the employee). If the owner laid off the employee and availed itself of the exemption in the Paycheck Protection Program Flexibility Act of 2020 (Flexibility Act) related to reductions in business activity described in e. below, the owner could treat the entire amount of the PPP loan as payroll, with the entire loan being forgiven. This would not only result in a windfall for the owner, by providing the owner with five months of payroll instead of 2.5 months, but also defeat the purpose of the CARES Act of protecting the paycheck of the employee.”

⁷ See Forgiveness IFR III.3.c

⁸ April 14 IFR § III.1.f.

⁹ CARES Act §1106(a)(2).

Form, the Document Instructions¹⁰ direct Borrower to provide either (i) a copy of the lender amortization schedule for such mortgage debt and “receipts or cancelled checks” verifying the payment or (ii) lender account statements from February 2020 and the months in, through one month after, the Covered Period. The Original Forgiveness IFR, as amended by the Updated Forgiveness IFR, essentially incorporates by reference the Documentation Instructions from the original forgiveness application (which are substantially the same as in the new Forgiveness Application Instructions).

11.Q: What qualifies as a “covered rent obligation”?

A: A covered rent obligation is any rent obligation arising under a leasing agreement that was in force before February 15, 2020.¹¹ According to subsequent guidance, covered rent includes rent under a lease for real or personal property (so long as the lease was in effect prior to February 15, 2020).¹² Line 3 of the Forgiveness Applications use the term “Business Rent or Lease Payments”. Available guidance does not expressly prohibit including payments of non-payroll costs incurred in prior periods (back rent), but neither does it expressly permit forgiveness of non-payroll costs incurred in prior periods. Further SBA guidance is needed to clarify this point.

In order to verify the amount of covered rent obligations entered on Line 3 of each Forgiveness Application, the Document Instructions direct Borrower to provide (i) a copy of the current lease agreement and receipts or cancelled checks or (ii) lessor account statements from February 2020 and each month during and one month after the end of the Covered Period.

12.Q: What qualifies as a “covered utility obligation”?

A: A covered utility payment is any payment for service for electricity, gas, water, transportation, telephone or internet access for which service began before February 15, 2020. There has been no guidance on what constitutes a transportation utility payment. Line 4 of each Forgiveness Application uses the term “Business Utility Payments” for this concept, and the Calculation Form Instructions only specify that the utility service must have begun before February 15, 2020.

In order to verify the amount of covered utility obligations, the Document Instructions direct Borrower to provide copies of invoices from February 2020 and those paid during the Covered Period, and receipts, cancelled checks or account statements verifying those eligible payments.

13.Q: What qualifies as a payment made or forgivable expense incurred?

A: Under the CARES Act, forgiveness applies to amounts “incurred and payments made” during the covered period. Original Forgiveness IFR § III.3.a and § III.4, as

¹⁰ Page 10 of Standard Forgiveness Application Instructions and page 4 of the EZ Application Instructions.

¹¹ See CARES Act §1106(a)(4) and Forgiveness IFR § III.1(3).

¹² See April 14 IFR § III.1.d.iii & Forgiveness IFR § III.1(3).

amended by the Updated Forgiveness IFR, provide that (i) Payroll Cost amounts actually paid during the Applicable Covered Period, (ii) non-Payroll Cost amounts actually paid during the Covered Period, (iii) Payroll Costs incurred during the Applicable Covered Period but paid thereafter, so long as the payment is made no later than the next occurring scheduled payroll date, and (iv) non-Payroll Costs that are incurred during the Covered Period but paid thereafter, so long as such payment is made no later than the next scheduled payment date thereof, all are forgivable.

The Original Forgiveness IFR § III.3.a, as amended by the Updated Forgiveness IFR, provides that payroll costs are considered “incurred” on the day the employee’s pay is earned (the day the employee worked, or if the employee is being paid but not performing work, the amount is deemed earned on the schedule established by Borrower, which is anticipated to be the day that employee would have performed work).

In addition, the difference in treatment of the partner/owner-employee cap as compared to other employees (see Question #7 above) suggests, and the Original Forgiveness IFR § III.3.b expressly confirms, that Borrowers may include as forgivable payroll costs payments to furloughed employees (even if they do not perform work), as well as bonuses and hazard pay, in each case to the extent such amounts do not exceed the Applicable Compensation Cap during the Applicable Covered Period.

The Forgiveness IFR § III.4.a, as amended by the Updated Forgiveness IFR, clarifies that non-payroll costs incurred during the Covered Period are forgivable even if the billing date is after the end of the Covered Period, so long as such amounts are actually paid by the next scheduled billing date.

14.Q: How are payroll costs calculated for employees of a Borrower?

A: No worksheet or other calculation of payroll costs is required to be submitted by the Borrower in connection with completing line 1 of the EZ Application, although documentation supporting the total amount recorded on line 1 is required in the applicable Documentation Instructions. Calculation of payroll costs for a business concern, or for the employees of an individual applicant with employees, using the Standard Forgiveness Application starts with completion of the Schedule A Worksheet, which then used to populate amounts in Schedule A and finally the Schedule A calculations are used to populate specified entries on the Forgiveness Calculation Form.

- **Table 1:** The Borrower enters the name, employee identifier (last four digits of employee social security number), cash compensation amount, average full-time equivalent (“**FTE**”) and salary/wage reduction of each employee:
 - who was employed by the Borrower at any point during the Applicable Covered Period;
 - whose principal place of residence is in the United States;
 - who received annualized compensation of no more than \$100,000 per annum for all pay periods in 2019 or was not employed by the Borrower at any time in 2019; and

- who is not an independent contractor, owner-employee, self-employed individual or partner.
- **Table 2:** The Borrower enters employee name, employee identifier (last four digits of employee social security number), cash compensation and average FTE of each employee:
 - who was employed by the Borrower at any point during the Applicable Covered Period;
 - whose principal place of residence is in the United States;
 - who received annualized compensation of more than \$100,000 per annum for any pay period in 2019; and
 - who is not an independent contractor, owner-employee, self-employed individual or partner.
- **Cash Compensation Amount:** For each employee, enter the lesser of (i) the sum of gross cash compensation (salary, wages, tips, commissions and leave pay, other than leave pay covered by Families First Coronavirus Response Act) and allowances for dismissal or separation that was (x) paid during the Applicable Covered Period or (y) incurred during the Applicable Covered Period and will be paid on the next payroll date after the Applicable Covered Period and (ii) the Applicable Compensation Cap.
- **How is FTE employment determined?:** The Borrower may elect one of two methods, but must consistently apply the same approach to each employee based on their status during the Applicable Covered Period¹³:
 - For each employee in Table 1 and Table 2, enter the average number of hours paid per week, divide by 40, and round the total to the nearest tenth (but in any event, no more than 1.0); or
 - For each employee who works 40 hours a week or more, enter 1.0, and for all other employees, enter 0.5.

The Borrower then adds together all the FTE employees for the selected reference period and Applicable Covered period and divides the number of FTE employees in the Applicable Covered Period by the number of FTE employees during the reference period to determine the reduction quotient in accordance with the applicable Forgiveness Application.
- **Salary/Hourly Wage Reduction & Safe Harbor:** The Borrower must complete the four step calculation in the Schedule A Worksheet Instructions under the heading “Salary/Hourly Wage Reduction” to determine whether (i) the Safe Harbor applies to each employee, in which case the Borrower enters zero (0) in this column of Table 1, or (ii) if the Safe Harbor does not apply, the amount, if any, of the Salary/Hourly Wage Reduction. This calculation is only required for Table 1 (employees who are not partners or owner-employees and who made no more than \$100,000 per annum on an annualized basis in any pay period in 2019 or were not employed by the Borrower at any time in 2019). Note that this Safe Harbor only applies to the extent that (x) the

¹³ See Forgiveness IFR § III.5.d.

Borrower establishes that average annual salary or hourly wage in the period from February 15, 2020, through April 26, 2020, was less than the average annual salary or average hourly wage for the pay period including February 15, 2020 and (y) the average annual salary or hourly wage as of June 30, 2020 is equal to or greater than the annual salary or hourly wage as of February 15, 2020. If no Safe Harbor applies, the actual reduction only occurs if and to the extent that any individual employee's average annual salary or average hourly wage during the Applicable Covered Period is reduced by more than 25 percent compared to that employee's average annual salary or average hourly wage during the period from January 1, 2020 through March 31, 2020. In addition, if the Borrower applies for forgiveness before the end of the Applicable Covered Period, it still must account for the excess salary reduction described above for the full 8-week or 24-week Applicable Covered Period (see Question #22 below).

- **FTE Reduction Exceptions:** Original Forgiveness IFR §§ III.5.a and III.5.b were amended and restated by Updated Forgiveness IFR §§ 1.f to (a) replace prior rules that created an exception from the FTE headcount reduction for both reduced hours and discontinued employment of certain employees with an exception that only applies to reductions in hours and (b) implement a PPP Flexibility Act exception from the FTE headcount reduction for employees who cannot be rehired or replaced by another person as a replacement for the prior SBA exception for laid off or otherwise separated employees. After giving effect to the Updated Forgiveness IFR, the following exceptions to the FTE headcount reduction are available:
 - **Reduced Hours:** Under the Original Forgiveness IFR § III.5.a, as amended by the Updated Forgiveness IFR § III.f, a Borrower may exclude any reduction in FTE employee headcount attributable to an individual employee whose hours were reduced during the Applicable Covered Period so long as (1) the Borrower made a good faith, written offer to restore the reduced hours of such employee; (2) the offer was for the same salary or wages and same number of hours as earned by such employee in the last pay period prior to the reduction in hours; (3) the offer was rejected by such employee; and (4) the Borrower has maintained records documenting the offer and its rejection.
 - **Inability to Re-Hire:** Under the Original Forgiveness IFR § III.5.b, as amended by the Updated Forgiveness IFR § III.f, a Borrower is exempt from the loan forgiveness reduction arising from a proportional reduction in FTE employees during the Applicable Covered Period if the Borrower documents in good faith the following: (1) an inability to rehire individuals who were employees of the Borrower on February 15, 2020; and (2) an inability to hire similarly qualified individuals for unfilled positions on or before December 31, 2020.

Under the Document Instructions, a Borrower does not submit the supporting data for these determinations but must maintain copies of its records for six years after the PPP loan is forgiven or repaid in full, including records demonstrating the basis for exemptions in the case of employees who reject a return offer, are fired for cause, voluntarily resign or voluntarily reduce hours. Also, Forgiveness IFR § III.5.a, as amended by the Updated Forgiveness IFR, requires Borrowers to report any rejection of a re-hire offer to the applicable state unemployment insurance office within 30 days of such rejection, but indicates that further guidance will be provided in this regard in the future.

- **FTE Reduction Safe Harbors:** After implementation of the PPP Flexibility Act, there are two potential FTE Safe Harbors, described below. Unlike the FTE Reduction Exceptions described above, which can exempt individual employees from being included in the FTE headcount reduction calculation, if the requirements of either are satisfied, the FTE Reduction Safe Harbors exempt an eligible Borrower from having to apply any FTE headcount reduction at all, regardless of whether or not the FTE Reduction Exemptions would otherwise apply.
 - **First FTE Reduction Safe Harbor:** Each Borrower is exempt from the FTE headcount reduction if the Borrower, in good faith, is able to document that it was unable to operate between February 15, 2020, and the end of the Covered Period at the same level of business activity as before February 15, 2020, due to compliance with requirements established or guidance issued between March 1, 2020 and December 31, 2020, by the Secretary of Health and Human Services, the Director of the Centers for Disease Control and Prevention, or the Occupational Safety and Health Administration, related to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID-19. Importantly, Updated Forgiveness IFR § III.1.f provides that the First FTE Reduction Safe Harbor includes both direct and indirect compliance with federal COVID-19 health and safety guidance, “because a significant amount of the reduction in business activity stemming from the pandemic is the result of state and local government shutdown orders that are based in part on guidance from the three federal agencies.”
 - **Second FTE Reduction Safe Harbor:** If the First FTE Reduction Safe Harbor does not apply, Borrowers must complete the “FTE Reduction Safe Harbor 2” portion of the Schedule A Worksheet to the Standard Forgiveness Application to confirm eligibility for the second FTE Safe Harbor. The Second FTE Safe Harbor is satisfied if (1) the Borrower reduced the FTE employee levels during the period beginning February 15, 2020 and April 26, 2020 and (2) the Borrower then restored its FTE headcount by no later than December 31, 2020 to at least its total FTE in the pay period inclusive of February 15, 2020.

If a Borrower had any FTE headcount reductions and does not satisfy either FTE Reduction Safe Harbor, the Borrower must calculate the FTE Reduction Quotient on Line 13 of Schedule A to the Standard Forgiveness Application and apply that to the forgiveness calculation in accordance with the Forgiveness Calculation Form. (Note that this does not apply to an EZ Application because a Borrower who could not satisfy either FTE Reduction Safe Harbor should not be eligible to file an EZ Application.)

- **Intersection of FTE Reduction and Salary/Wage Reductions:** Notwithstanding the foregoing or anything in the Forgiveness Applications to the contrary, Original Forgiveness IFR § III.5.f, which was not expressly modified by the Updated Forgiveness IFR, provides that Borrowers will not be doubly penalized for employees who reduce the FTE headcount and for such employees' related salary/wage reductions. Instead, only the portion of any decline in an employee's salary or wages that is not attributable to the FTE headcount reduction will be included in determining Salary/Wage Reductions. The example given is where an hourly employee's hours are reduced, but the hourly wage remains unchanged, the FTE reduction reflecting the reduction in hours counts (unless it is subject to the hour reduction exception described above), but no Salary/Wage Reduction is required for that employee because the hourly wage was not reduced and the reduction in hours has already been accounted for in the FTE Reduction determination. Unfortunately, neither the Schedule A Worksheet nor the Schedule A Worksheet Instructions reflect this exception, so it is not clear how or if a Borrower is required to denote reliance on this exception in the Salary/Hourly Wage Reduction column for applicable employees. Since PPP lenders will not receive and do not have an obligation to review Schedule A Worksheet, however, ultimately this is an issue to be resolved between SBA and each Borrower with an SBA-reviewed PPP loan.
- **Partner/Owner-Employees:** Note that owner-employees and partners are calculated separately from other employees in the Standard Forgiveness Application, with such owner-employees and partners accounted for on Line 9 of Schedule A to the Standard Forgiveness Application.

15.Q: How are payroll costs calculated on the Standard Forgiveness Application?

A: Payroll cost components for employees listed on the Schedule A Worksheet of the Standard Forgiveness Application are entered and calculated on the Forgiveness Calculation Form based in part on the Schedule A Worksheet (see Question #14 above) as follows:

- **Line 1:** The Borrower enters the total cash compensation amount from the final row (labeled "Totals:") in the Table 1 column labeled Cash Compensation.

- **Line 2:** The Borrower enters the Average FTE from the same row in Table 1 for the column labeled Average FTE.
- **Line 3:** If the Average Annual Salary/Hourly Wage for each employee in Table 1 during the Applicable Covered Period was at least 75 percent of such employee's average annual salary or hourly wage between January 1, 2020, and March 31, 2020, then enter zero on this line. Otherwise, the Borrower enters the aggregate Salary/Hourly Wage Reduction amount from the same row in Table 1 for the column labeled Salary/Hourly Wage Reduction. **This amount is also entered on Line 5 of the Standard Forgiveness Application Calculation Form.**
- **Line 4:** The Borrower enters the total cash compensation amount from the final row (labeled "Totals:") in the Table 2 column labeled Cash Compensation.
- **Line 5:** The Borrower enters the Average FTE from the same row in Table 1 for the column labeled Average FTE.
- **Line 6:** The Borrower enters total amount for employer contributions paid during the Applicable Covered Period for employee health insurance, including for a self-insured, employer-sponsored group plan, but excluding (i) pre or after tax contributions by employees and (ii) amounts paid to health insurance or retirement accounts on behalf of self-employed individuals (see Questions #6.b and #8 above). The Document Instructions require the Borrower to provide payment receipts, cancelled checks or account statements documenting the amount of such payments. This amount is expressly excluded from the \$100,000 per annum cap, and there is no express prohibition against prepayments of such amounts during the Applicable Covered Period in the guidance available to date.
- **Line 7:** The Borrower enters total amount for employer contributions paid during the Applicable Covered Period for employee retirement plans, excluding pre and after tax contributions by employees. The Document Instructions require the Borrower to provide payment receipts, cancelled checks or account statements documenting the amount of such payments. This amount expressly excluded from the \$100,000 per annum cap, and there is no express prohibition against prepayments of such amounts during the Applicable Covered Period in the guidance available to date.
- **Line 8:** The Borrower enters the total amount paid for employer state and local taxes assessed on employee compensation paid during the Applicable Covered Period, excluding any taxes withheld from employee earnings. To verify this amount, the Document Instructions require the Borrower deliver state quarterly business and individual employee wage reporting and unemployment insurance tax filings reported, or that will be reported, in the relevant state.
- **Line 9:** The Borrower enters eligible cash compensation amounts paid to each owner (owner-employee, self-employed owner individual or general partners) during the Applicable Covered Period, which shall not exceed for any such owner the lesser of the Applicable Compensation Cap. See Questions #6 and #7 above for details on determining such compensation.

- **Line 10:** The Borrower enters the sum of Lines 1, 4, 6, 7, 8 and 9. This is the aggregate amount of forgivable payroll costs. **This amount is also entered on Line 1 of the Standard Forgiveness Application Calculation Form.**
- **Line 11:** The Borrower can skip Lines 11 and 12 and enter a 1.0 on Line 13 if (a) it did not have any reduction in employee compensation that would reduce forgiveness and (b) satisfies one of the FTE Reduction Safe Harbors. Otherwise, the Borrower enters the total average FTE for its selected comparison period (for non-seasonal employers, either (i) February 15, 2020 to June 30, 2019, or (ii) January 1, 2020 to February 29, 2020, and for seasonal employers, either of the preceding non-seasonal periods or twelve consecutive weeks occurring between May 1, 2019 to September 15, 2019).
- **Line 12:** If the Borrower is required to complete this line, the Borrower enters the sum of Lines 2 and 5. This is the aggregate Average FTE for all employees (other than owners and other excluded employees) for the Applicable Covered Period.
- **Line 13:** If one of the FTE Safe Harbors was met, the Borrower enters 1.0. If not, the Borrower enters the ratio calculated by dividing line 12 by line 11. **This quotient is also entered on Line 7 of the Standard Forgiveness Application Calculation Form.**

16.Q: How is the final Forgiveness Amount calculated (Standard Forgiveness Application)?

A: The final determination of the Forgiveness Amount is determined by completion of the Forgiveness Amount Calculation on the Forgiveness Calculation Form as follows:

- **Lines 1-4: Initial Forgiveness Amount.**
 - **Line 1 (Payroll Costs):** The Borrower enters the aggregate forgivable payroll costs from **Line 10 of Schedule A.**
 - **Line 2 (Business Mortgage Interest Payments):** The Borrower enters the aggregate amount of Business Mortgage Interest Payments actually paid during the Covered Period or incurred during the Covered Period and actually paid on the next occurring payment date after the end of the Covered Period (also referred to as covered mortgage obligations in the CARES Act and related guidance, see Question #10 above).
 - **Line 3 (Business Rent or Lease Payments):** The Borrower enters the aggregate amount of Business Rent or Lease Payments actually paid during the Covered Period or incurred during the Covered Period and to be paid on the next occurring payment date after the end of the Covered Period (also referred to as covered rent in the CARES Act and related guidance, see Question #11 above).
 - **Line 4 (Business Utility Payments):** The Borrower enters the aggregate amount of Business Utility Payments actually paid during the Covered Period or incurred during the Covered Period and to be paid on the next occurring payment date after the end of the Covered Period (also referred to as covered utility in the

CARES Act and related guidance, see Question #12 above). **The sum of lines 1-4 is the initial Forgiveness Amount, subject to possible adjustments described below.**

- **Lines 5-7: Possible Adjustments to Initial Forgiveness Amount.**
 - **Line 5 (Total Salary/Hourly Wage Reduction):** The Borrower enters amount from **Line 3 of Schedule A** (the Total Salary/Hourly Wage Reduction). If the Safe Harbor applied or there was no reduction of compensation by more than 25 percent, this amount could be zero.
 - **Line 6 (Interim Adjusted Forgiveness Amount):** The Borrower deducts Line 5 (the Total Salary/Hourly Wage Reduction) from the initial Forgiveness Amount (the sum of amounts entered on Lines 1-4) to arrive at an interim adjusted forgiveness amount (no less than zero).
 - **Line 7 (FTE Reduction Quotient):** The Borrower enters the FTE Reduction Quotient from Line 13 of Schedule A. If one of the FTE Safe Harbors applied or there were no FTE headcount reductions, this number could be 1.0; otherwise, it will be less than 1.0.
- **Lines 8-10: Possible Forgiveness Amounts.**
 - **Line 8 (Modified Total Forgiveness Amount):** The Borrower multiplies the interim adjusted forgiveness amount from Line 6 times the FTE Reduction Quotient from Line 7. The result is referred to as the Modified Total.
 - **Line 9 (Principal Amount of PPP Loan):** The Borrower enters the principal amount of its PPP loan.
 - **Line 10 (60 percent Payroll Cost Requirement Cap):** The Borrower enters the result of dividing the aggregate payroll costs entered on Line 1 by 0.60. This establishes the maximum forgiveness amount based on the 60 percent payroll cost requirement (regardless of the aggregate amount of non-payroll costs).
- **Line 11 (Final Forgiveness Amount):** The Borrower compares the Modified Total, the PPP loan amount and the 60 percent payroll cost adjusted amount from Lines 8-10 and enters the smallest such amount on Line 11. **This is the final Forgiveness Amount to be paid by SBA to the PPP lender, subject to further reduction by SBA for the amount of any EIDL Advance paid to the Borrower (see Question #18 below).**

17.Q: How is the Forgiveness Amount capped pursuant to the 60 percent Payroll Costs requirement?

A: Originally, according to the Initial IFR and the April 14 IFR, and as confirmed again in the Original Forgiveness IFR, at least 75 percent of forgivable expenses were required to consist of payroll costs, meaning that no more than 25 percent of the Baseline Forgiveness Amount could be composed of Capped Expenses. However, the PPP Flexibility Act reduced the minimum payroll cost amount to 60 percent of the forgivable amount (meaning up to 40 percent of the forgiven amount can be non-payroll costs), which was confirmed in the First Flexibility Act IFR. This

restriction is implemented in the Standard Forgiveness Application in Line 10 of the Calculation Form (see Question #16 above), and on Line 7 of the EZ Application.

18.Q: How is any EIDL Advance treated for purposes of forgiveness?

A: An EIDL Advance is the amount of any Economic Injury Disaster Loan (EIDL) that a Borrower may have obtained directly from SBA under Section 7(b) of the Small Business Act (as updated by the CARES Act) in the form of a grant of up to \$10,000. The EIDL Advance program was established pursuant to Section 1110(e) of the CARES Act. In a Procedural Notice effective June 19, 2020, SBA confirmed that EIDL Advances are required to be excluded from the original amount of any PPP loan and that otherwise the proceeds of an EIDL in excess of the EIDL Advance that was used for payroll costs should have been refinanced with a PPP loan, with the full EIDL loan amount (other than the EIDL Advance) being paid directly to SBA. The Forgiveness Application Instructions provide that SBA will confirm the amount of any EIDL Advance and deduct that amount from the final Forgiveness Amount entered on the applicable Forgiveness Application.

19.Q: To what extent is interest forgivable?

A: Interest on the forgiven principal portion of a PPP loan will be remitted by SBA to the PPP lender (and thus forgiven as to the applicable Borrower) along with the forgiven principal payment. Interest on any unforgiven portion of a PPP loan will accrue for the six-month deferral period and be an obligation of the borrower under the PPP loan note. It is possible, if not likely, that Forgiveness Application processing may extend beyond the six-month interest deferral period for PPP loans, so PPP lenders will need to determine (unless already expressly covered in their loan documentation) whether to collect principal and interest payments based upon the full amount of the PPP loan until the forgiveness payment is actually remitted by SBA (with a ratable refund to Borrowers for the forgiven portion after the forgiveness payment, including interest to that date, is received) or to base those payments upon anticipated forgiveness amount reported to SBA. Because SBA has reserved the right to review any Forgiveness Application or PPP loan application under the Original Forgiveness Review IFR and the Updated Forgiveness IFR, and it is unclear from the Forgiveness IFRs whether that review must be completed before the end of SBA's statutory 90-day period to process a forgiveness determination by a PPP lender, lenders that size the amortization assuming that forgiveness determinations will be honored by SBA need to expressly reserve the right with Borrowers to revise the amortization schedule and obtain back payments of interest and principal as necessary based on the final amount of the forgiveness remittance by SBA.

20.Q: What documents are required from a borrower seeking forgiveness?

A: Borrowers are required to submit documentation verifying the number of FTE employees, as well as the dollar amounts of payroll costs and other amounts necessary to calculate the final Forgiveness Amount in accordance with the applicable Forgiveness Application.

- For payroll costs during the Applicable Covered Period, business concerns or individual applicants with employees should submit (a) bank account statements or third party payroll service provider reports documenting cash compensation paid to employees during the Applicable Covered Period, (b) either (i) IRS Form 941 or 944 tax forms and state quarterly wage unemployment insurance tax reporting forms or (ii) equivalent payroll processor records for all payroll periods that overlap the Applicable Covered Period and (c) payment receipts, cancelled checks or account statements documenting employer contributions to health insurance and retirement plans.
- Individual applicants who file Schedule C to the form 1040 should submit their 2019 1040 tax return (or complete it and submit the completed copy if it has not yet been filed).
- Partners should submit their K-1s for 2019 and for the periods overlapping with the Applicable Covered Period.
- To establish FTE headcount in connection with a Standard Forgiveness Application, Borrowers must submit documentation showing the average number of FTE employees on payroll per month for the comparison period elected by the Borrower (see Question #15 (Line 11) above), which may include payroll tax filings (IRS Form 941 or 944) that have been or will be reported and state quarterly business and individual employee wage reporting and unemployment insurance tax filings reported, or that will be reported. Documents may cover periods longer than the specific time periods being measured so long as the documents, taken together, cover all periods being measured.
- To establish non-cash payroll costs, Borrowers must submit the following documentation:
 - documentation verifying insurance contributions during the Applicable Covered Period (see Question #15, Line 6);
 - documentation verifying retirement contributions during the Applicable Covered Period (see Question #15, Line 7); and
 - documentation verifying state tax payments during the Applicable Covered Period (see Question #15, Line 8)
- To establish non-payroll costs, Borrowers must submit the following documentation:
 - documentation verifying existence of covered mortgage obligations, covered utilities and covered rent prior to February 15, 2020;
 - documentation verifying covered mortgage obligations during the Covered Period (see Question #10 above);
 - documentation verifying covered rent during the Covered Period (see Question #11 above); and
 - documentation verifying covered utilities during the Covered Period (see Question #12 above).
- In addition, Borrowers filing a Standard Forgiveness Application do not submit, but must retain for six years after forgiveness or repayment in full of the applicable PPP loan, the following documentation:
 - documentation supporting information for each individual employee in Table 1 of Schedule A Worksheet, including the Salary/Hourly Wage Reduction calculation;

- documentation supporting information for each individual employee in Table 2 of Schedule A Worksheet, including establishing that such employee received income in one or more pay periods in 2019 that annualized to more than \$100,000 per annum;
- documentation regarding excluded employees (those who refused to return, were fired for cause or voluntarily left or reduced hours);
- documentation supporting certification of eligibility for the First FTE Reduction Safe Harbor because of inability to operate due to compliance with federal health and safety laws related to COVID-19; and
- documentation supporting the Second FTE Reduction Safe Harbor calculations on the Schedule A Worksheet.
- Borrowers filing an EZ Application do not submit, but must retain for six years after forgiveness or repayment in full of the applicable PPP loan, the following documentation:
 - documentation supporting certification that no employee's salary or hourly wages were reduced by more than 25 percent during the Applicable Covered Period (compared to the first calendar quarter of 2020), including payroll separately listing each employee and their compensation during all such period;
 - documentation regarding excluded employees (those who refused to return, were fired for cause or voluntarily left or reduced hours);
 - documentation supporting certification, if applicable, that the Borrower did not reduce the number of employees between January 1, 2020 and the end of the Applicable Covered Period (other than excluded employees), which must include payroll records separately listing each employee; and
 - documentation supporting certification, if applicable, of the Borrower's inability to operate due to compliance with federal health and safety laws related to COVID-19, including copies of applicable requirements for each Borrower location and relevant financial records.

21.Q: What are PPP lenders' responsibilities for review of Borrower documentation and calculations in connection with each Forgiveness Application?

A: Under Original Forgiveness Review IFR § III.2.a, as amended and restated by Updated Forgiveness Review IFR § III.2.b, lenders are required to complete all of the following steps with respect to each Forgiveness Application:

- confirm receipt of the Borrower certifications contained in such Forgiveness Application;
- confirm receipt of the required documentation from Borrowers in accordance with the Documentation Instructions;
- confirm the Borrower's calculations in such Forgiveness Application, including the following:
 - with respect to the EZ Application, the dollar amount of the payroll costs, covered mortgage obligations, covered rent obligations and covered utilities, claimed on Lines 1, 2, 3, and 4 of the EZ

- Application, by reviewing the documentation submitted with the EZ Application; or
- with respect to the Standard Forgiveness Application, the dollar amount of the “(A) Cash Compensation, Non-Cash Compensation, and Compensation to Owners claimed on Lines 1, 4, 6, 7, 8, and 9 on PPP Schedule A and (B) Business Mortgage Interest Payments, Business Rent or Lease Payments, and Business Utility Payments claimed on Lines 2, 3, and 4 on the PPP Loan Forgiveness Calculation Form, by reviewing the documentation submitted” with the Standard Forgiveness Application; and
- confirm that the Borrower made the calculation on Line 10 of the Standard Forgiveness Application Calculation Form or Line 7 of the EZ Application correctly, by dividing the Borrower’s eligible payroll costs claimed (on Line 1 of either Forgiveness Application) by 0.60.

The Original Forgiveness Review IFR § III.2.a, as amended and restated by Updated Forgiveness Review IFR § III.2.b, states that accurate calculation of the Forgiveness Amount is the Borrower’s responsibility and that PPP lenders do not need to independently verify the Borrower’s reported information if the Borrower submits documentation supporting its request for loan forgiveness and attests that it accurately verified the payments for eligible costs. Under the Updated Forgiveness Review IFR, the PPP lenders’ obligation is to “perform a good-faith review, in a reasonable time, of the borrower’s calculations and supporting documents concerning amounts eligible for loan forgiveness. For example, minimal review of calculations based on a payroll report by a recognized third-party payroll processor would be reasonable. By contrast, if payroll costs are not documented with such recognized sources, more extensive review of calculations and data would be appropriate.” This rule also confirms PPP lenders’ right to rely on Borrower representations, but requires PPP lenders to “work with” Borrowers to remedy any issues identified by the PPP lender review.

22. Q: What is the timing for submission of a Forgiveness Application by a PPP borrower?

A: Under Section 1106(e) of the CARES Act, an application for forgiveness must first be submitted to a PPP lender by the PPP borrower. No deadline is specified for Borrower submission in the CARES Act, but Updated Forgiveness IFR § III.1.c amends Original Forgiveness IFR § III.2 to clarify that Borrowers “may submit a loan forgiveness application any time on or before the maturity date of the loan – including before the end of the covered period – if the borrower has used all of the loan proceeds for which the borrower is requesting forgiveness.” But the Updated Forgiveness IFR goes on to provide that if a Borrower “applies for forgiveness before the end of the covered period and has reduced any employee’s salaries or wages in excess of 25 percent, the borrower must account for the excess salary reduction for the full 8-week or 24-week covered period.” Therefore, some Borrowers may need to calculate the better result between applying immediately and waiting to apply at the end of the Applicable Covered Period if they reinstated compensation to employees after commencement of the Applicable Covered Period.

23.Q: What is the deadline for PPP lenders to review forgiveness applications?

A: Under Section 1106(g) of the CARES Act, a PPP lender has 60 days after the date on which such lender receives the forgiveness application to “issue a decision” on that application. But the Original Forgiveness Review IFR § III.2.b, as amended by Updated Forgiveness IFR, makes an important clarification, providing that the 60-day period runs from the date a PPP lender receives a “complete loan forgiveness application”. This should give PPP lenders additional review time if they determine that a Forgiveness Application is incomplete and require additional documentation from a Borrower before proceeding. Note that if a PPP lender receives a notice from SBA that it is reviewing a PPP loan before the Forgiveness Application review has been completed, the PPP lender is required to stop review of that Forgiveness Application until the result of SBA review is complete. In addition, under Original Forgiveness Review IFR § III.2.c, as amended by Updated Forgiveness IFR § III.2.a, if a PPP lender receives notice of the commencement of any such review at any time, it has only 5 business days from receipt of that notice to submit the complete loan file to SBA. In addition, the PPP lender must confirm that the information provided by the lender to SBA “accurately reflects lender’s records for the loan, and that the lender has made its decision in accordance with the requirements set forth in 2.a [of the Original Forgiveness Review IFR, as amended by the Updated Forgiveness IFR].”

If a PPP lender determines that a Borrower is entitled to forgiveness of some or all of the amount applied for, that PPP lender must request payment from SBA at the time it issues its decision to SBA. SBA will, subject to any SBA review of the loan or loan application, remit the appropriate forgiveness amount to the lender, plus any interest accrued through the date of payment, not later than 90 days after the lender issues its decision to SBA. Each PPP lender must notify the applicable Borrower of remittance by SBA of the Forgiveness Amount (or that SBA determined that no amount of the loan is eligible for forgiveness) and the date that such Borrower’s first payment of any remaining amount under its PPP Note is due, if applicable.

If a PPP lender determines that no forgiveness is due to a Borrower, SBA reserves the right to review that decision in its sole discretion. Within 30 days after notice of such decision from the PPP lender to the applicable Borrower, such Borrower has the right to notify the PPP lender that it is requesting an SBA review of the PPP lender’s decision (note that this Borrower notice is not expressly required to be given in writing). Within 5 days of receipt of such notice, the PPP lender must notify SBA of the Borrower’s request for review. SBA will notify the PPP lender if SBA declines a request for review. If a Borrower does not request SBA review or SBA declines the request for review, the PPP lender is responsible for notifying the Borrower of the date on which the its first payment is due with respect to the outstanding amount of the PPP loan. If SBA accepts a Borrower’s request for review, SBA will notify the Borrower and the PPP lender of the results of the review. If SBA denies forgiveness in whole or in part, the PPP lender is responsible for notifying the Borrower of the date on which its first payment is due.

24.Q: What is the deadline for SBA to remit payment of the forgiven amount?

A: Under Section 1106(c)(3) of the CARES Act, SBA has 90 days from the date on which the amount of forgiveness is determined to remit to the PPP lender an amount equal to the amount of forgiveness plus any interest thereon accrued through the payment date. However, the Original Forgiveness Review IFR, as amended by the Updated Forgiveness IFR, provides that compliance with the 90-day rule is “subject to any SBA review of the loan or loan application,” which indicates that their review could delay remittance of the Forgiveness Amount. Further clarification must be provided by SBA on this apparent conflict.

25.Q: Will SBA review or audit forgiveness applications or decisions?

A: Original Forgiveness Review IFR § III.1.a, as amended by the Updated Forgiveness IFR, expressly provides that SBA may review any PPP loan, as the Administrator deems appropriate. SBA had previously announced that it would review the necessity certification of each Borrower with a PPP loan of \$2 million or more, but the Original Forgiveness Review IFR significantly expands matters that SBA might also review and disregards the \$2 million size limit at minimum for other reviewable matters (though, since prior guidance provides that SBA has deemed satisfactory the necessity certification for loans under \$2 million, that should obviate the need to review the necessity certification for such loans).

- **Necessity Certification:** FAQ #39 and FAQ #46 state that SBA will review the necessity certification of all PPP loans of \$2 million or more. FAQ #46 further clarified that PPP lenders of PPP loans of less than \$2 million will be deemed to have satisfied the necessity certification based on an assumption of more limited access to alternate liquidity. Currently it is not known if these SBA reviews could also include borrower affiliation and eligibility determinations or forgiveness calculations and determinations. Under FAQ #46, any borrower of \$2 million or more that is determined by SBA during such a review not to have properly made the necessity certification will be required to repay the PPP loan in full (though this result does not invalidate the 100 percent SBA guarantee of such a loan). “If Borrower repays the loan after receiving notification from SBA, SBA will not pursue administrative enforcement or referrals to other agencies based on its determination with respect to the certification concerning necessity of the loan request,” which implies that borrowers that do not return such loans are likely to be subject to administration enforcement procedures or other referrals.
- **Loan Eligibility:** The Forgiveness Application also provides that SBA may request additional information from Borrowers to evaluate their eligibility for PPP loans, and that SBA may direct a PPP lender to disapprove a Borrower’s loan forgiveness application “if SBA determines that Borrower was ineligible for the PPP loan.” The Original Forgiveness Review IFR confirms this and provides that an eligibility review will be based upon the rules and guidance available at the time that a Borrower applied for a PPP loan, including applications of general SBA business loan eligibility rules, size standards and affiliation rules.

- **Loan Amount:** SBA indicates that it may review the calculation of any Borrower's original loan amount as part of its review.
- **Allowable Use of Proceeds:** SBA may review whether a Borrower used the PPP loan proceeds for allowable uses.
- **Loan Forgiveness Amounts:** SBA may review the calculation of the final Forgiveness Amount.

26.Q: When will SBA initiate review of a PPP loan and how long must records be retained?

A: SBA reserves the right to initiate a review at any time, and the Original Forgiveness Review IFR emphasizes that Borrowers are required to retain their records for at least six years after the date the PPP loan is forgiven or paid in full, which implies that SBA is reserving the right to review files not only during the PPP loan period, but also long after the PPP authorization and two-year loan maturities have expired. Pursuant to Original Forgiveness Review IFR § III.1.e, as amended by the Updated Forgiveness IFR, if SBA deems a Borrower ineligible for a PPP loan amount or the proposed Forgiveness Amount, "SBA will direct the PPP lender to deny the loan forgiveness application in whole or in part, as appropriate." In addition, SBA reserves the right to seek repayment of the outstanding PPP loan balance or pursue other available remedies.

27.Q: How will SBA communicate decisions and conduct appeals of reviews?

A: Under the Original Forgiveness Review IFR, as amended by the Updated Forgiveness IFR, SBA will require the PPP lender to act as a go-between for many communications regarding the reviews, though SBA reserves the right to request documentation directly from Borrowers, as well, including requesting that a Borrower deliver to a PPP lender, to be forwarded to SBA within 5 business days of receipt by such PPP lender, all documentation required to be retained by such Borrower in connection with a review of such Borrower's application.¹⁴ Failure by a Borrower to respond to such SBA requests can result in a determination that such Borrower is ineligible for the loan or for forgiveness. The Updated Forgiveness IFR indicates that further guidance will be provided for SBA appeal process.

28.Q: Is there a cap on forgiveness for related corporate PPP borrowers with multiple PPP loans?

A: On and after April 30, 2020, under the Seventh IFR, SBA established a \$20 million aggregate cap on "businesses that are part of a single corporate group." The cap was not retroactive and only applied to loans not fully disbursed on or prior to April 30, 2020. Each Borrower had the responsibility for contacting its PPP lenders to inform it if such Borrower's corporate group would exceed the \$20

¹⁴ See Updated Forgiveness IFR § III.2.b ("The lender must also request that the borrower provide the lender with the applicable documentation that the instructions to the Loan Forgiveness Application Form (SBA Form 3508, 3508EZ, or lender's equivalent) instruct the borrower to maintain but not submit (documentation listed under "Documents that Each Borrower Must Maintain but is Not Required to Submit"). The lender must submit documents received from the borrower to SBA within five business days of receipt from the borrower.")

million cap and failure to do so is directed to be “regarded as a use of PPP funds for unauthorized purposes, and the loan will not be eligible for forgiveness.” In order to confirm that there are no violations of this rule, lenders may require a certification on this point as part of the forgiveness application review process. However, no such certification was included in the Forgiveness Applications.

29. What happens to PPP loan proceeds that a borrower uses for a disallowed purpose?

A: Amounts that are not used for an allowable purpose must be repaid, although it is unclear how immediate that repayment obligation is. Section III.2.s of the Initial IFR provides that “If [a borrower uses] PPP funds for unauthorized purposes, SBA will direct [Borrower] to repay those amounts. If [a Borrower] knowingly use[s] the funds for unauthorized purposes, [Borrower] will be subject to additional liability such as charges for fraud.” Furthermore, under that rule, if a shareholder, member, or partner uses PPP loan proceeds for unauthorized purposes, SBA will have recourse against the shareholder, member, or partner for such unauthorized use. The Forgiveness Application includes a Borrower certification that “if the funds were knowingly used for unauthorized purposes, the federal government may pursue recovery of loan amounts and/or civil or criminal fraud charges.” Finally, in the Original Forgiveness Review IFR § III.1.e, SBA states that it may void forgiveness in whole or in part or seek repayment of an outstanding loan if it determines that a Borrower is ineligible, though it does not specify steps it may or will take if it discovers a disallowed use of funds.