



PPP Forgiveness Summary

STACI E. ROSCHE, SENIOR COUNSEL

704 373 8559 | srosche@mcguirewoods.com

MARK A. KROMKOWSKI, PARTNER

312 849 8170 | mkromkowski@mcguirewoods.com

BRYAN P. BYLICA, PARTNER

312 750 3617 | bbylica@mcguirewoods.com

NAHO KOBAYASHI, PARTNER

704 343 2334 | nkobayashi@mcguirewoods.com

A. ROSE STERN, COUNSEL

202 828 2831 | astern@mcguirewoods.com

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www.mcguirewoods.com

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PPP Forgiveness Summary

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. Recently, SBA produced material guidance regarding the process for PPP borrowers to seek and obtain full or partial forgiveness. 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 McGuireWoods' summary based upon (i) the [Interim Final Rule – Loan Forgiveness](#) posted on May 22, 2020 (**Forgiveness IFR**); (ii) the [Interim Final Rule – SBA Loan Review Procedures and Related Borrower and Lender Responsibilities](#) posted on May 22, 2020 (**Forgiveness Responsibilities IFR**); (iii) the [Form of Forgiveness Application](#), or SBA Form 3508 (**Forgiveness Application**); (iv) [How to Calculate Maximum Loan Amounts – By Business Type](#), dated April 24, 2020 (**Loan Size Calculation FAQ**); and (v) the [CARES Act and the rules, FAQs, guidance and other materials](#) (**Treasury PPP Website**) posted as of 5 p.m. (ET) on May 27, 2020.

Additional guidance expected from SBA could impact the applicability of the current guidance summarized herein, so vigilance is required for additional updates of official SBA guidance, which can usually be found on the Treasury PPP Website.

Other than the Forgiveness IFR and the Forgiveness Responsibility IFR, the initial Interim Final Rule is referred to herein as the “Initial IFR” and each IFR that followed by the date it was originally posted to the Treasury website. The government’s official [Paycheck Protection Program Frequently Asked Questions](#) (**FAQ**), as updated from time to time, are referred to as the FAQ and further identified by question number. The Forgiveness Application includes several subparts that are referred to individually herein: (i) Calculation Form on page 3 of the Forgiveness Application, (ii) Calculation Form Instructions on pages 1-2, (iii) Schedule A on page 6, (iv) Schedule A

Instructions on page 5, (v) Schedule A Worksheet on pages 9-10, (vi) Worksheet Instructions on pages 7-8, and (vii) Documentation Instructions on page 11.

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

A: In the Forgiveness Application, Borrower completes a series of calculations to arrive at the Forgiveness Amount on Line 11 of the Forgiveness Calculation Form. If reviewed in isolation, the one-page Forgiveness Calculation Form may appear deceptively simple, but each line item is subject to additional calculations on Schedule A (subject to the Schedule A Instructions) and on the Schedule A Worksheet (subject to the Worksheet Instructions). The Forgiveness Application provides detailed instructions for preparation and submission thereof by Borrowers. The Forgiveness IFR committed a number of the instructions from the Forgiveness Application to rules and provides some useful examples of calculations. The Forgiveness Responsibility IFR 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). Each component of the Forgiveness Amount calculation is addressed in more detail below, as are the related responsibilities of Borrowers and PPP lenders.

2. 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 No. 3 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.

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

A: Both the Calculation Form Instructions and the Forgiveness IFR confirm prior guidance that the “**Covered Period**” is the eight-week (56-day) period commencing on the date that the PPP loan is funded. In addition, a new “**Alternative Payroll Covered Period**” has been added that permits Borrowers *with biweekly or more frequent payroll schedules* to use the eight-week (56-day) period commencing on the first day of its 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 Forgiveness Application specifies that the Covered Period or Alternative Payroll Covered Period applies.

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 summary, “**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.

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

A: Essentially, 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 related guidance updates from time to time.

Note that while 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, subsequent guidance directed borrowers and lenders to exclude sole proprietors and independent contractors from the payroll costs of a business concern because sole proprietors and independent contractors can separately apply for a PPP loan.

In the 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. As noted above, 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 loans. 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.

The general list of payroll costs is provided for reference below; more detailed descriptions of each component of payroll costs are provided herein.

a. Included:

- i. Salary, hourly wages, commissions or similar compensation
- ii. Payment of cash tips or equivalent (see Question No. 5.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 healthcare benefits including insurance premiums
- vi. Payment of any retirement benefit
- vii. Payment of state or local tax assessed on compensation of employees

b. 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 the United States
- iv. Sick leave for which a tax credit is permitted under Section 7001 of the Families First Coronavirus Response Act
- v. Family leave for which a tax credit is permitted under Section 7003 of the Families First Coronavirus Response Act

5. 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 tips and commissions. Based on the Loan Size Calculation FAQ, tax filing status is used to determine how to calculate these amounts.

- 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 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 Filers and general partners.)
- 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 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.)
- e. Limited liability companies determine the calculation method based on their tax filing elections.

6. 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.

The Schedule A Worksheet Instructions expressly provide that, with respect to employees listed in Tables 1 and 2 (all covered employees other than partners or owner-employers), no more than \$15,385 may be forgiven for any individual employee during the Applicable Covered Period. The

Schedule A Instructions provide that the cap on compensation per partner/owner-employee during the Applicable Covered Period is the lesser of (x) \$15,385 and (y) the eight-week equivalent (8/52) of their 2019 compensation.

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

A: Under FAQ No. 7, 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 No. 12 below); 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 (\$15,385 per employee for the Applicable Covered Period).

8. Q: How is forgiveness calculated for individuals with self-employment income?

A: Owner compensation 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) 8/52, and (b) \$15,385 for such individuals **across all businesses**. As previously noted, no additional forgiveness is provided for retirement or health insurance contributions for such self-employed individuals. Pursuant to the April 14 IFR, 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.

9. 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 the Borrower, is a mortgage on real or personal property and was incurred before Feb. 15, 2020. Line 2 of the Calculation Form uses the term “Business Mortgage Interest Payments” and confirms that any such payments, other than prepayments, made during the Covered Period (or incurred during such period and paid on the next occurring scheduled payment date) may be included as a forgivable expense.

Documentation Note: To verify the amount entered on Line 2 of the Forgiveness Calculation Form, the Document Instructions direct the 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 Forgiveness IFR essentially incorporates by reference the Documentation Instructions from the Forgiveness Application.

10. 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 Feb. 15, 2020. According to subsequent guidance, covered rent includes any such rent under a lease for real or personal property. Line 3 of the Calculation Form Instructions and Calculation Form use the term “Business Rent or Lease Payments.” The example provided in Forgiveness IFR § III.3.a indicates that non-payroll costs incurred in a prior period are forgivable if actually paid during the Covered Period.

Documentation Note: To verify the amount of covered rent obligations entered on Line 3 of the Forgiveness Calculation Form, the Document Instructions direct the 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 (subject to the 75 percent payroll cost requirement).

11. 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 Feb. 15, 2020. There has been no guidance on what constitutes a transportation utility payment. Line 4 of the Calculation Form uses the term “Business Utility Payments.” The example provided in Forgiveness IFR § III.3.a indicates that non-payroll costs incurred in a prior period are forgivable if actually paid during the Covered Period (subject to the 75 percent payroll cost requirement).

Documentation Note: To verify the amount of covered utility obligations entered on Line 4 of the Forgiveness Calculation Form, the Document Instructions direct the 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.

12. 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. The Calculation Form Instructions provide, and Forgiveness IFR § III.3.a and § III.4 confirm, 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, are all forgivable.

The Forgiveness IFR § III.3.a 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 the Borrower, which is anticipated to be the day that employee would have performed work).

The Forgiveness IFR § III.3.b clarifies 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 \$15,385 during the Applicable Covered Period. Nonetheless, compensation to owner-employees and partners cannot exceed **the lesser of** 8/52 of their 2019 compensation or \$15,385 per person.

The Forgiveness IFR § III.4.a 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.

13. Q: How are payroll costs calculated for employees of a Borrower (Schedule A Worksheet)?

A: Calculation of payroll costs for a business concern, or for the employees of an individual applicant with employees, starts with completion of the Schedule A Worksheet, which is 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** — 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 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 at any time in 2019; and
 - who is not a partner or owner-employee.
- **Table 2** — 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 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 a partner or owner-employee.
- **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 were (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) \$15,385.
- **How to Determine FTE Employment** — Borrower may elect one of two methods, but must consistently apply the same approach to each employee based on the individual's status during the Applicable Covered Period.

- o 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).
- o For each employee who works 40 hours a week or more, enter 1.0, and for all other employees, enter 0.5.

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 Forgiveness Application.

- **Salary/Hourly Wage Reduction and Safe Harbor** — 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 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 required only 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 at any time in 2019). Note that the Safe Harbor applies only to the extent that (x) the Borrower establishes that average annual salary or hourly wage in the period from Feb. 15 through April 26, 2020, was less than the average annual salary or average hourly wage for the pay period including Feb. 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 Feb. 15, 2020. If no Safe Harbor applies, the actual reduction occurs only 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 Jan. 1 through March 31, 2020.
- **FTE Reduction Exceptions** — Borrower does not have to include FTE data for (i) former employees who rejected a good faith, written offer to return or (ii) employees who, during the Applicable Covered Period, were fired for cause, voluntarily

resigned or voluntarily requested and received reductions in hours. According to the Schedule A Worksheet Instructions, such employees would be included in the FTE column in Table 1 or Table 2 only if the position was not filled by a new employee. But Forgiveness IFR § III.5.b separately provides both that (i) the Borrower may count such employee at the same FTE equivalency level as before the rejection, resignation, removal or reduction event; and (ii) such employees are actually exempt from the FTE reduction penalty, so that seemingly conflicting guidance requires further clarification. Also, presumably, although it is not expressly provided in available guidance, the “voluntary reduction in hours” concept would include reductions to zero (as in the case of unpaid pregnancy or parental leave, for example).

Under the Document Instructions, the 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 FAQ § III.5.a. provides a complete list of steps a Borrower must take to confirm rejection of a good faith job offer, including an obligation of the Borrower to report such rejection to the applicable state unemployment insurance office within 30 days of such rejection, and indicates that further guidance will be provided on SBA’s website regarding how this could impact the former employee’s unemployment insurance eligibility.

- **FTE Reduction Safe Harbor** — Borrower must complete the FTE Safe Harbor determination on the Schedule A Worksheet based on the Borrower’s total average FTE during specified periods. The first requirement to determine whether the Safe Harbor applies is determining whether the total average FTE between Feb. 15 and April 26, 2020, is less than the Borrower’s total FTE for the pay period inclusive of Feb. 15, 2020. If no, the Safe Harbor is not available. If yes, then the Borrower must determine whether its total FTE as of June 30, 2020, is greater than or equal to its total FTE in the pay period inclusive of Feb. 15, 2020. If yes, then the Safe Harbor applies and no FTE

Reduction must be taken, but if not, the Borrower must calculate the FTE Reduction Quotient on Line 13 of Schedule A and apply that to the forgiveness calculation in accordance with the Forgiveness Calculation Form.

- **Intersection of FTE Reduction and Salary/Wage Reductions** — Notwithstanding the foregoing or anything in the Forgiveness Application to the contrary, Forgiveness IFR § III.5.f 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 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 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 the 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 the 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, on Line 9 of Schedule A.

14. Q: How are payroll costs calculated (Schedule A)?

A: Payroll cost components for employees listed on the Schedule A Worksheet are entered and calculated on the Forgiveness Calculation Form based in part on the Schedule A Worksheet (see Question No. 13 above) as follows:

- **Line 1** — Borrower enters the total cash compensation amount from the final row (labeled “Totals:”) in the Table 1 column labeled Cash Compensation.
- **Line 2** — 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 Jan. 1 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 Forgiveness Application Form.**
- **Line 4** — Borrower enters the total cash compensation amount from the final row (labeled “Totals:”) in the Table 2 column labeled Cash Compensation.
- **Line 5** — Borrower enters the Average FTE from the same row in Table 1 for the column labeled Average FTE.
- **Line 6** — 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 Question No. 5.b. 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** — 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** — 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 to 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** — 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 (i) an amount equal to (x) such owner's eligible 2019 cash compensation times (y) 8/52, and (ii) \$15,385. See Question No. 5 above for details on determining such compensation.
- **Line 10** — 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 Forgiveness Calculation Form.**
- **Line 11** — Borrower enters the total average FTE for its selected comparison period (for non-seasonal employers, either (i) Feb. 15 to June 30, 2020, or (ii) Jan. 1 to Feb. 29, 2020, and for seasonal employers, either of the preceding non-seasonal periods or 12 consecutive weeks occurring between May 1 and Sept. 15, 2019).
- **Line 12** — 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 the FTE Safe Harbor 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 Forgiveness Calculation Form.**

15. Q: How is the final Forgiveness Amount calculated (Forgiveness Calculation Form)?

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)** — Borrower enters the aggregate forgivable payroll costs from Line 10 of Schedule A.
 - **Line 2 (Business Mortgage Interest Payments)** — 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 No. 9 above).
 - **Line 3 (Business Rent or Lease Payments)** — 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 No. 10 above).
 - **Line 4 (Business Utility Payments)** — 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 #11 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)** — 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)** — 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)** — Borrower enters the FTE Reduction Quotient from Line 13 of Schedule A. If the Safe Harbor applied or there were no FTE 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)** — 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)** — Borrower enters the principal amount of its PPP loan.
 - **Line 10 (75 Percent Payroll Cost Requirement Cap)** — Borrower enters the result of dividing the aggregate payroll costs entered on Line 1 by 0.75. This establishes the maximum forgiveness amount based on the 75 percent payroll cost requirement (regardless of the aggregate amount of non-payroll costs).
- **Line 11 (Final Forgiveness Amount)** — Borrower compares the Modified Total, the PPP loan amount and the 75 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 Borrower (see Question No. 17 below).**

16. Q: How is the Forgiveness Amount capped pursuant to the 75 Percent Payroll Costs requirement?

A: According to the Initial IFR and the April 14 IFR, and as confirmed again in the Forgiveness IFR, at least 75 percent of forgivable expenses must consist of payroll costs, meaning that no more than 25 percent of the Baseline Forgiveness Amount can be composed of Capped Expenses. This restriction is implemented in the Forgiveness Application in Line 10 of the Forgiveness Calculation Form (see Question No. 15 above).

17. 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 the Borrower may have obtained directly from SBA under Section 7(b) of the Small Business Act (as updated by the CARES Act). Based on prior guidance (though this is not made clear in the Forgiveness

Application), one might assume this refers to EIDL advances that were established pursuant to Section 1110(e) of the CARES Act and were provided as emergency grants of up to \$10,000 regardless of whether the requested EIDL loan was funded. **The Forgiveness Calculation Instructions provide that SBA will confirm the amount of any EIDL Advance and deduct that amount from the final Forgiveness Amount entered on Line 11 of the Forgiveness Calculation Form.**

18. 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.

19. 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 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, Borrowers must submit documentation showing the average number of FTE employees

on payroll per month for the comparison period elected by Borrower (see Question No. 14, 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:
 - documentation verifying insurance contributions during the Applicable Covered Period (see Question No. 14, Line 6);
 - documentation verifying retirement contributions during the Applicable Covered Period (see Question No. 14, Line 7); and
 - documentation verifying state tax payments during the Applicable Covered Period (see Question No. 14, Line 8)
- To establish non-payroll costs, Borrowers must submit:
 - documentation verifying existence of covered mortgage obligations, covered utilities and covered rent prior to Feb. 15, 2020;
 - documentation verifying covered mortgage obligations during the Covered Period (see Question No. 9 above);
 - documentation verifying covered rent during the Covered Period (see Question No. 10 above); and
 - documentation verifying covered utilities during the Covered Period (see Question No. 11 above).
- In addition, Borrowers **do not submit** but must have available and maintain, for six years after forgiveness or repayment in full of the applicable PPP loan, the following:
 - 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;

- o documentation regarding excluded employees (those who refused to return, were fired for cause or voluntarily left or reduced hours); and
- o documentation supporting all FTE Reduction Safe Harbor calculations on the Schedule A Worksheet.

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

A: Forgiveness Responsibility IFR § III.2.a describes the steps that Lenders are required to complete with respect to each Forgiveness Application. Though the Forgiveness Responsibility IFR states that accurate calculation of the Forgiveness Amount is a Borrower's responsibility, it also provides that (i) 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, and (ii) the PPP lenders' standard of review is completion of a "good-faith review, in a reasonable time, of Borrower's calculations and supporting documents concerning amounts eligible for loan forgiveness." 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.

21. Q: Can PPP lenders rely on borrower documentation submitted for forgiveness?

A: According to Initial IFR § III.3.c , PPP lenders are not required to "conduct any verification if Borrower submits documentation supporting its request for loan forgiveness and attests that it has accurately verified the payments for eligible costs."

22. Q: What standard qualifies a lender under the "hold harmless" protections of the CARES Act?

A: Under Section 1106(h) of the CARES Act, "if a lender has received the documentation required under this section from an eligible recipient attesting that the eligible recipient has accurately verified" payments of forgivable costs and expenses during the covered period, such lender will not be subject to an SBA enforcement action or penalty relating to loan forgiveness for forgivable amounts.

23. 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 in the CARES Act for the Borrower to submit this application, though many PPP notes provide a deadline for the forgiveness application, as do many of the consents to PPP loans that many Borrowers obtained from existing lenders before applying for a PPP loan.

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

A: Under Section 1106(g) of the CARES Act, as updated by the Forgiveness Responsibility IFR, a PPP lender has 60 days after it receives a complete loan forgiveness application to make a decision regarding forgiveness.

25. 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, it is unclear under the Forgiveness IFR and Forgiveness Responsibility IFR whether an SBA review of a PPP loan could result in a delay in remittance of the Forgiveness Amount submitted by a PPP lender. Further clarification from the SBA is required on this point.

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

A: Forgiveness Responsibility IFR § III.1.a expressly provides that SBA may review any PPP loan, as the Administrator deems appropriate, but this does not mean that SBA will elect to review all PPP loans. 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 Forgiveness Responsibility IFR significantly expands matters that SBA might also review without regard to the \$2 million size limit announced for the necessity certification.

- **Necessity Certification** — FAQ Nos. 39 and 46 state that SBA will review the necessity certification of all PPP loans of \$2 million

or more. FAQ No. 46 further clarifies 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 No. 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 Forgiveness Responsibility 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 the Borrower used the PPP loan proceeds for allowable uses.
- **Loan Forgiveness Amounts** — SBA may review the calculation of the final Forgiveness Amount.

27. 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 Forgiveness Responsibility 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.** Lenders are also directed to comply with their

federal regulator records retention requirements and, for SBA supervised lenders, their obligations under 13 CFR 120.461. Pursuant to Forgiveness Responsibility IFR § III.1.e, 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.

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

A: Under the Forgiveness Responsibility 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. **Failure by a Borrower to respond to such SBA requests can result in a determination that the Borrower is ineligible for the loan or for forgiveness.** The Forgiveness Responsibility IFR indicates that further guidance will be provided for an SBA appeal process for such determinations.

29. Q: Does an SBA determination of ineligibility of a Borrower for a PPP loan or forgiveness for a PPP loan affect SBA guarantee of that PPP loan?

A: FAQ No. 39 expressly provides that the “outcome of SBA’s review of loan files will not affect SBA’s guarantee of any loan for which the lender complied with the lender obligations” under the Initial IFR § III.3.b(i)-(iii). Also, FAQ No. 46 expressly provides that an SBA determination that a Borrower did not properly make the necessity certification will not result in a termination of SBA guarantee of that PPP loan. But the overview in Forgiveness Responsibility IFR § III indicates that release of SBA from its liability under any PPP loan guaranty will be determined based on 13 CFR 120.524, which permits termination of all or a portion of any SBA guarantee liability in circumstances described in that rule.

30. 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 applied only to loans not fully disbursed on April 30, 2020. Borrowers had the responsibility for

contacting lenders to inform them if a Borrower’s corporate group would exceed the \$20 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.” No Borrower certification regarding the \$20 million cap was included in the Forgiveness Application, though Borrowers that, together with their affiliates, received PPP loans in excess of \$2 million in the aggregate must check a box on the Forgiveness Application noting that.

31. Q: Section III.1 of the Eighth IFR poses this question — “Are recipients of PPP loans entitled to exemptions on the grounds provided in Federal nondiscrimination laws for sex-specific admissions practices, sex-specific domestic violence shelters, coreligionist housing, or Indian tribal preferences in connection with adoption or foster care practices?”

A: The answer to the foregoing question — “Yes. With respect to any loan or loan forgiveness under the PPP, the nondiscrimination provisions in the applicable SBA regulations incorporate the limitations and exemptions provided in corresponding Federal statutory or regulatory nondiscrimination provisions for sex-specific admissions practices at preschools, non-vocational elementary or secondary schools, and private undergraduate higher education institutions under Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), for sex-specific emergency shelters and coreligionist housing under the Fair Housing Act of 1968 (42 U.S.C. 3601 et seq.), and for adoption or foster care practices giving child placement preferences to Indian tribes under the Indian Child Welfare Act of 1978 (25 U.S.C. 1901 et seq.).”

32. Q: What are the differences between “allowable uses” of PPP loan proceeds and “forgivable” expenses of PPP loans?

A: The allowable uses of PPP loans under CARES Act § 1102 and the forgivable expenses under CARES Act § 1106 overlap a great deal, but are not identical.

The following items are **allowable and forgivable** expenses:

- Payroll costs
- Covered mortgage obligations
- Covered rental obligations
- Covered utilities

The following item is an **allowable but not forgivable** expense:

- Interest costs on debt obligations (other than Covered Mortgage Interest) that were incurred before Feb. 15, 2020 (“Permitted Non-Mortgage Interest Expenses”)

Even though the Forgiveness Application did not require Borrowers to account for or certify whether all PPP loan funds were used for allowable purposes, it does require a 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.”

33. Q: Are allowable expenses capped for a business concern?

A: According to the Initial IFR and the April 14 IFR, at least 75 percent of allowable expenses must consist of payroll costs. However, the Forgiveness Application does not require Borrowers to report on allowable uses, or whether the 75 percent payroll costs test has been satisfied. Nevertheless, based on the Forgiveness Responsibility IFR, SBA intends to conduct some review of the allowable uses of some PPP loans. Further guidance regarding the scope of this review, in particular how the 75 percent payroll cost requirement will be applied for determination of allowable uses, is required.

34. 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 the following: “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. Finally, in Forgiveness Responsibility 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.