



## **NOTICE OF CLE PROGRAM**

**The NDNY-FCBA's CLE Committee**

*Presents*

*COVID-19 Federal Employment Law and SBA Loan Update*

**Thursday, May 21, 2020**

**1:00 p.m. to 2:00 p.m.**

*hosted via Zoom*

**RSVP by Monday, May 18, 2020**

This program will focus on the federal labor and employment law related developments related to the Families First Coronavirus Response Act, including federal paid leave and expanded FMLA leave provisions, OSHA regulations and other considerations for employers dealing with positive cases of covid in the workplace, and various aspects of the Paycheck Protection Program loans under the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act, including borrower eligibility, the calculation of maximum loan amounts, the use of proceeds, and available loan forgiveness.

### **Presenters:**

**Scott P. Quesnel, Esq., SPHR**  
**Christopher P. Langlois, Esq.**  
**Girvin & Ferlazzo, PC**

### **Timed Agenda:**

<b>1:00 p.m. – 1:30 p.m.</b>	<b>Employment</b>
<b>1:30 p.m. – 2:00 p.m.</b>	<b>SBA</b>

The Northern District of New York Federal Court Bar Association has been certified by the New York State Continuing Legal Education Board as an Accredited Provider of continuing legal education in the State of New York.

*COVID-19 Federal Employment Law and SBA Loan Update* has been approved in accordance with the requirements of the New York State Continuing Legal Education Board for 1.0 credits towards the Skills requirement.

This program is appropriate for newly admitted and experienced attorneys.

**VCN - Video Conference approved for newly admitted attorneys**

This is a single program. No partial credit will be awarded.

This program is complimentary to all Northern District of New York Federal Court Bar Association Members.

Thank you to those members that requested electronic copies of the materials.

If you have any suggestions for our CLE Programs please contact the Executive Director at [schilders@ndnyfcba.org](mailto:schilders@ndnyfcba.org)

**Christopher P. Langlois**

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Christopher Langlois provides legal representation and advice to the firm's individual, commercial, and institutional clients with respect to a broad range of litigated and non-litigated civil matters, including trial and appellate practice before all New York State courts, Federal courts, and administrative agencies. Mr. Langlois' areas of practice include consumer and commercial debt collection, commercial litigation, personal injury/medical malpractice, school and special education law; public and private sector labor and employment law; municipal law; real property tax law; environmental law and compliance; and zoning and planning law.

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### **Practice Areas**

- [Litigation](#)
- [Collections](#)
- [Education Law](#)
- [Special Education Law](#)
- [Public and Private Sector Labor and Employment Law](#)

### **Education**

- Siena College
- Albany Law School of Union University

### **Court Admissions**

- United States Court of Appeals for the Second Circuit
- United States District Courts for the Northern and Southern Districts of New York
- New York

**Scott P. Quesnel**

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Scott strives to achieve optimal results for all his clients in the complicated area of labor and employment law. Scott primarily focuses on assisting employers traverse the difficult path towards achieving compliance with state and federal law. One of the most common mistakes that employers make is failing to establish and regularly review straight-forward policies. Scott works with clients to develop practices and policies that avoid many of the common pitfalls that trap employers.

Litigation in some circumstances, however, is inevitable. When the situation arises, Scott is prepared to counsel and represent individuals, businesses, not-for-profit corporations, school districts and municipal entities in matters that range from minor civil proceedings to complex class actions. Scott is admitted to practice in all New York State Courts, as well as the United States Supreme Court.

Scott also regularly practices before administrative agencies including the: New York State Division of Human Rights; Equal Employment Opportunity Commission; New York State Department of Taxation and Finance; New York State Workers' Compensation Board; National Labor Relations Board; Public Employees Review Board; United States Education Department; United States Department of Labor; and the Occupational Safety Health Commission. He has successfully represented clients in matters involving discrimination and equal employment opportunity under laws such as Title VII, Title IX, the Americans With Disabilities Act, the Age Discrimination in Employment Act, and the Family and Medical Leave Act. Mr. Quesnel also has extensive experience representing clients in wage and hour disputes under the Fair Labor Standards Act and New York State Labor Law.

Utilizing his five years of experience working for the New York State Department of Labor, Mr. Quesnel has successfully represented clients in matters involving the Department of Labor's Division of Labor Standards; Unemployment Insurance Division; Division of Safety and Health; Bureau of Public Work; and Asbestos Control Bureau. In addition to policy development and civil litigation, Mr. Quesnel is certified as a Senior Professional in Human Resources and as such is available to provide a broad range of employment law and human resource training to employers, human resource professionals and employees, and is available to assist employers in performing workplace investigations.

Recently, Mr. Quesnel has seen his practice extend to include employers from Massachusetts, Texas, Thailand, Great Britain and Italy.

### **Memberships and Affiliations**

- New York State Bar Association
- Northern District of New York Federal Bar Association
- Albany County Bar Association
- The American Trial Lawyers Association mock trial team
- Albany Law School Chapter of the National Order of the Barristers
- Society for Human Resource Management
- Capital Region Human Resource Association
- Capital Region Recruiter's Network
- Board of Directors, Sunmark Federal Credit Union

### **Awards and Distinctions**

- Winner of the Dominick L. Gabrielli Appellate Advocacy Moot Court Competition
- Winner of the Donna Jo Morse Client Counseling Competition
- National Finalist in the American Bar Association's Negotiating Competition
- Recipient of the James E. Frankel Scholarship in Construction Law

### **Practice Areas**

- [Public and Private Sector Labor and Employment Law](#)
- [Litigation](#)

### **Education**

- State University of New York at Geneseo
- Albany Law School

### **Court Admissions**

- United States Supreme Court
- United States Court of Appeals for the Second Circuit
- United States District Courts for the Northern, Southern, and Eastern Districts of New York
- New York



**Paycheck Protection Program  
Loan Forgiveness Application**

OMB Control Number 3245-0407  
Expiration Date: 10/31/2020

**LOAN FORGIVENESS APPLICATION INSTRUCTIONS FOR BORROWERS**

To apply for forgiveness of your Paycheck Protection Program (PPP) loan, you (the Borrower) must complete this application as directed in these instructions, and **submit it to your Lender** (or the Lender that is servicing your loan). Borrowers may also complete this application electronically through their Lender.

This application has the following components: (1) the PPP Loan Forgiveness Calculation Form; (2) PPP Schedule A; (3) the PPP Schedule A Worksheet; and (4) the (optional) PPP Borrower Demographic Information Form. All Borrowers must submit (1) and (2) to their Lender.

**Instructions for PPP Loan Forgiveness Calculation Form**

**Business Legal Name (“Borrower”)/DBA or Tradename (if applicable)/Business TIN (EIN, SSN):** Enter the same information as on your Borrower Application Form.

**Business Address/Business Phone/Primary Contact/E-mail Address:** Enter the same information as on your Borrower Application Form, unless there has been a change in address or contact information.

**SBA PPP Loan Number:** Enter the loan number assigned by SBA at the time of loan approval. Request this number from the Lender if necessary.

**Lender PPP Loan Number:** Enter the loan number assigned to the PPP loan by the Lender.

**PPP Loan Amount:** Enter the disbursed principal amount of the PPP loan (the total loan amount you received from the Lender).

**Employees at Time of Loan Application:** Enter the total number of employees at the time of the Borrower’s PPP Loan Application.

**Employees at Time of Forgiveness Application:** Enter the total number of employees at the time the Borrower is applying for loan forgiveness.

**PPP Loan Disbursement Date:** Enter the date that you received the PPP loan proceeds from the Lender. If loan proceeds were received on more than one date, enter the first date on which you received PPP loan proceeds.

**EIDL Advance Amount:** If the Borrower received an Economic Injury Disaster Loan (EIDL) advance, enter the amount.

**EIDL Application Number:** If the Borrower applied for an EIDL, enter the Borrower’s EIDL Application Number.

**Payroll Schedule:** Select the box that corresponds to your payroll schedule.

**Covered Period:** Enter the eight-week (56-day) Covered Period of your PPP loan. The first day of the Covered Period must be the same as the PPP Loan Disbursement Date. For example, if the Borrower received its PPP loan proceeds on Monday, April 20, the first day of the Covered Period is April 20 and the last day of the Covered Period is Sunday, June 14.

**Alternative Payroll Covered Period:** For administrative convenience, Borrowers with a biweekly (or more frequent) payroll schedule may elect to calculate eligible payroll costs using the eight-week (56-day) period that begins on the first day of their first pay period following their PPP Loan Disbursement Date (the “Alternative Payroll Covered Period”). For example, if the Borrower received its PPP loan proceeds on Monday, April 20, and the first day of its first pay period following its PPP loan disbursement is Sunday, April 26, the first day of the Alternative Payroll Covered Period is April 26 and the last day of the Alternative Payroll Covered Period is Saturday, June 20. Borrowers who elect to use the Alternative Payroll Covered Period must apply the Alternative Payroll Covered Period wherever there is a reference in this application to “the Covered Period or the Alternative Payroll Covered Period.” However, Borrowers must apply the Covered Period (not the Alternative Payroll Covered Period) wherever there is a reference in this application to “the Covered Period” only.

**If Borrower Received PPP Loans in Excess of \$2 Million:** Check the box if the Borrower, together with its affiliates (to the extent required under SBA’s interim final rule on affiliates ([85 FR 20817](#) (April 15, 2020)) and not waived under 15 U.S.C. 636(a)(36)(D)(iv)), received PPP loans with an original principal amount in excess of \$2 million.

**Forgiveness Amount Calculation (see Summary of Costs Eligible for Forgiveness below):**

**Line 1:** Enter total eligible payroll costs incurred or paid during the Covered Period or the Alternative Payroll Covered Period.



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To calculate these costs, complete PPP Schedule A. Enter the amount from PPP Schedule A, line 10.

**Line 2:** Enter the amount of business mortgage interest payments during the Covered Period for any business mortgage obligation on real or personal property incurred before February 15, 2020. Do not include prepayments.

**Line 3:** Enter the amount of business rent or lease payments for real or personal property during the Covered Period, pursuant to lease agreements in force before February 15, 2020.

**Line 4:** Enter the amount of business utility payments during the Covered Period, for business utilities for which service began before February 15, 2020.

*NOTE: For lines 2-4, you are not required to report payments that you do not want to include in the forgiveness amount.*

**Line 5:** Enter the number from PPP Schedule A, line 3. This amount reflects the loan forgiveness reduction required for salary/hourly wage reductions in excess of 25% for certain employees as described in PPP Schedule A.

**Line 6:** Add lines 1 through 4, subtract line 5, enter the total. If this amount is less than zero, enter a zero.

**Line 7:** Enter the number from PPP Schedule A, line 13.

**Line 8:** Enter the amount on line 6 multiplied by the amount on line 7. This calculation incorporates the loan forgiveness reduction required for any full-time equivalency (FTE) employee reductions as described in PPP Schedule A.

**Line 9:** Enter the PPP Loan Amount.

**Line 10:** Divide the amount on line 1 by 0.75, and enter the amount. This determines whether at least 75% of the potential forgiveness amount was used for payroll costs. For more information, see Interim Final Rule on Paycheck Protection Program posted on April 2, 2020 ([85 FR 20811](#)).

**Line 11:** Enter the smallest of lines 8, 9, or 10. Note: If applicable, SBA will deduct EIDL Advance Amounts from the forgiveness amount remitted to the Lender.

**Summary of Costs Eligible for Forgiveness:**

Borrowers are eligible for loan forgiveness for the following costs:

1. **Eligible payroll costs.** Borrowers are generally eligible for forgiveness for the payroll costs paid and payroll costs incurred during the eight-week (56-day) Covered Period (or Alternative Payroll Covered Period) (“payroll costs”). Payroll costs are considered paid on the day that paychecks are distributed or the Borrower originates an ACH credit transaction. Payroll costs are considered incurred on the day that the employee’s pay is earned. Payroll costs incurred but not paid during the Borrower’s last pay period of the Covered Period (or Alternative Payroll Covered Period) are eligible for forgiveness if paid on or before the next regular payroll date. Otherwise, payroll costs must be paid during the Covered Period (or Alternative Payroll Covered Period). For each individual employee, the total amount of cash compensation eligible for forgiveness may not exceed an annual salary of \$100,000, as prorated for the covered period. Count payroll costs that were both paid and incurred only once. For information on what qualifies as payroll costs, see Interim Final Rule on Paycheck Protection Program posted on April 2, 2020 ([85 FR 20811](#)).
2. **Eligible nonpayroll costs.** Nonpayroll costs eligible for forgiveness consist of:
  - (a) covered mortgage obligations: payments of interest (not including any prepayment or payment of principal) on any business mortgage obligation on real or personal property incurred before February 15, 2020 (“business mortgage interest payments”);
  - (b) covered rent obligations: business rent or lease payments pursuant to lease agreements for real or personal property in force before February 15, 2020 (“business rent or lease payments”); and
  - (c) covered utility payments: business payments for a service for the distribution of electricity, gas, water, transportation, telephone, or internet access for which service began before February 15, 2020 (“business utility payments”).

An eligible nonpayroll cost must be paid during the Covered Period or incurred during the Covered Period and paid on or before the next regular billing date, even if the billing date is after the Covered Period. Eligible nonpayroll costs cannot exceed 25% of the total forgiveness amount. Count nonpayroll costs that were both paid and incurred only once.

The amount of loan forgiveness the Borrower applies for may be subject to reductions as explained in PPP Schedule A.



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**PPP Loan Forgiveness Calculation Form**

<b>Business Legal Name ("Borrower")</b>		<b>DBA or Tradename, if applicable</b>	
<b>Business Address</b>		<b>Business TIN (EIN, SSN)</b>	<b>Business Phone</b>
			( ) -
		<b>Primary Contact</b>	<b>E-mail Address</b>

**SBA PPP Loan Number:** \_\_\_\_\_ **Lender PPP Loan Number:** \_\_\_\_\_

**PPP Loan Amount:** \_\_\_\_\_ **PPP Loan Disbursement Date:** \_\_\_\_\_

**Employees at Time of Loan Application:** \_\_\_\_\_

**Employees at Time of Forgiveness Application:** \_\_\_\_\_

**EIDL Advance Amount:** \_\_\_\_\_ **EIDL Application Number:** \_\_\_\_\_

**Payroll Schedule:** The frequency with which payroll is paid to employees is:

- Weekly**    
 **Biweekly** (every other week)    
 **Twice a month**    
 **Monthly**    
 **Other** \_\_\_\_\_

**Covered Period:** \_\_\_\_\_ to \_\_\_\_\_

**Alternative Payroll Covered Period, if applicable:** \_\_\_\_\_ to \_\_\_\_\_

**If Borrower (together with affiliates, if applicable) received PPP loans in excess of \$2 million, check here:**

**Forgiveness Amount Calculation:**

Payroll and Nonpayroll Costs

Line 1. Payroll Costs (enter the amount from PPP Schedule A, line 10): \_\_\_\_\_

Line 2. Business Mortgage Interest Payments: \_\_\_\_\_

Line 3. Business Rent or Lease Payments: \_\_\_\_\_

Line 4. Business Utility Payments: \_\_\_\_\_

Adjustments for Full-Time Equivalency (FTE) and Salary/Hourly Wage Reductions

Line 5. Total Salary/Hourly Wage Reduction (enter the amount from PPP Schedule A, line 3): \_\_\_\_\_

Line 6. Add the amounts on lines 1, 2, 3, and 4, then subtract the amount entered in line 5: \_\_\_\_\_

Line 7. FTE Reduction Quotient (enter the number from PPP Schedule A, line 13): \_\_\_\_\_

Potential Forgiveness Amounts

Line 8. Modified Total (multiply line 6 by line 7): \_\_\_\_\_

Line 9. PPP Loan Amount: \_\_\_\_\_

Line 10. Payroll Cost 75% Requirement (divide line 1 by 0.75): \_\_\_\_\_

Forgiveness Amount

Line 11. Forgiveness Amount (enter the smallest of lines 8, 9, and 10): \_\_\_\_\_





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By Signing Below, You Make the Following Representations and Certifications on Behalf of the Borrower:

The authorized representative of the Borrower certifies to all of the below by **initialing** next to each one.

\_\_\_\_\_ The dollar amount for which forgiveness is requested:

- was used to pay costs that are eligible for forgiveness (payroll costs to retain employees; business mortgage interest payments; business rent or lease payments; or business utility payments);
- includes all applicable reductions due to decreases in the number of full-time equivalent employees and salary/hourly wage reductions;
- does not include nonpayroll costs in excess of 25% of the amount requested; and
- does not exceed eight weeks' worth of 2019 compensation for any owner-employee or self-employed individual/general partner, capped at \$15,385 per individual.

\_\_\_\_\_ I understand 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.

\_\_\_\_\_ The Borrower has accurately verified the payments for the eligible payroll and nonpayroll costs for which the Borrower is requesting forgiveness.

\_\_\_\_\_ I have submitted to the Lender the required documentation verifying payroll costs, the existence of obligations and service (as applicable) prior to February 15, 2020, and eligible business mortgage interest payments, business rent or lease payments, and business utility payments.

\_\_\_\_\_ The information provided in this application and the information provided in all supporting documents and forms is true and correct in all material respects. I understand that knowingly making a false statement to obtain forgiveness of an SBA-guaranteed loan is punishable under the law, including 18 USC 1001 and 3571 by imprisonment of not more than five years and/or a fine of up to \$250,000; under 15 USC 645 by imprisonment of not more than two years and/or a fine of not more than \$5,000; and, if submitted to a Federally insured institution, under 18 USC 1014 by imprisonment of not more than thirty years and/or a fine of not more than \$1,000,000.

\_\_\_\_\_ The tax documents I have submitted to the Lender are consistent with those the Borrower has submitted/will submit to the IRS and/or state tax or workforce agency. I also understand, acknowledge, and agree that the Lender can share the tax information with SBA's authorized representatives, including authorized representatives of the SBA Office of Inspector General, for the purpose of ensuring compliance with PPP requirements and all SBA reviews.

\_\_\_\_\_ I understand, acknowledge, and agree that SBA may request additional information for the purposes of evaluating the Borrower's eligibility for the PPP loan and for loan forgiveness, and that the Borrower's failure to provide information requested by SBA may result in a determination that the Borrower was ineligible for the PPP loan or a denial of the Borrower's loan forgiveness application.

The Borrower's eligibility for loan forgiveness will be evaluated in accordance with the PPP regulations and guidance issued by SBA through the date of this application. SBA may direct a lender to disapprove the Borrower's loan forgiveness application if SBA determines that the Borrower was ineligible for the PPP loan.

\_\_\_\_\_  
Signature of Authorized Representative of Borrower

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title



**Instructions for PPP Schedule A**

**Lines 1 through 5:** Enter the amounts from PPP Schedule A Worksheet Tables as directed.

Enter the amount from line 3 of PPP Schedule A on line 5 of the Loan Forgiveness Application Form.

**For lines 6 through 9,** during the Covered Period or the Alternative Payroll Covered Period:

**Line 6:** Enter the total amount paid by the Borrower for employer contributions for employee health insurance, including employer contributions to a self-insured, employer-sponsored group health plan, but excluding any pre-tax or after tax contributions by employees.

**Line 7:** Enter the total amount paid by the Borrower for employer contributions to employee retirement plans, excluding any pre-tax or after-tax contributions by employees.

**Line 8:** Enter the total amount paid by the Borrower for employer state and local taxes assessed on employee compensation (e.g., state unemployment insurance tax); do not list any taxes withheld from employee earnings.

**Line 9:** Enter any amounts paid to owners (owner-employees, a self-employed individual, or general partners). This amount is capped at \$15,385 (the eight-week equivalent of \$100,000 per year) for each individual or the eight-week equivalent of their applicable compensation in 2019, whichever is lower. See Interim Final Rule on Additional Eligibility Criteria and Requirements for Certain Pledges of Loans posted on April 14, 2020 for more information ([85 FR 21747](#), 21749).

**Line 10:** Add lines 1, 4, 6, 7, 8, and 9. Enter this amount on line 1 on the PPP Loan Forgiveness Calculation Form.

**Line 11:** Enter the Borrower's total average weekly full-time equivalency (FTE) during the chosen reference period. For purposes of this calculation, the reference period is, at the Borrower's election, either (i) February 15, 2019 to June 30, 2019; (ii) January 1, 2020 to February 29, 2020; or (iii) in the case of seasonal employers, either of the preceding periods or a consecutive twelve-week period between May 1, 2019 and September 15, 2019. For each employee, follow the same method that was used to calculate Average FTE on the PPP Schedule A Worksheet. Sum across all employees during the reference period and enter that total on this line.

The calculations on lines 11, 12, and 13 will be used to determine whether the Borrower's loan forgiveness amount must be reduced based on reductions in full-time equivalent employees, as required by the statute. Specifically, the actual loan forgiveness amount that the Borrower will receive may be reduced if the Borrower's average weekly FTE employees during the Covered Period (or the Alternative Payroll Covered Period) was less than during the Borrower's chosen reference period. The Borrower is exempt from such a reduction if the FTE Reduction Safe Harbor applies. See PPP Schedule A Worksheet—FTE Reduction Safe Harbor.

**Line 12:** Add lines 2 and 5.

**Line 13:** Divide line 12 by line 11 (or enter 1.0 if the FTE Reduction Safe Harbor has been met, according to PPP Schedule A Worksheet—FTE Reduction Safe Harbor). If more than 1.0, enter 1.0. Enter this amount on line 7 of the Loan Forgiveness Calculation Form.



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**PPP Schedule A**

PPP Schedule A Worksheet, Table 1 Totals

Line 1. Enter Cash Compensation (Box 1) from PPP Schedule A Worksheet, Table 1: \_\_\_\_\_

Line 2. Enter Average FTE (Box 2) from PPP Schedule A Worksheet, Table 1: \_\_\_\_\_

Line 3. Enter Salary/Hourly Wage Reduction (Box 3) from PPP Schedule A Worksheet, Table 1:  
If the average annual salary or hourly wage for each employee listed on the PPP  
Schedule A Worksheet, Table 1 during the Covered Period or the Alternative Payroll  
Covered Period was at least 75% of such employee's average annual salary or hourly  
wage between January 1, 2020 and March 31, 2020, check here  and enter **0** on line  
3.

PPP Schedule A Worksheet, Table 2 Totals

Line 4. Enter Cash Compensation (Box 4) from PPP Schedule A Worksheet, Table 2: \_\_\_\_\_

Line 5. Enter Average FTE (Box 5) from PPP Schedule A Worksheet, Table 2: \_\_\_\_\_

Non-Cash Compensation Payroll Costs During the Covered Period or the Alternative Payroll Covered Period

Line 6. Total amount paid by Borrower for employer contributions for employee health insurance: \_\_\_\_\_

Line 7. Total amount paid by Borrower for employer contributions to employee retirement plans: \_\_\_\_\_

Line 8. Total amount paid by Borrower for employer state and local taxes assessed on employee  
compensation: \_\_\_\_\_

Compensation to Owners

Line 9. Total amount paid to owner-employees/self-employed individual/general partners:  
This amount may not be included in PPP Schedule A Worksheet, Table 1 or 2. If there is  
more than one individual included, attach a separate table that lists the names of and  
payments to each.

Total Payroll Costs

Line 10. Payroll Costs (add lines 1, 4, 6, 7, 8, and 9): \_\_\_\_\_

Full-Time Equivalency (FTE) Reduction Calculation

If you have not reduced the number of employees or the average paid hours of your employees between  
January 1, 2020 and the end of the Covered Period, check here , skip lines 11 and 12 and enter **1.0** on line 13.

Line 11. Average FTE during the Borrower's chosen reference period: \_\_\_\_\_

Line 12. Total Average FTE (add lines 2 and 5): \_\_\_\_\_

Line 13. FTE Reduction Quotient (divide line 12 by line 11) or enter 1.0 if FTE Safe Harbor is met: \_\_\_\_\_



**Instructions for PPP Schedule A Worksheet**

Complete the PPP Schedule A Worksheet or obtain an equivalent report from the Borrower’s payroll system or payroll processor.

**Table Instructions**

**Employee’s Name:** Separately list each employee. Do not include any independent contractors, owner-employees, self-employed individuals, or partners.

**Employee Identifier:** Enter the last four digits of each employee’s Social Security Number.

**Cash Compensation:** Enter the sum of gross salary, gross wages, gross tips, gross commissions, paid leave (vacation, family, medical or sick leave, not including leave covered by the Families First Coronavirus Response Act), and allowances for dismissal or separation paid or incurred during the Covered Period or the Alternative Payroll Covered Period. For each individual employee, the total amount of cash compensation eligible for forgiveness may not exceed an annual salary of \$100,000, as prorated for the Covered Period; therefore, do not enter more than \$15,385 in Table 1 or Table 2 for any individual employee.

**Average FTE:** This calculates the average full-time equivalency (FTE) during the Covered Period or the Alternative Payroll Covered Period. For each employee, enter the average number of hours paid per week, divide by 40, and round the total to the nearest tenth. The maximum for each employee is capped at 1.0. A simplified method that assigns a 1.0 for employees who work 40 hours or more per week and 0.5 for employees who work fewer hours may be used at the election of the Borrower.

This calculation will be used to determine whether the Borrower’s loan forgiveness amount must be reduced due to a statutory requirement concerning reductions in full-time equivalent employees. Borrowers are eligible for loan forgiveness for certain expenditures during the Covered Period or the Alternative Payroll Covered Period. However, the actual loan forgiveness amount that the Borrower will receive may be less, depending on whether the Borrower’s average weekly number of FTE employees during the Covered Period or the Alternative Payroll Covered Period was less than during the Borrower’s chosen reference period (*see* Instructions to PPP Schedule A, Line 11). The Borrower is exempt from such a reduction if the FTE Reduction Safe Harbor applies. See the FTE Reduction Safe Harbor instructions below.

**Salary/Hourly Wage Reduction:** This calculation will be used to determine whether the Borrower’s loan forgiveness amount must be reduced due to a statutory requirement concerning reductions in employee salary and wages. Borrowers are eligible for loan forgiveness for certain expenditures during the Covered Period or the Alternative Payroll Covered Period. However, the actual amount of loan forgiveness the Borrower will receive may be less, depending on whether the salary or hourly wages of certain employees during the Covered Period or the Alternative Payroll Covered Period was less than during the period from January 1, 2020 to March 31, 2020. If the Borrower restored salary/hourly wage levels, the Borrower may be eligible for elimination of the Salary/Hourly Wage Reduction amount. Borrowers must complete this worksheet to determine whether to reduce the amount of loan forgiveness for which they are eligible. Complete the Salary/Hour Wage Reduction column only for employees whose salaries or hourly wages were reduced by more than 25% during the Covered Period or the Alternative Payroll Covered Period as compared to the period of January 1, 2020 through March 31, 2020. For each employee listed in Table 1, complete the following (using salary for salaried employees and hourly wage for hourly employees):

Step 1. Determine if pay was reduced more than 25%.

- a. Enter average annual salary or hourly wage during Covered Period or Alternative Payroll Covered Period: \_\_\_\_\_.
- b. Enter average annual salary or hourly wage between January 1, 2020 and March 31, 2020: \_\_\_\_\_.
- c. Divide the value entered in 1.a. by 1.b.: \_\_\_\_\_.  
If 1.c. is 0.75 or more, enter zero in the column above box 3 for that employee; otherwise proceed to Step 2.

Step 2. Determine if the Salary/Hourly Wage Reduction Safe Harbor is met.

- a. Enter the annual salary or hourly wage as of February 15, 2020: \_\_\_\_\_.
- b. Enter the average annual salary or hourly wage between February 15, 2020 and April 26, 2020: \_\_\_\_\_.  
If 2.b. is equal to or greater than 2.a., skip to Step 3. Otherwise, proceed to 2.c.
- c. Enter the average annual salary or hourly wage as of June 30, 2020: \_\_\_\_\_.  
If 2.c. is equal to or greater than 2.a., the Salary/Hourly Wage Reduction Safe Harbor has been met – enter zero in the column above box 3 for that employee. Otherwise proceed to Step 3.

Step 3. Determine the Salary/Hourly Wage Reduction.

- a. Multiply the amount entered in 1.b. by 0.75: \_\_\_\_\_.
- b. Subtract the amount entered in 1.a. from 3.a.: \_\_\_\_\_.



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If the employee is an hourly worker, compute the total dollar amount of the reduction that exceeds 25% as follows:

c. Enter the average number of hours worked per week between January 1, 2020 and March 31, 2020:  
\_\_\_\_\_.

d. Multiply the amount entered in 3.b. by the amount entered in 3.c. \_\_\_\_\_. Multiply this amount by 8: \_\_\_\_\_. Enter this value in the column above box 3 for that employee.

If the employee is a salaried worker, compute the total dollar amount of the reduction that exceeds 25% as follows:

e. Multiply the amount entered in 3.b. by 8: \_\_\_\_\_. Divide this amount by 52: \_\_\_\_\_. Enter this value in the column above box 3 for that employee.

**FTE Reduction Exceptions:** Indicate the FTE of (1) any positions for which the Borrower made a good-faith, written offer to rehire an employee during the Covered Period or the Alternative Payroll Covered Period which was rejected by the employee; and (2) any employees who during the Covered Period or the Alternative Payroll Covered Period (a) were fired for cause, (b) voluntarily resigned, or (c) voluntarily requested and received a reduction of their hours. In all of these cases, include these FTEs on this line only if the position was not filled by a new employee. Any FTE reductions in these cases do not reduce the Borrower's loan forgiveness.

**Boxes 1 through 5:** Enter the sums of the amounts in each of the columns.

**FTE Reduction Safe Harbor**

A safe harbor under applicable law and regulation exempts certain borrowers from the loan forgiveness reduction based on FTE employee levels. Specifically, the Borrower is exempt from the reduction in loan forgiveness based on FTE employees described above if both of the following conditions are met: (1) the Borrower reduced its FTE employee levels in the period beginning February 15, 2020, and ending April 26, 2020; and (2) the Borrower then restored its FTE employee levels by not later than June 30, 2020 to its FTE employee levels in the Borrower's pay period that included February 15, 2020.



**Paycheck Protection Program  
Loan Forgiveness Application**

OMB Control Number 3245-0407  
Expiration Date: 10/31/2020

**PPP Schedule A Worksheet**

**Table 1:** List employees who:

- Were employed by the Borrower at any point during the Covered Period or the Alternative Payroll Covered Period whose principal place of residence is in the United States; and
- Received compensation from the Borrower at an annualized rate of less than or equal to \$100,000 for all pay periods in 2019 or were not employed by the Borrower at any point in 2019.

Employee's Name	Employee Identifier	Cash Compensation	Average FTE	Salary / Hourly Wage Reduction
<b>FTE Reduction Exceptions:</b>				
<b>Totals:</b>		<b>Box 1</b>	<b>Box 2</b>	<b>Box 3</b>

**Table 2:** List employees who:

- Were employed by the Borrower at any point during the Covered Period or the Alternative Payroll Covered Period whose principal place of residence is in the United States; and
- Received compensation from the Borrower at an annualized rate of more than \$100,000 for any pay period in 2019.

Employee's Name	Employee Identifier	Cash Compensation	Average FTE
<b>Totals:</b>		<b>Box 4</b>	<b>Box 5</b>

Attach additional tables if additional rows are needed.

**FTE Reduction Safe Harbor:**

- Step 1. Enter the borrower's total average FTE between February 15, 2020 and April 26, 2020. Follow the same method that was used to calculate Average FTE in the PPP Schedule A Worksheet Tables. Sum across all employees and enter: \_\_\_\_\_.
- Step 2. Enter the borrower's total FTE in the Borrower's pay period inclusive of February 15, 2020. Follow the same method that was used in step 1: \_\_\_\_\_.
- Step 3. If the entry for step 2 is greater than step 1, proceed to step 4. Otherwise, the FTE Reduction Safe Harbor is not applicable and the Borrower must complete line 13 of PPP Schedule A by dividing line 12 by line 11 of that schedule.
- Step 4. Enter the borrower's total FTE as of June 30, 2020: \_\_\_\_\_.
- Step 5. If the entry for step 4 is greater than or equal to step 2, enter 1.0 on line 13 of PPP Schedule A; the FTE Reduction Safe Harbor has been satisfied. Otherwise, the FTE Reduction Safe Harbor does not apply and the Borrower must complete line 13 of PPP Schedule A by dividing line 12 by line 11 of that schedule.



**Documents that Each Borrower Must Submit with its PPP Loan Forgiveness Application**

**PPP Loan Forgiveness Calculation Form**

**PPP Schedule A**

**Payroll:** Documentation verifying the eligible cash compensation and non-cash benefit payments from the Covered Period or the Alternative Payroll Covered Period consisting of each of the following:

- a. Bank account statements or third-party payroll service provider reports documenting the amount of cash compensation paid to employees.
- b. Tax forms (or equivalent third-party payroll service provider reports) for the periods that overlap with the Covered Period or the Alternative Payroll Covered Period:
  - i. Payroll tax filings reported, or that will be reported, to the IRS (typically, Form 941); and
  - ii. State quarterly business and individual employee wage reporting and unemployment insurance tax filings reported, or that will be reported, to the relevant state.
- c. Payment receipts, cancelled checks, or account statements documenting the amount of any employer contributions to employee health insurance and retirement plans that the Borrower included in the forgiveness amount (PPP Schedule A, lines (6) and (7)).

**FTE:** Documentation showing (at the election of the Borrower):

- a. the average number of FTE employees on payroll per month employed by the Borrower between February 15, 2019 and June 30, 2019;
- b. the average number of FTE employees on payroll per month employed by the Borrower between January 1, 2020 and February 29, 2020; or
- c. in the case of a seasonal employer, the average number of FTE employees on payroll per month employed by the Borrower between February 15, 2019 and June 30, 2019; between January 1, 2020 and February 29, 2020; or any consecutive twelve-week period between May 1, 2019 and September 15, 2019.

The selected time period must be the same time period selected for purposes of completing PPP Schedule A, line 11. Documents may include payroll tax filings reported, or that will be reported, to the IRS (typically, Form 941) and state quarterly business and individual employee wage reporting and unemployment insurance tax filings reported, or that will be reported, to the relevant state. Documents submitted may cover periods longer than the specific time period.

**Nonpayroll:** Documentation verifying existence of the obligations/services prior to February 15, 2020 and eligible payments from the Covered Period.

- a. Business mortgage interest payments: Copy of lender amortization schedule and receipts or cancelled checks verifying eligible payments from the Covered Period; or lender account statements from February 2020 and the months of the Covered Period through one month after the end of the Covered Period verifying interest amounts and eligible payments.
- b. Business rent or lease payments: Copy of current lease agreement and receipts or cancelled checks verifying eligible payments from the Covered Period; or lessor account statements from February 2020 and from the Covered Period through one month after the end of the Covered Period verifying eligible payments.
- c. Business utility payments: Copy of invoices from February 2020 and those paid during the Covered Period and receipts, cancelled checks, or account statements verifying those eligible payments.

**Documents that Each Borrower Must Maintain but is Not Required to Submit**

PPP Schedule A Worksheet or its equivalent and the following:

- a. Documentation supporting the listing of each individual employee in PPP Schedule A Worksheet Table 1, including the “Salary/Hourly Wage Reduction” calculation, if necessary.
- b. Documentation supporting the listing of each individual employee in PPP Schedule A Worksheet Table 2; specifically, that each listed employee received during any single pay period in 2019 compensation at an annualized rate of more than \$100,000.
- c. Documentation regarding any employee job offers and refusals, firings for cause, voluntary resignations, and written requests by any employee for reductions in work schedule.
- d. Documentation supporting the PPP Schedule A Worksheet “FTE Reduction Safe Harbor.”

All records relating to the Borrower’s PPP loan, including documentation submitted with its PPP loan application, documentation supporting the Borrower’s certifications as to the necessity of the loan request and its eligibility for a PPP loan, documentation necessary to support the Borrower’s loan forgiveness application, and documentation demonstrating the Borrower’s material compliance with PPP requirements. The Borrower must retain all such documentation in its files for six years after the date the loan is forgiven or repaid in full, and permit authorized representatives of SBA, including representatives of its Office of Inspector General, to access such files upon request.



Paycheck Protection Program  
Loan Forgiveness Application

OMB Control Number 3245-0407  
Expiration Date: 10/31/2020

**PPP Borrower Demographic Information Form (Optional)**

**Instructions**

1. **Purpose.** Veteran/gender/race/ethnicity data is collected for program reporting purposes only.
2. **Description.** This form requests information about each of the Borrower’s Principals. Add additional sheets if necessary.
3. **Definition of Principal.** The term “Principal” means:
  - For a self-employed individual, independent contractor, or a sole proprietor, the self-employed individual, independent contractor, or sole proprietor.
  - For a partnership, all general partners and all limited partners owning 20% or more of the equity of the Borrower, or any partner that is involved in the management of the Borrower’s business.
  - For a corporation, all owners of 20% or more of the Borrower, and each officer and director.
  - For a limited liability company, all members owning 20% or more of the Borrower, and each officer and director.
  - Any individual hired by the Borrower to manage the day-to-day operations of the Borrower (“key employee”).
  - Any trustor (if the Borrower is owned by a trust).
  - For a nonprofit organization, the officers and directors of the Borrower.
4. **Principal Name.** Insert the full name of the Principal.
5. **Position.** Identify the Principal’s position; for example, self-employed individual; independent contractor; sole proprietor; general partner; owner; officer; director; member; or key employee.

Principal Name		Position
Veteran	1=Non-Veteran; 2=Veteran; 3=Service-Disabled Veteran; 4=Spouse of Veteran; X=Not Disclosed	
Gender	M=Male; F=Female; X=Not Disclosed	
Race (more than 1 may be selected)	1=American Indian or Alaska Native; 2=Asian; 3=Black or African-American; 4=Native Hawaiian or Pacific Islander; 5=White; X=Not Disclosed	
Ethnicity	H=Hispanic or Latino; N=Not Hispanic or Latino; X=Not Disclosed	

**Disclosure is voluntary and will have no bearing on the loan forgiveness decision**

**Paperwork Reduction Act** – You are not required to respond to this collection of information unless it displays a currently valid OMB Control Number. The estimated time for completing this application, including gathering data needed, is 180 minutes. Comments about this time or the information requested should be sent to Small Business Administration, Director, Records Management Division, 409 3rd St., SW, Washington DC 20416, and/or SBA Desk Officer, Office of Management and Budget, New Executive Office Building, Washington DC 20503.



**FOR PUBLIC EMPLOYERS ONLY\***



Has the employee been formally diagnosed with COVID 19 (which requires quarantine)?

No

Yes

Under NYS Law, the employee is entitled to 14 days of leave at full pay (no monetary cap).

Is the employee subject to a mandatory or precautionary order of quarantine or isolation due to COVID-19?

A “mandatory or precautionary order of quarantine or isolation” is defined to mean an “order of quarantine or isolation issued by the State of New York, the Department of Health, local board of health, or any government entity duly authorized to issue such order due to COVID-19.”

No

Yes

Under NYS Law, the employee is entitled to 14 days of leave at full pay (no monetary cap).

Under federal law, **effective April 1, 2020**, employee is entitled to 2 weeks or 80 hours of leave at full pay, up to \$511 per day and \$5,110 max cap.

*Not clear yet whether employees are entitled to both forms of leave.*

Is the employee unable to work because the employee is quarantined pursuant to the advice of a health care provider?

No

Yes

Under federal law, **effective April 1, 2020**, employee is entitled to 2 weeks or 80 hours of leave at full pay, up to \$511 per day and \$5,110 max cap.

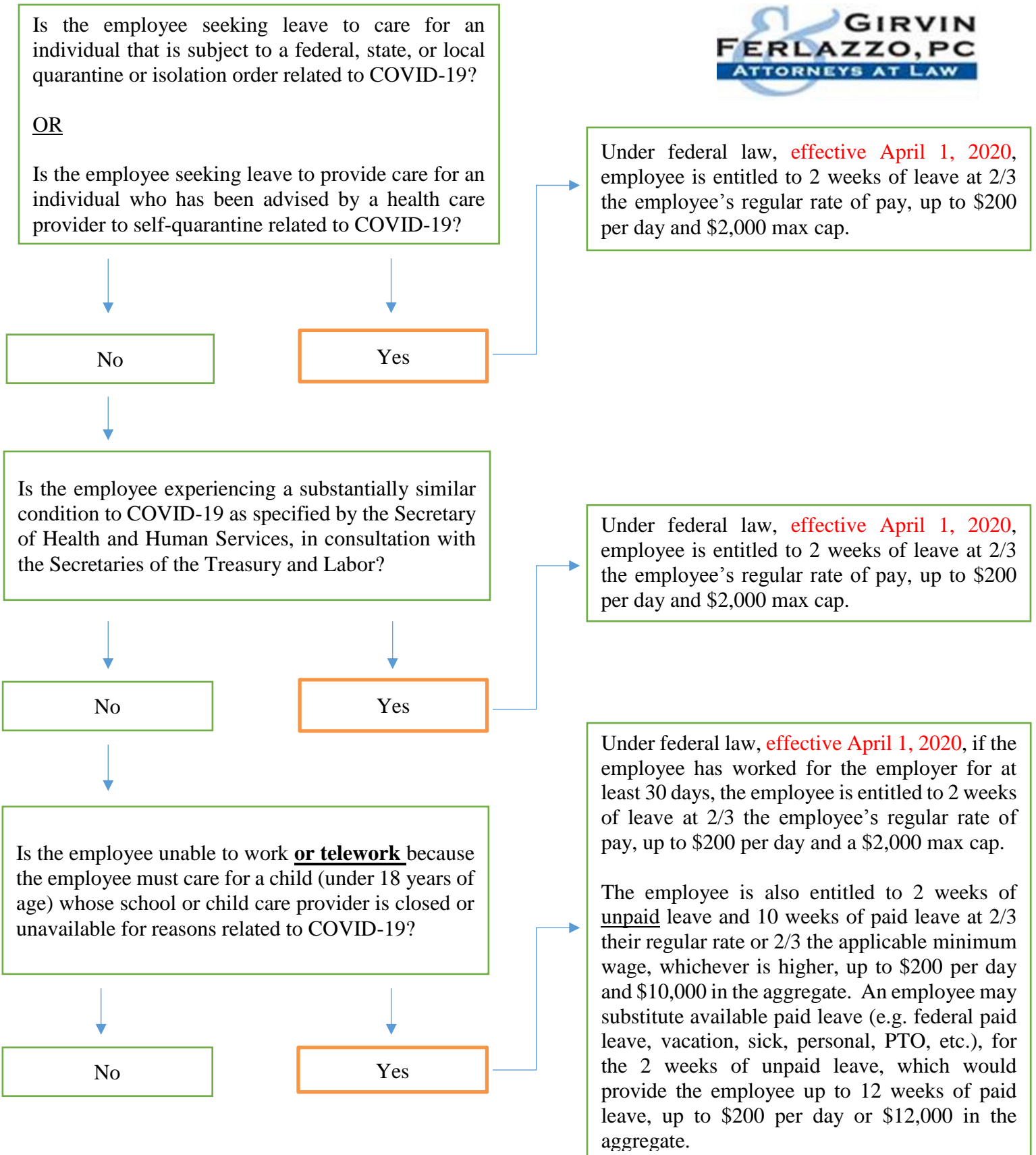
Is the employee experiencing COVID-19 symptoms and seeking a medical diagnosis?

No

Yes

Under federal law, **effective April 1, 2020**, employee is entitled to 2 weeks or 80 hours of leave at full pay, up to \$511 per day and \$5,110 max cap.

Go to next page



\*This flowchart only applies to the federal Families First Coronavirus Response Act and New York's new COVID-19 quarantine leave law. Therefore, school districts and municipalities also must be cognizant of the rights an employee might have under other laws, including other provisions of the Family and Medical Leave Act, the Americans with Disabilities Act and the New York Human Rights Law, as well as all applicable collective bargaining agreements.

If an employee requests leave for any reason not enumerated above, they may still be legally or contractually entitled to take leave. If you have any questions, contact the attorneys at Girvin & Ferlazzo at (518) 462-0300.

**FOR PRIVATE EMPLOYERS ONLY\***



Has the employee been formally diagnosed with COVID 19 (which requires quarantine)?

**or:**

Is the employee subject to a mandatory or precautionary order of quarantine or isolation due to COVID-19?

A “mandatory or precautionary order of quarantine or isolation” is defined to mean an “order of quarantine or isolation issued by the State of New York, the Department of Health, local board of health, or any government entity duly authorized to issue such order due to COVID-19.”

No

Yes

Under NYS Law, private employers that, as of January 1, 2020, had:

- 1-10 employees and a revenue of less than \$1 million last year, all employees are entitled to unpaid leave for the duration of order of quarantine or isolation.
- 11-99 employees or 1-10 employees with a revenue of greater than \$1 million last year, all employees are entitled to 5 days of paid leave at their normal salary or average weekly wage.
- 100 or more employees, all employees are entitled to 14 days of paid leave at their normal salary or average weekly wage.

Under federal law, **effective April 1, 2020**, employee is entitled to 2 weeks or 80 hours of leave at full pay, up to \$511 per day and \$5,110 max cap (**only applies to businesses with less than 500 employees**).

*Not clear yet whether employees are entitled to both forms of leave.*

Is the employee unable to work because the employee is quarantined pursuant to the advice of a health care provider?

No

Yes

Under federal law, **effective April 1, 2020** employee is entitled to 2 weeks or 80 hours of leave at full pay, up to \$511 per day and \$5,110 max cap (**only applies to businesses with less than 500 employees**).

Is the employee experiencing COVID-19 symptoms and seeking a medical diagnosis?

No

Yes

Under federal law, **effective April 1, 2020** employee is entitled to 2 weeks or 80 hours of leave at full pay, up to \$511 per day and \$5,110 max cap (**only applies to businesses with less than 500 employees**).

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Is the employee seeking leave to care for an individual that is subject to a Federal, State, or local quarantine or isolation order related to COVID-19?

OR

Is the employee seeking leave to provide care for an individual who has been advised by a health care provider to self-quarantine related to COVID-19?

No

Yes

Under federal law, **effective April 1, 2020**, employee is entitled to 2 weeks of leave at 2/3 the employee's regular rate of pay, up to \$200 per day and \$2,000 max cap (**only applies to businesses with less than 500 employees**).

Is the employee experiencing a substantially similar condition to COVID-19 as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of the Treasury and Labor?

No

Yes

Under federal law, **effective April 1, 2020**, employee is entitled to 2 weeks of leave at 2/3 the employee's regular rate of pay, up to \$200 per day and \$2,000 max cap (**only applies to businesses with less than 500 employees**).

Is the employee unable to work or telework because the employee must care for a child (under 18 years of age) whose school or child care provider is closed or unavailable for reasons related to COVID-19?

No

Yes

Under federal law, **effective April 1, 2020**, if the employee has worked for the employer for at least 30 days, the employee is entitled to 2 weeks of leave at 2/3 the employee's regular rate of pay, up to \$200 per day and a \$2,000 max cap.

The employee is also entitled to 2 weeks of unpaid leave and 10 weeks of paid leave at 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher, up to \$200 per day and \$10,000 in the aggregate. An employee may substitute available paid leave (e.g. federal paid leave, vacation, sick, personal, PTO, etc.), for the 2 weeks of unpaid leave, which would provide the employee up to 12 weeks of paid leave, up to \$200 per day or \$12,000 in the aggregate (**only applies to businesses with less than 500 employees**).

\* This flowchart only applies to the federal Families First Coronavirus Response Act and New York's new COVID-19 quarantine leave law. Therefore, private employers also must be cognizant of the rights an employee might have under other laws, including other provisions of the Family and Medical Leave Act, the Occupational Safety and Health Act, the Americans with Disabilities Act and the New York Human Rights Law, as well as all applicable employer policies and handbooks.

If you have any questions, please contact Scott P. Quesnel at [spq@girvinlaw.com](mailto:spq@girvinlaw.com) or (518) 225-3381, or Patrick J. Fitzgerald at [pjf@girvinlaw.com](mailto:pjf@girvinlaw.com) or (518) 469-8098.

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## Families First Coronavirus Response Act (“FFCRA”) Leave

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The Families First Coronavirus Response Act (FFCRA or Act) requires certain employers to provide their employees with paid sick or family leave for specified reasons related to COVID-19. These requirements are **effective April 1, 2020**, and continue until December 31, 2020.

Generally, the Act provides that covered employers must provide to **all employees**:

- Two weeks (up to 80 hours) of **paid sick time** at the employee’s regular rate of pay where the employee is unable to work because the employee is quarantined (pursuant to Federal, State, or local government order or advice of a health care provider), and/or experiencing COVID-19 symptoms and seeking a medical diagnosis;

or

- Two weeks (up to 80 hours) of **paid sick time** at two-thirds the employee’s regular rate of pay because the employee is unable to work because of a bona fide need to care for an individual subject to quarantine (pursuant to Federal, State, or local government order or advice of a health care provider), or care for a child (under 18 years of age) whose school or child care provider is closed or unavailable for reasons related to COVID-19, and/or the employee is experiencing a substantially similar condition as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of the Treasury and Labor.

A covered employer must provide to employees that it has employed for **at least 30 days**:

- Up to an **additional 10 weeks of paid family leave** at two-thirds the employee’s regular rate of pay where an employee is unable to work due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19.

### **Covered Employers**

The paid sick leave and expanded family and medical leave provisions of the FFCRA apply to certain public employers, and private employers with fewer than 500 employees.

Small businesses with fewer than 50 employees may qualify for exemption from the requirement to provide leave due to school closings or child care unavailability if the leave requirements would jeopardize the viability of the business as a going concern.

### **Qualifying Reasons for Leave**

Under the FFCRA, an employee qualifies for paid sick time if the employee is **unable to work (or unable to telework)** due to a need for leave because the employee:

1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
2. has been advised by a health care provider to self-quarantine related to COVID-19;
3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
5. is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19; or
6. is experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

Under the FFCRA, an employee qualifies for expanded family leave if the employee is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19.

### **Duration of Leave**

**For reasons (1)-(4) and (6):** A full-time employee is eligible for up to 80 hours of leave, and a part-time employee is eligible for the number of hours of leave that the employee works on average over a two-week period.

**For reason (5):** A full-time employee is eligible for up to 12 weeks of leave at 40 hours a week, and a part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

### **Calculation of Pay**

**For leave reasons (1), (2), or (3):** employees taking leave shall be paid at either their regular rate or the applicable minimum wage, whichever is higher, up to \$511 per day and \$5,110 in the aggregate (over a 2-week period).

**For leave reasons (4) or (6):** employees taking leave shall be paid at 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher, up to \$200 per day and \$2,000 in the aggregate (over a 2-week period).

**For leave reason (5):** employees taking leave shall be paid at 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher, up to \$200 per day and \$10,000 in the aggregate (over a 12-week period—two weeks of unpaid sick leave followed by up to 10 weeks of paid expanded family and medical leave). Employees may substitute available paid leave (vacation, sick, personal), for the 2 weeks of unpaid leave, which would provide the employee up to 12 weeks of paid leave, up to \$200 per day or \$12,000 in the aggregate.

**Tax Credits:** Covered employers qualify for dollar-for-dollar reimbursement through tax credits for all qualifying wages paid under the FFCRA. Qualifying wages are those paid to an employee who takes leave under the Act for a qualifying reason, up to the appropriate per diem and aggregate payment caps. Applicable tax credits also extend to amounts paid or incurred to maintain health insurance coverage. For more information, please see the Department of the Treasury's website.


**Employer Notice:** Each covered employer must post in a conspicuous place on its premises a notice of FFCRA requirements. If employees are tele-working, covered employers should also send the notice to all current employees via email, mail, and/or post it on the main page of its website.

**Prohibitions:** Employers may not discharge, discipline, or otherwise discriminate against any employee who takes paid sick leave under the FFCRA and files a complaint or institutes a proceeding under or related to the FFCRA.

**Penalties and Enforcement:** Employers in violation of the first two weeks' paid sick time or unlawful termination provisions of the FFCRA will be subject to the penalties and enforcement described in Sections 16 and 17 of the Fair Labor Standards Act. 29 U.S.C. 216; 217. Employers in violation of the provisions providing for up to an additional 10 weeks of paid leave to care for a child whose school or place of care is closed (or child care provider is unavailable) are subject to the enforcement provisions of the Family and Medical Leave Act. The Department will observe a temporary period of non-enforcement for the first 30 days after the Act takes effect, so long as the employer has acted reasonably and in good faith to comply with the Act. For purposes of this non-enforcement position, "good faith" exists when violations are remedied and the employee is made whole as soon as practicable by the employer, the violations were not willful, and the Department receives a written commitment from the employer to comply with the Act in the future.







# Federal CARES Act: Overview of the Paycheck Protection Program

Christopher P. Langlois, Esq.

Girvin & Ferlazzo, P.C.

# What is the Paycheck Protection Program (PPP)?

- ▶ The PPP is a new Small Business Administration (SBA) loan program included in the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act enacted on March 27, 2020 in response to the COVID-19 pandemic
- ▶ The PPP is intended to provide immediate financial assistance to small businesses nationwide which have been adversely impacted by the COVID-19 emergency and response
- ▶ Primary feature of the PPP loan program is that some or all of principal amount of the loan is eligible to forgiveness if the loan proceeds are used for certain specified purposes

# History to Date:

- ▶ Created on March 27, 2020 as part of the CARES Act and funded with an initial \$349,000,000,000 authorized by Congress
- ▶ SBA lenders were authorized to begin accepting applications on April 3, 2020, although most did not begin accepting applications until April 6, 2020 which awaiting additional SBA guidance
- ▶ Ten days later – on April 16, 2020 – the SBA announced that the initial \$349 billion allocated to the program had been exhausted over approximately 1.6 million approved loans

## History to Date (con't)

- ▶ On April 24, 2020, Congress authorized an additional \$310 billion in funds for the PPP
- ▶ As of May 8, 2020, the SBA had approved an additional 2.5 million loans totaling approximately \$188 billion, leaving about \$122 billion remaining in available funding
- ▶ Application period is open until June 30, 2020

# Borrower Eligibility

## ▶ Size/Organization

- ▶ Must have fewer than 500 employees or, if more than 500 employees, meet the SBA employee-based or revenue-based size standard for the corresponding industry (NAICS Code)
- ▶ Exception – a single business entity (i.e., hotel/restaurant) with more than one physical location is eligible for a PPP loan, even if it has more than 500 employees, as long as it does not employ more than 500 employees per physical location
- ▶ Eligible borrowers include tax-exempt nonprofit or veterans organizations, as well as individuals operating as a sole proprietorship, independent contractor, or self-employed individual

## Borrower Eligibility (con't)

- ▶ The borrower's business must have been in operation as of February 15, 2020
- ▶ The borrower must not have received another PPP loan
  - ▶ Note – A borrower is eligible to receive a PPP loan even if they received an Economic Injury Disaster Loan (EIDL) between January 31, 2020 and April 3, 2020
- ▶ A borrower is ineligible if an owner of 20% or more of the equity of the applicant has been convicted of a felony within the past five years, or is presently incarcerated, on probation, on parole, or under indictment

# Required Borrower Certifications

- ▶ Borrowers applying for PPP loans must “certify in good faith” several statements, including that:
  - ▶ “Current economic uncertainty makes this loan request necessary to support the ongoing operations” of the borrower; and
  - ▶ “The funds will be used to retain workers and maintain payroll or make mortgage interest payments, lease payments, and utility payments” as specified under the PPP rules
- ▶ Note – Knowingly making a false statement to obtain a guaranteed loan from the SBA, or knowingly using loan proceeds for unauthorized purposes, can result in civil and/or criminal liability

# The “Need” Certification

- ▶ After the first round of lending, it came to light that many publicly-traded companies with significant market value and liquidity had applied for and received PPP loans worth millions of dollars each – resulting in criticism that these companies did not “need” the loans and were not the “small businesses” which Congress intended to assist
- ▶ On April 28, 2020, the SBA issued an updated FAQs document which addressed (in Question and Answer 31) what was expected of borrowers in making their good faith certification of need:
  - ▶ “...borrowers must assess their economic need for a PPP loan...”
  - ▶ “...borrowers still must certify in good faith that their PPP loan request is necessary.”



# The “Need” Certification (con’t)

- ▶ “[b]orrowers must make this certification in good faith, taking into account their current business activity and their ability to access other sources of liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business.”
- ▶ “For example, it is unlikely that a public company with substantial market value and access to capital markets will be able to make the required certification in good faith, and such company should be prepared to demonstrate to the SBA, upon request, the basis for its certification”
- ▶ Announced that any borrower who obtained a PPP loan prior to the issuance of this guidance could repay the loan in full by May 7, 2020 without penalty
- ▶ This was followed by public statements from the Treasury Department that PPP loans for more than \$2 million dollars would be fully audited, with “spot check” audits possible on smaller loan amounts

# The "Need" Certification (con't)

- ▶ On May 13, 2020, the SBA issued an updated FAQs which again addressed (in Question and Answer 46) the "need" certification:
  - ▶ Borrowers which received a PPP loan of less than \$2 million "will be deemed to have made the required certification concerning the necessity of the loan request in good faith."
  - ▶ Borrowers which received a PPP loan in excess of \$2 million do not benefit from this "safe harbor" and are "subject to review" for compliance with program requirements and potential repayment
  - ▶ Extended "safe harbor" to return PPP loan proceeds to May 18, 2020

# Calculation of Loan Amount

- ▶ Maximum loan amount is equal to **2.5** times applicant's **average monthly payroll costs**, not to exceed \$10 million
- ▶ Borrowers may calculate their aggregate payroll costs using date either from the previous 12 months **or** from calendar year 2019

# Calculation of Loan Amount (con't)

- ▶ "Payroll costs" include:
  - ▶ Compensation to employees in the form of salary, wages, commissions, or similar compensation;
  - ▶ Cash tips or the equivalent;
  - ▶ Payment for vacation, parental, family, medical, or sick leave;
  - ▶ Allowance for separation or dismissal;
  - ▶ Payment for employee benefits consisting of group health care coverage premiums and retirement benefits
  - ▶ Payment of state and local taxes assessed on compensation of employees

# Calculation of Loan Amount (con't)

- ▶ Exclusions from “payroll costs”:
  - ▶ Compensation of an individual employee in excess of an annual salary of \$100,000, prorated as necessary
  - ▶ Employer-side federal payroll taxes
  - ▶ Compensation of an employee whose principal place of residence is outside of the United States

# Loan Terms

- ▶ Loan term – 2 Years
- ▶ Interest rate – 1%
- ▶ Payments deferred for first six months following loan disbursement (although interest will accrue during deferment period)
- ▶ No personal guarantee required
- ▶ No collateral required

# Loan Forgiveness

- ▶ Borrowers may apply to have their PPP loan balances forgiven in whole or in part
- ▶ Amount of eligible loan forgiveness is generally equal to amounts spent by borrower during the eight week period immediately following the loan disbursement date on eligible payroll costs (cash and non-cash compensation) and on eligible non-payroll costs (business mortgage interest, rent, and utility payments)
- ▶ Forgiveness amount subject to reduction if borrower (i) has reduced number of FTE employees; (ii) has reduced employee salary and wages by more than 25%, and/or (iii) used more than 25% of loan proceeds on non-payroll costs

# Loan Forgiveness (con't)

▶ **Basic loan forgiveness formula:**

Total Eligible Payroll Costs

+

Total Eligible Nonpayroll Costs

(-)

Salary/Hourly Wage Reduction Adjustment

(x)

FTE Reduction Quotient Adjustment

Forgiveness amount equals product of above, or Eligible Payroll Costs divided by 0.75, whichever is **smaller**



# Loan Forgiveness (con't)

- ▶ Eligible Payroll Costs:
  - ▶ Choose between **either**:
    - ▶ "Covered Period" – the eight week (56 day) period beginning on the same day as the loan proceeds were disbursed; **or**
    - ▶ "Alternative Payroll Covered Period" – the eight week (56 day) period beginning on the first day of the first pay period following the date the loan proceeds were disbursed
  - ▶ Eligible payroll costs include those actually paid **and** incurred (i.e., earned but not paid) during the applicable eight week period
  - ▶ Eligible payroll costs include cash compensation (i.e., salary/wages), plus amounts paid for employer contributions to health insurance and employee retirement plans, plus employer state and local taxes assessed on employee compensation

# Loan Forgiveness (con't)

## ▶ Eligible Payroll Costs (con't)

- ▶ Eligible payroll costs include cash compensation (i.e., salary/wages), plus amounts paid for employer contributions to health insurance and employee retirement plans, plus employer state and local taxes assessed on employee compensation
- ▶ Must exclude that portion of employee compensation in excess of \$100,000 as prorated during the Covered Period (i.e., forgiveness amount may not include any compensation paid to an employee in excess of \$15,385 over the eight week period)

# Loan Forgiveness (con't)

- ▶ Eligible Nonpayroll Costs:

- ▶ Includes:

- ▶ Business mortgage interest payments

- ▶ Rent or lease payments on real or personal property

- ▶ Utility payments (electricity, gas, water, transportation, telephone, or internet access)

- ▶ Obligation/service must have been in place before February 15, 2020

- ▶ Remember – any claimed nonpayroll costs which exceed 25% of loan amount will result in reduction in loan forgiveness amount

# Loan Forgiveness (con't)

- ▶ Salary/Hourly Wage Reduction Adjustment
  - ▶ Total eligible loan forgiveness will be reduced by an amount equal to the amount by which average employee salaries/wages were reduced by greater than 25% during the Covered Period or Alternative Payroll Covered Period as compared to the average salaries/wages paid during the period of January 1, 2020 and March 31, 2020
  - ▶ "Safe Harbor" - Borrowers who reduced salaries/wages by more than 25% between February 15, 2020 and April 26, 2020 may avoid the reduction adjustment if they restore salary/wages levels by June 30, 2020

# Loan Forgiveness (con't)

- ▶ FTE Reduction Adjustment:

- ▶ Total eligible loan forgiveness amount also subject to a pro rata reduction equal to the percent by which the borrower reduced the average number of its full-time equivalent (FTE) employees during the Covered Period or Alternative Payroll Covered Period, as compared to borrower's selected "reference period"
- ▶ Borrower may opt to use one of two "reference periods" for the FTE comparison:
  - ▶ February 15, 2020 to June 30, 2020; or
  - ▶ January 1, 2020 to February 29, 2020

# Loan Forgiveness (con't)

- ▶ FTE Reduction Adjustment (con't):
  - ▶ Exceptions – FTE reduction does not include any employee who (i) rejects a good faith written offer of rehire, (ii) is fired for cause, (iii) voluntarily resigns, or (iv) voluntarily requests and receives a reduction in their hours
  - ▶ Average FTE during selected referenced period, divided by average FTE during Covered Period or Alternative Payroll Covered Period, results in the “FTE Reduction Quotient”
  - ▶ Safe Harbor – borrowers may avoid the FTE Reduction Adjustment if (i) borrower reduced FTE employee levels between February 15, 2020 and April 26, 2020, and (ii) borrower then restores its FTE employee levels by not later than June 30, 2020

# Guidance

- ▶ SBA Paycheck Protection Program Loans Frequently Asked Questions (as of May 13, 2020)
- ▶ SBA Paycheck Protection Program Loan Forgiveness Application and Instructions (issued May 15, 2020)
- ▶ Be sure to regularly check SBA website for new/additional guidance

As of May 13, 2020

## **PAYCHECK PROTECTION PROGRAM LOANS**

### **Frequently Asked Questions (FAQs)**

The Small Business Administration (SBA), in consultation with the Department of the Treasury, intends to provide timely additional guidance to address borrower and lender questions concerning the implementation of the Paycheck Protection Program (PPP), established by section 1102 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act or the Act). This document will be updated on a regular basis.

Borrowers and lenders may rely on the guidance provided in this document as SBA's interpretation of the CARES Act and of the Paycheck Protection Program Interim Final Rules ("PPP Interim Final Rules") ([link](#)). The U.S. government will not challenge lender PPP actions that conform to this guidance,<sup>1</sup> and to the PPP Interim Final Rules and any subsequent rulemaking in effect at the time.

1. **Question:** Paragraph 3.b.iii of the PPP Interim Final Rule states that lenders must "[c]onfirm the dollar amount of average monthly payroll costs for the preceding calendar year by reviewing the payroll documentation submitted with the borrower's application." Does that require the lender to replicate every borrower's calculations?

**Answer:** No. Providing an accurate calculation of payroll costs is the responsibility of the borrower, and the borrower attests to the accuracy of those calculations on the Borrower Application Form. Lenders are expected to perform a good faith review, in a reasonable time, of the borrower's calculations and supporting documents concerning average monthly payroll cost. For example, minimal review of calculations based on a payroll report by a recognized third-party payroll processor would be reasonable. In addition, as the PPP Interim Final Rule indicates, lenders may rely on borrower representations, including with respect to amounts required to be excluded from payroll costs.

If the lender identifies errors in the borrower's calculation or material lack of substantiation in the borrower's supporting documents, the lender should work with the borrower to remedy the issue.<sup>2</sup>

2. **Question:** Are small business concerns (as defined in section 3 of the Small Business Act, 15 U.S.C. 632) required to have 500 or fewer employees to be eligible borrowers in the PPP?

**Answer:** No. Small business concerns can be eligible borrowers even if they have more than 500 employees, as long as they satisfy the existing statutory and regulatory definition of a "small business concern" under section 3 of the Small Business Act, 15 U.S.C. 632. A business can qualify if it meets the SBA employee-based or revenue-

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<sup>1</sup> This document does not carry the force and effect of law independent of the statute and regulations on which it is based.

<sup>2</sup> Question 1 published April 3, 2020.



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based size standard corresponding to its primary industry. Go to [www.sba.gov/size](http://www.sba.gov/size) for the industry size standards.

Additionally, a business can qualify for the Paycheck Protection Program as a small business concern if it met both tests in SBA's "alternative size standard" as of March 27, 2020: (1) maximum tangible net worth of the business is not more than \$15 million; and (2) the average net income after Federal income taxes (excluding any carry-over losses) of the business for the two full fiscal years before the date of the application is not more than \$5 million.

A business that qualifies as a small business concern under section 3 of the Small Business Act, 15 U.S.C. 632, may truthfully attest to its eligibility for PPP loans on the Borrower Application Form, unless otherwise ineligible.

3. **Question:** Does my business have to qualify as a small business concern (as defined in section 3 of the Small Business Act, 15 U.S.C. 632) in order to participate in the PPP?

**Answer:** No. In addition to small business concerns, a business is eligible for a PPP loan if the business has 500 or fewer employees whose principal place of residence is in the United States, or the business meets the SBA employee-based size standards for the industry in which it operates (if applicable). Similarly, PPP loans are also available for qualifying tax-exempt nonprofit organizations described in section 501(c)(3) of the Internal Revenue Code (IRC), tax-exempt veterans organization described in section 501(c)(19) of the IRC, and Tribal business concerns described in section 31(b)(2)(C) of the Small Business Act that have 500 or fewer employees whose principal place of residence is in the United States, or meet the SBA employee-based size standards for the industry in which they operate.

4. **Question:** Are lenders required to make an independent determination regarding applicability of affiliation rules under 13 C.F.R. 121.301(f) to borrowers?

**Answer:** No. It is the responsibility of the borrower to determine which entities (if any) are its affiliates and determine the employee headcount of the borrower and its affiliates. Lenders are permitted to rely on borrowers' certifications.

5. **Question:** Are borrowers required to apply SBA's affiliation rules under 13 C.F.R. 121.301(f)?

**Answer:** Yes. Borrowers must apply the affiliation rules set forth in SBA's Interim Final Rule on Affiliation. A borrower must certify on the Borrower Application Form that the borrower is eligible to receive a PPP loan, and that certification means that the borrower is a small business concern as defined in section 3 of the Small Business Act (15 U.S.C. 632), meets the applicable SBA employee-based or revenue-based size standard, or meets the tests in SBA's alternative size standard, after applying the affiliation rules, if applicable. SBA's existing affiliation exclusions apply to the PPP, including, for example the exclusions under 13 CFR 121.103(b)(2).

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6. **Question:** The affiliation rule based on ownership (13 C.F.R. 121.301(f)(1)) states that SBA will deem a minority shareholder in a business to control the business if the shareholder has the right to prevent a quorum or otherwise block action by the board of directors or shareholders. If a minority shareholder irrevocably gives up those rights, is it still considered to be an affiliate of the business?

**Answer:** No. If a minority shareholder in a business irrevocably waives or relinquishes any existing rights specified in 13 C.F.R. 121.301(f)(1), the minority shareholder would no longer be an affiliate of the business (assuming no other relationship that triggers the affiliation rules).

7. **Question:** The CARES Act excludes from the definition of payroll costs any employee compensation in excess of an annual salary of \$100,000. Does that exclusion apply to all employee benefits of monetary value?

**Answer:** No. The exclusion of compensation in excess of \$100,000 annually applies only to cash compensation, not to non-cash benefits, including:

- employer contributions to defined-benefit or defined-contribution retirement plans;
- payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums; and
- payment of state and local taxes assessed on compensation of employees.

8. **Question:** Do PPP loans cover paid sick leave?

**Answer:** Yes. PPP loans covers payroll costs, including costs for employee vacation, parental, family, medical, and sick leave. However, the CARES Act excludes qualified sick and family leave wages for which a credit is allowed under sections 7001 and 7003 of the Families First Coronavirus Response Act (Public Law 116–127). Learn more about the Paid Sick Leave Refundable Credit [here](#).

9. **Question:** My small business is a seasonal business whose activity increases from April to June. Considering activity from that period would be a more accurate reflection of my business's operations. However, my small business was not fully ramped up on February 15, 2020. Am I still eligible?

**Answer:** In evaluating a borrower's eligibility, a lender may consider whether a seasonal borrower was in operation on February 15, 2020 or for an 8-week period between February 15, 2019 and June 30, 2019.

10. **Question:** What if an eligible borrower contracts with a third-party payer such as a payroll provider or a Professional Employer Organization (PEO) to process payroll and report payroll taxes?

**Answer:** SBA recognizes that eligible borrowers that use PEOs or similar payroll providers are required under some state registration laws to report wage and other data on

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the Employer Identification Number (EIN) of the PEO or other payroll provider. In these cases, payroll documentation provided by the payroll provider that indicates the amount of wages and payroll taxes reported to the IRS by the payroll provider for the borrower's employees will be considered acceptable PPP loan payroll documentation. Relevant information from a Schedule R (Form 941), Allocation Schedule for Aggregate Form 941 Filers, attached to the PEO's or other payroll provider's Form 941, Employer's Quarterly Federal Tax Return, should be used if it is available; otherwise, the eligible borrower should obtain a statement from the payroll provider documenting the amount of wages and payroll taxes. In addition, employees of the eligible borrower will not be considered employees of the eligible borrower's payroll provider or PEO.

11. **Question:** May lenders accept signatures from a single individual who is authorized to sign on behalf of the borrower?

**Answer:** Yes. However, the borrower should bear in mind that, as the Borrower Application Form indicates, only an authorized representative of the business seeking a loan may sign on behalf of the business. An individual's signature as an "Authorized Representative of Applicant" is a representation to the lender and to the U.S. government that the signer is authorized to make the certifications, including with respect to the applicant and each owner of 20% or more of the applicant's equity, contained in the Borrower Application Form. Lenders may rely on that representation and accept a single individual's signature on that basis.

12. **Question:** I need to request a loan to support my small business operations in light of current economic uncertainty. However, I pleaded guilty to a felony crime a very long time ago. Am I still eligible for the PPP?

**Answer:** Yes. Businesses are only ineligible if an owner of 20 percent or more of the equity of the applicant is presently incarcerated, on probation, on parole; subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction; or, within the last five years, for any felony, has been convicted; pleaded guilty; pleaded nolo contendere; been placed on pretrial diversion; or been placed on any form of parole or probation (including probation before judgment).

13. **Question:** Are lenders permitted to use their own online portals and an electronic form that they create to collect the same information and certifications as in the Borrower Application Form, in order to complete implementation of their online portals?

**Answer:** Yes. Lenders may use their own online systems and a form they establish that asks for the same information (using the same language) as the Borrower Application Form. Lenders are still required to send the data to SBA using SBA's interface.

14. **Question:** What time period should borrowers use to determine their number of employees and payroll costs to calculate their maximum loan amounts?

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**Answer:** In general, borrowers can calculate their aggregate payroll costs using data either from the previous 12 months or from calendar year 2019. For seasonal businesses, the applicant may use average monthly payroll for the period between February 15, 2019, or March 1, 2019, and June 30, 2019. An applicant that was not in business from February 15, 2019 to June 30, 2019 may use the average monthly payroll costs for the period January 1, 2020 through February 29, 2020.

Borrowers may use their average employment over the same time periods to determine their number of employees, for the purposes of applying an employee-based size standard. Alternatively, borrowers may elect to use SBA's usual calculation: the average number of employees per pay period in the 12 completed calendar months prior to the date of the loan application (or the average number of employees for each of the pay periods that the business has been operational, if it has not been operational for 12 months).

15. **Question:** Should payments that an eligible borrower made to an independent contractor or sole proprietor be included in calculations of the eligible borrower's payroll costs?

**Answer:** No. Any amounts that an eligible borrower has paid to an independent contractor or sole proprietor should be excluded from the eligible business's payroll costs. However, an independent contractor or sole proprietor will itself be eligible for a loan under the PPP, if it satisfies the applicable requirements.

16. **Question:** How should a borrower account for federal taxes when determining its payroll costs for purposes of the maximum loan amount, allowable uses of a PPP loan, and the amount of a loan that may be forgiven?

**Answer:** Under the Act, payroll costs are calculated on a gross basis without regard to (i.e., not including subtractions or additions based on) federal taxes imposed or withheld, such as the employee's and employer's share of Federal Insurance Contributions Act (FICA) and income taxes required to be withheld from employees. As a result, payroll costs are not reduced by taxes imposed on an employee and required to be withheld by the employer, but payroll costs do not include the employer's share of payroll tax. For example, an employee who earned \$4,000 per month in gross wages, from which \$500 in federal taxes was withheld, would count as \$4,000 in payroll costs. The employee would receive \$3,500, and \$500 would be paid to the federal government. However, the employer-side federal payroll taxes imposed on the \$4,000 in wages are excluded from payroll costs under the statute.<sup>3</sup>

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<sup>3</sup> The definition of "payroll costs" in the CARES Act, 15 U.S.C. 636(a)(36)(A)(viii), excludes "taxes imposed or withheld under chapters 21, 22, or 24 of the Internal Revenue Code of 1986 during the covered period," defined as February 15, 2020, to June 30, 2020. As described above, the SBA interprets this statutory exclusion to mean that payroll costs are calculated on a gross basis, without subtracting federal taxes that are imposed on the employee or withheld from employee wages. Unlike employer-side payroll taxes, such employee-side taxes are ordinarily expressed as a reduction in employee take-home pay; their exclusion from the definition of payroll costs means payroll costs should not be reduced based on taxes imposed on the employee or withheld from employee wages. This interpretation is consistent with the text of the statute and advances the legislative purpose of ensuring workers

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17. **Question:** I filed or approved a loan application based on the version of the PPP Interim Final Rule published on April 2, 2020. Do I need to take any action based on the updated guidance in these FAQs?

**Answer:** No. Borrowers and lenders may rely on the laws, rules, and guidance available at the time of the relevant application. However, borrowers whose previously submitted loan applications have not yet been processed may revise their applications based on clarifications reflected in these FAQs.

18. **Question:** Are PPP loans for existing customers considered new accounts for FinCEN Rule CDD purposes? Are lenders required to collect, certify, or verify beneficial ownership information in accordance with the rule requirements for existing customers?

**Answer:** If the PPP loan is being made to an existing customer and the necessary information was previously verified, you do not need to re-verify the information.

Furthermore, if federally insured depository institutions and federally insured credit unions eligible to participate in the PPP program have not yet collected beneficial ownership information on existing customers, such institutions do not need to collect and verify beneficial ownership information for those customers applying for new PPP loans, unless otherwise indicated by the lender's risk-based approach to BSA compliance.<sup>4</sup>

19. **Question:** Do lenders have to use a promissory note provided by SBA or may they use their own?

**Answer:** Lenders may use their own promissory note or an SBA form of promissory note.

20. **Question:** The amount of forgiveness of a PPP loan depends on the borrower's payroll costs over an eight-week period; when does that eight-week period begin?

**Answer:** The eight-week period begins on the date the lender makes the first disbursement of the PPP loan to the borrower. The lender must make the first disbursement of the loan no later than ten calendar days from the date of loan approval.<sup>5</sup>

21. **Question:** Do lenders need a separate SBA Authorization document to issue PPP loans?

**Answer:** No. A lender does not need a separate SBA Authorization for SBA to guarantee a PPP loan. However, lenders must have executed SBA Form 2484 (the

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remain paid and employed. Further, because the reference period for determining a borrower's maximum loan amount will largely or entirely precede the period from February 15, 2020, to June 30, 2020, and the period during which borrowers will be subject to the restrictions on allowable uses of the loans may extend beyond that period, for purposes of the determination of allowable uses of loans and the amount of loan forgiveness, this statutory exclusion will apply with respect to such taxes imposed or withheld at any time, not only during such period.

<sup>4</sup> Questions 2 – 18 published April 6, 2020.

<sup>5</sup> Questions 19 – 20 published April 8, 2020.

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Lender Application Form for the Paycheck Protection Program)<sup>6</sup> to issue PPP loans and receive a loan number for each originated PPP loan. Lenders may include in their promissory notes for PPP loans any terms and conditions, including relating to amortization and disclosure, that are not inconsistent with Sections 1102 and 1106 of the CARES Act, the PPP Interim Final Rules and guidance, and SBA Form 2484.

22. **Question:** I am a non-bank lender that meets all applicable criteria of the PPP Interim Final Rule. Will I be automatically enrolled as a PPP lender? What criteria will SBA and the Treasury Department use to assess whether to approve my application to participate as a PPP lender?

**Answer:** We encourage lenders that are not currently 7(a) lenders to apply in order to increase the scope of PPP lending options and the speed with which PPP loans can be disbursed to help small businesses across America. We recognize that financial technology solutions can promote efficiency and financial inclusion in implementing the PPP. Applicants should submit SBA Form 3507 and the relevant attachments to [NFRLApplicationForPPP@sba.gov](mailto:NFRLApplicationForPPP@sba.gov). Submission of the SBA Form 3507 does not result in automatic enrollment in the PPP. SBA and the Treasury Department will evaluate each application from a non-bank or non-insured depository institution lender and determine whether the applicant has the necessary qualifications to process, close, disburse, and service PPP loans made with SBA's guarantee. SBA may request additional information from the applicant before making a determination.

23. **Question:** How do the \$10 million cap and affiliation rules work for franchises?

**Answer:** If a franchise brand is listed on the SBA Franchise Directory, each of its franchisees that meets the applicable size standard can apply for a PPP loan. (The franchisor does not apply on behalf of its franchisees.) The \$10 million cap on PPP loans is a limit per franchisee entity, and each franchisee is limited to one PPP loan.

Franchise brands that have been denied listing on the Directory because of affiliation between franchisor and franchisee may request listing to receive PPP loans. SBA will not apply affiliation rules to a franchise brand requesting listing on the Directory to participate in the PPP, but SBA will confirm that the brand is otherwise eligible for listing on the Directory.

24. **Question:** How do the \$10 million cap and affiliation rules work for hotels and restaurants (and any business assigned a North American Industry Classification System (NAICS) code beginning with 72)?

**Answer:** Under the CARES Act, any single business entity that is assigned a NAICS code beginning with 72 (including hotels and restaurants) and that employs not more than 500 employees per physical location is eligible to receive a PPP loan.

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<sup>6</sup> This requirement is satisfied by a lender when the lender completes the process of submitting a loan through the E-Tran system; no transmission or retention of a physical copy of Form 2484 is required.

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In addition, SBA's affiliation rules (13 CFR 121.103 and 13 CFR 121.301) do not apply to any business entity that is assigned a NAICS code beginning with 72 and that employs not more than a total of 500 employees. As a result, if each hotel or restaurant location owned by a parent business is a separate legal business entity, each hotel or restaurant location that employs not more than 500 employees is permitted to apply for a separate PPP loan provided it uses its unique EIN.

The \$10 million maximum loan amount limitation applies to each eligible business entity, because individual business entities cannot apply for more than one loan. The following examples illustrate how these principles apply.

Example 1. Company X directly owns multiple restaurants and has no affiliates.

- Company X may apply for a PPP loan if it employs 500 or fewer employees per location (including at its headquarters), even if the total number of employees employed across all locations is over 500.

Example 2. Company X wholly owns Company Y and Company Z (as a result, Companies X, Y, and Z are all affiliates of one another). Company Y and Company Z each own a single restaurant with 500 or fewer employees.

- Company Y and Company Z can each apply for a separate PPP loan, because each has 500 or fewer employees. The affiliation rules do not apply, because Company Y and Company Z each has 500 or fewer employees and is in the food services business (with a NAICS code beginning with 72).

Example 3. Company X wholly owns Company Y and Company Z (as a result, Companies X, Y, and Z are all affiliates of one another). Company Y owns a restaurant with 400 employees. Company Z is a construction company with 400 employees.

- Company Y is eligible for a PPP loan because it has 500 or fewer employees. The affiliation rules do not apply to Company Y, because it has 500 or fewer employees and is in the food services business (with a NAICS code beginning with 72).
- The waiver of the affiliation rules does not apply to Company Z, because Company Z is in the construction industry. Under SBA's affiliation rules, 13 CFR 121.301(f)(1) and (3), Company Y and Company Z are affiliates of one another because they are under the common control of Company X, which wholly owns both companies. This means that the size of Company Z is determined by adding its employees to those of Companies X and Y. Therefore, Company Z is deemed to have more than 500 employees, together with its affiliates. However, Company Z may be eligible to receive a PPP loan as a small business concern if it, together with Companies X and Y, meets SBA's other applicable size standards," as explained in FAQ #2.

25. **Question:** Does the information lenders are required to collect from PPP applicants regarding every owner who has a 20% or greater ownership stake in the applicant business (i.e., owner name, title, ownership %, TIN, and address) satisfy a lender's obligation to collect beneficial ownership information (which has a 25% ownership threshold) under the Bank Secrecy Act?

**Answer:**

For lenders with existing customers: With respect to collecting beneficial ownership information for owners holding a 20% or greater ownership interest, if the PPP loan is being made to an existing customer and the lender previously verified the necessary information, the lender does not need to re-verify the information. Furthermore, if federally insured depository institutions and federally insured credit unions eligible to participate in the PPP program have not yet collected such beneficial ownership information on existing customers, such institutions do not need to collect and verify beneficial ownership information for those customers applying for new PPP loans, unless otherwise indicated by the lender's risk-based approach to Bank Secrecy Act (BSA) compliance.

For lenders with new customers: For new customers, the lender's collection of the following information from all natural persons with a 20% or greater ownership stake in the applicant business will be deemed to satisfy applicable BSA requirements and FinCEN regulations governing the collection of beneficial ownership information: owner name, title, ownership %, TIN, address, and date of birth. If any ownership interest of 20% or greater in the applicant business belongs to a business or other legal entity, lenders will need to collect appropriate beneficial ownership information for that entity. If you have questions about requirements related to beneficial ownership, go to <https://www.fincen.gov/resources/statutes-and-regulations/cdd-final-rule>. Decisions regarding further verification of beneficial ownership information collected from new customers should be made pursuant to the lender's risk-based approach to BSA compliance.<sup>7</sup>

26. **Question:** SBA regulations require approval by SBA's Standards of Conduct Committee (SCC) for SBA Assistance, other than disaster assistance, to an entity, if its sole proprietor, partner, officer, director, or stockholder with a 10 percent or more interest is: a current SBA employee; a Member of Congress; an appointed official or employee of the legislative or judicial branch; a member or employee of an SBA Advisory Council or SCORE volunteer; or a household member of any of the preceding individuals. Do these entities need the approval of the SCC in order to be eligible for a PPP loan?

**Answer:** The SCC has authorized a blanket approval for PPP loans to such entities so that further action by the SCC is not necessary in the PPP program.

27. **Question:** SBA regulations require a written statement of no objection by the pertinent Department or military service before it provides any SBA Assistance, other than disaster loans, to an entity, if its sole proprietor, partner, officer, director, or stockholder with a 10 percent or more interest, or if a household member of any of the preceding individuals, is an employee of another Government Department or Agency having a grade of at least GS-13 or its equivalent. Does this requirement apply to PPP loans?

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<sup>7</sup> Questions 21 – 25 published April 13, 2020.



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**Answer:** No. The SCC has determined that a written statement of no objection is not required from another Government Department or Agency for PPP loans.

28. **Question:** Is a lender permitted to submit a PPP loan application to SBA through E-Tran before the lender has fulfilled its responsibility to review the required borrower documentation and calculation of payroll costs?

**Answer:** No. Before a lender submits a PPP loan through E-Tran, the lender must have collected the information and certifications contained in the Borrower Application Form and the lender must have fulfilled its obligations set forth in paragraphs 3.b.(i)-(iii) of the PPP Interim Final Rule. Please refer to the Interim Final Rule and FAQ #1 for more information on the lender's responsibility regarding confirmation of payroll costs.

Lenders who did not understand that these steps are required before submission to E-Tran need not withdraw applications submitted to E-Tran before April 14, 2020, but must fulfill lender responsibilities with respect to those applications as soon as practicable and no later than loan closing.<sup>8</sup>

29. **Question:** Can lenders use scanned copies of documents or E-signatures or E-consents permitted by the E-sign Act?

**Answer:** Yes. All PPP lenders may accept scanned copies of signed loan applications and documents containing the information and certifications required by SBA Form 2483 and the promissory note used for the PPP loan. Additionally, lenders may also accept any form of E-consent or E-signature that complies with the requirements of the Electronic Signatures in Global and National Commerce Act (P.L. 106-229).

If electronic signatures are not feasible, when obtaining a wet ink signature without in-person contact, lenders should take appropriate steps to ensure the proper party has executed the document.

This guidance does not supersede signature requirements imposed by other applicable law, including by the lender's primary federal regulator.<sup>9</sup>

30. **Question:** Can a lender sell a PPP loan into the secondary market?

**Answer:** Yes. A PPP loan may be sold into the secondary market at any time after the loan is fully disbursed. A secondary market sale of a PPP loan does not require SBA approval. A PPP loan sold into the secondary market is 100% SBA guaranteed. A PPP loan may be sold on the secondary market at a premium or a discount to par value.<sup>10</sup>

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<sup>8</sup> Questions 26 – 28 published April 14, 2020.

<sup>9</sup> Question 29 published April 15, 2020.

<sup>10</sup> Question 30 published April 17, 2020.

31. **Question:** Do businesses owned by large companies with adequate sources of liquidity to support the business's ongoing operations qualify for a PPP loan?

**Answer:** In addition to reviewing applicable affiliation rules to determine eligibility, all borrowers must assess their economic need for a PPP loan under the standard established by the CARES Act and the PPP regulations at the time of the loan application. Although the CARES Act suspends the ordinary requirement that borrowers must be unable to obtain credit elsewhere (as defined in section 3(h) of the Small Business Act), borrowers still must certify in good faith that their PPP loan request is necessary. Specifically, before submitting a PPP application, all borrowers should review carefully the required certification that “[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.” Borrowers must make this certification in good faith, taking into account their current business activity and their ability to access other sources of liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business. For example, it is unlikely that a public company with substantial market value and access to capital markets will be able to make the required certification in good faith, and such a company should be prepared to demonstrate to SBA, upon request, the basis for its certification.

Lenders may rely on a borrower's certification regarding the necessity of the loan request. Any borrower that applied for a PPP loan prior to the issuance of this guidance and repays the loan in full by May 7, 2020 will be deemed by SBA to have made the required certification in good faith.<sup>11</sup>

32. **Question:** Does the cost of a housing stipend or allowance provided to an employee as part of compensation count toward payroll costs?

**Answer:** Yes. Payroll costs includes all cash compensation paid to employees, subject to the \$100,000 annual compensation per employee limitation.

33. **Question:** Is there existing guidance to help PPP applicants and lenders determine whether an individual employee's principal place of residence is in the United States?

**Answer:** PPP applicants and lenders may consider IRS regulations (26 CFR § 1.121-1(b)(2)) when determining whether an individual employee's principal place of residence is in the United States.

34. **Question:** Are agricultural producers, farmers, and ranchers eligible for PPP loans?

**Answer:** Yes. Agricultural producers, farmers, and ranchers are eligible for PPP loans if: (i) the business has 500 or fewer employees, or (ii) the business fits within the revenue-based sized standard, which is average annual receipts of \$1 million.

Additionally, agricultural producers, farmers, and ranchers can qualify for PPP loans as a small business concern if their business meets SBA's “alternative size standard.” The

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<sup>11</sup> Question 31 published April 23, 2020.

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“alternative size standard” is currently: (1) maximum net worth of the business is not more than \$15 million, and (2) the average net income after Federal income taxes (excluding any carry-over losses) of the business for the two full fiscal years before the date of the application is not more than \$5 million.

For all of these criteria, the applicant must include its affiliates in its calculations. [Link](#) to Applicable Affiliation Rules for the PPP.

**35. Question:** Are agricultural and other forms of cooperatives eligible to receive PPP loans?

**Answer:** As long as other PPP eligibility requirements are met, small agricultural cooperatives and other cooperatives may receive PPP loans.<sup>12</sup>

**36. Question:** To determine borrower eligibility under the 500-employee or other applicable threshold established by the CARES Act, must a borrower count all employees or only full-time equivalent employees?

**Answer:** For purposes of loan eligibility, the CARES Act defines the term employee to include “individuals employed on a full-time, part-time, or other basis.” A borrower must therefore calculate the total number of employees, including part-time employees, when determining their employee headcount for purposes of the eligibility threshold. For example, if a borrower has 200 full-time employees and 50 part-time employees each working 10 hours per week, the borrower has a total of 250 employees.

By contrast, for purposes of loan forgiveness, the CARES Act uses the standard of “full-time equivalent employees” to determine the extent to which the loan forgiveness amount will be reduced in the event of workforce reductions.<sup>13</sup>

**37. Question:** Do businesses owned by private companies with adequate sources of liquidity to support the business’s ongoing operations qualify for a PPP loan?

**Answer:** See response to FAQ #31.<sup>14</sup>

**38. Question:** Section 1102 of the CARES Act provides that PPP loans are available only to applicants that were “in operation on February 15, 2020.” Is a business that was in operation on February 15, 2020 but had a change in ownership after February 15, 2020 eligible for a PPP loan?

**Answer:** Yes. As long as the business was in operation on February 15, 2020, if it meets the other eligibility criteria, the business is eligible to apply for a PPP loan regardless of the change in ownership. In addition, where there is a change in ownership effectuated through a purchase of substantially all assets of a business that was in operation on

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<sup>12</sup> Questions 32 – 35 published April 24, 2020.

<sup>13</sup> Questions 36 published April 26, 2020.

<sup>14</sup> Question 37 published April 28, 2020.

February 15, the business acquiring the assets will be eligible to apply for a PPP loan even if the change in ownership results in the assignment of a new tax ID number and even if the acquiring business was not in operation until after February 15, 2020. If the acquiring business has maintained the operations of the pre-sale business, the acquiring business may rely on the historic payroll costs and headcount of the pre-sale business for the purposes of its PPP application, except where the pre-sale business had applied for and received a PPP loan. The Administrator, in consultation with the Secretary, has determined that the requirement that a business “was in operation on February 15, 2020” should be applied based on the economic realities of the business’s operations.

**39. Question:** Will SBA review individual PPP loan files?

**Answer:** Yes. In FAQ #31, SBA reminded all borrowers of an important certification required to obtain a PPP loan. To further ensure PPP loans are limited to eligible borrowers in need, the SBA has decided, in consultation with the Department of the Treasury, that it will review all loans in excess of \$2 million, in addition to other loans as appropriate, following the lender’s submission of the borrower’s loan forgiveness application. Additional guidance implementing this procedure will be forthcoming.

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 set forth in paragraphs III.3.b(i)-(iii) of the Paycheck Protection Program Rule (April 2, 2020) and further explained in FAQ #1.<sup>15</sup>

**40. Question:** Will a borrower’s PPP loan forgiveness amount (pursuant to section 1106 of the CARES Act and SBA’s implementing rules and guidance) be reduced if the borrower laid off an employee, offered to rehire the same employee, but the employee declined the offer?

**Answer:** No. As an exercise of the Administrator’s and the Secretary’s authority under Section 1106(d)(6) of the CARES Act to prescribe regulations granting de minimis exemptions from the Act’s limits on loan forgiveness, SBA and Treasury intend to issue an interim final rule excluding laid-off employees whom the borrower offered to rehire (for the same salary/wages and same number of hours) from the CARES Act’s loan forgiveness reduction calculation. The interim final rule will specify that, to qualify for this exception, the borrower must have made a good faith, written offer of rehire, and the employee’s rejection of that offer must be documented by the borrower. Employees and employers should be aware that employees who reject offers of re-employment may forfeit eligibility for continued unemployment compensation.

**41. Question:** Can a seasonal employer that elects to use a 12-week period between May 1, 2019 and September 15, 2019 to calculate its maximum PPP loan amount under the interim final rule issued by Treasury on April 27, 2020, make all the required certifications on the Borrower Application Form?

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<sup>15</sup> Questions 38 – 39 published April 29, 2020.

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**Answer:** Yes. The Borrower Application Form requires applicants to certify that “The Applicant is eligible to receive a loan under the rules in effect at the time this application is submitted that have been issued by the Small Business Administration (SBA) implementing the Paycheck Protection Program.” On April 27, 2020, Treasury issued an interim final rule allowing seasonal borrowers to use an alternative base period for purposes of calculating the loan amount for which they are eligible under the PPP. An applicant that is otherwise in compliance with applicable SBA requirements, and that complies with Treasury’s interim final rule on seasonal workers, will be deemed eligible for a PPP loan under SBA rules. Instead of following the instructions on page 3 of the Borrower Application Form for the time period for calculating average monthly payroll for seasonal businesses, an applicant may elect to use the time period in Treasury’s interim final rule on seasonal workers.

42. **Question:** Do nonprofit hospitals exempt from taxation under section 115 of the Internal Revenue Code qualify as “nonprofit organizations” under section 1102 of the CARES Act?

**Answer:** Section 1102 of the CARES Act defines the term “nonprofit organization” as “an organization that is described in section 501(c)(3) of the Internal Revenue Code of 1986 and that is exempt from taxation under section 501(a) of such Code.” The Administrator, in consultation with the Secretary of the Treasury, understands that nonprofit hospitals exempt from taxation under section 115 of the Internal Revenue Code are unique in that many such hospitals may meet the description set forth in section 501(c)(3) of the Internal Revenue Code to qualify for tax exemption under section 501(a), but have not sought to be recognized by the IRS as such because they are otherwise fully tax-exempt under a different provision of the Internal Revenue Code.

Accordingly, the Administrator will treat a nonprofit hospital exempt from taxation under section 115 of the Internal Revenue Code as meeting the definition of “nonprofit organization” under section 1102 of the CARES Act if the hospital reasonably determines, in a written record maintained by the hospital, that it is an organization described in section 501(c)(3) of the Internal Revenue Code and is therefore within a category of organization that is exempt from taxation under section 501(a).<sup>16</sup> The hospital’s certification of eligibility on the Borrower Application Form cannot be made without this determination. This approach helps accomplish the statutory purpose of ensuring that a broad range of borrowers, including entities that are helping to lead the medical response to the ongoing pandemic, can benefit from the loans provided under the PPP.

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<sup>16</sup> This determination need not account for the ancillary conditions set forth in section 501(r) of the Internal Revenue Code and elsewhere associated with securing the tax exemption under that section. Section 501(r) states that a hospital organization shall not be treated as described in section 501(c)(3) unless it meets certain community health and other requirements. However, section 1102 of the CARES Act defines the term “nonprofit organization” solely by reference to section 501(c)(3), and section 501(r) does not amend section 501(c)(3). Therefore, for purposes of the PPP, the requirements of section 501(r) do not apply to the determination of whether an organization is “described in section 501(c)(3).”

As of May 13, 2020

This guidance is solely for purposes of qualification as a “nonprofit organization” under section 1102 of the CARES Act and related purposes of the CARES Act, and does not have any consequences for federal tax law purposes. Nonprofit hospitals should also review all other applicable eligibility criteria, including the *Interim Final Rules on Promissory Notes, Authorizations, Affiliation, and Eligibility* (April 28, 2020) regarding an important limitation on ownership by state or local governments. 85 FR 23450, 23451.<sup>17</sup>

43. **Question:** FAQ #31 reminded borrowers to review carefully the required certification on the Borrower Application Form that “[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.” SBA guidance and regulations provide that any borrower who applied for a PPP loan prior to April 24, 2020 and repays the loan in full by May 7, 2020 will be deemed by SBA to have made the required certification in good faith. Is it possible for a borrower to obtain an extension of the May 7, 2020 repayment date?

**Answer:** SBA is extending the repayment date for this safe harbor to May 14, 2020. Borrowers do not need to apply for this extension. This extension will be promptly implemented through a revision to the SBA’s interim final rule providing the safe harbor. SBA intends to provide additional guidance on how it will review the certification prior to May 14, 2020.

44. **Question:** How do SBA’s affiliation rules at 13 C.F.R. 121.301(f) apply with regard to counting the employees of foreign and U.S. affiliates?

**Answer:** For purposes of the PPP’s 500 or fewer employee size standard, an applicant must count all of its employees and the employees of its U.S and foreign affiliates, absent a waiver of or an exception to the affiliation rules. 13 C.F.R. 121.301(f)(6). Business concerns seeking to qualify as a “small business concern” under section 3 of the Small Business Act (15 U.S.C. 632) on the basis of the employee-based size standard must do the same.<sup>18</sup>

45. **Question:** Is an employer that repays its PPP loan by the safe harbor deadline (May 14, 2020) eligible for the Employee Retention Credit?

**Answer:** Yes. An employer that applied for a PPP loan, received payment, and repays the loan by the safe harbor deadline (May 14, 2020) will be treated as though the employer had not received a covered loan under the PPP for purposes of the Employee Retention Credit. Therefore, the employer will be eligible for the credit if the employer is otherwise an eligible employer for purposes of the credit.<sup>19</sup>

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<sup>17</sup> Questions 40 – 42 published May 3, 2020.

<sup>18</sup> Questions 43 – 44 published May 5, 2020.

<sup>19</sup> Question 45 published May 6, 2020.

46. **Question:** How will SBA review borrowers' required good-faith certification concerning the necessity of their loan request?

**Answer:** When submitting a PPP application, all borrowers must certify in good faith that “[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.” SBA, in consultation with the Department of the Treasury, has determined that the following safe harbor will apply to SBA’s review of PPP loans with respect to this issue: Any borrower that, together with its affiliates,<sup>20</sup> received PPP loans with an original principal amount of less than \$2 million will be deemed to have made the required certification concerning the necessity of the loan request in good faith.

SBA has determined that this safe harbor is appropriate because borrowers with loans below this threshold are generally less likely to have had access to adequate sources of liquidity in the current economic environment than borrowers that obtained larger loans. This safe harbor will also promote economic certainty as PPP borrowers with more limited resources endeavor to retain and rehire employees. In addition, given the large volume of PPP loans, this approach will enable SBA to conserve its finite audit resources and focus its reviews on larger loans, where the compliance effort may yield higher returns.

Importantly, borrowers with loans greater than \$2 million that do not satisfy this safe harbor may still have an adequate basis for making the required good-faith certification, based on their individual circumstances in light of the language of the certification and SBA guidance. SBA has previously stated that all PPP loans in excess of \$2 million, and other PPP loans as appropriate, will be subject to review by SBA for compliance with program requirements set forth in the PPP Interim Final Rules and in the Borrower Application Form. If SBA determines in the course of its review that a borrower lacked an adequate basis for the required certification concerning the necessity of the loan request, SBA will seek repayment of the outstanding PPP loan balance and will inform the lender that the borrower is not eligible for loan forgiveness. If the 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. SBA’s determination concerning the certification regarding the necessity of the loan request will not affect SBA’s loan guarantee.

47. **Question:** An SBA interim final rule posted on May 8, 2020 provided that any borrower who applied for a PPP loan and repays the loan in full by May 14, 2020 will be deemed by SBA to have made the required certification concerning the necessity of the loan request in good faith. Is it possible for a borrower to obtain an extension of the May 14, 2020 repayment date?

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<sup>20</sup> For purposes of this safe harbor, a borrower must include its affiliates to the extent required under the interim final rule on affiliates, 85 FR 20817 (April 15, 2020).

As of May 13, 2020

**Answer:** Yes, SBA is extending the repayment date for this safe harbor to May 18, 2020, to give borrowers an opportunity to review and consider FAQ #46. Borrowers do not need to apply for this extension. This extension will be promptly implemented through a revision to the SBA's interim final rule providing the safe harbor.<sup>21</sup>

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<sup>21</sup> Questions 46 – 47 published May 13, 2020.



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## New York State COVID-19 Related Illness or Quarantine Leave

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### The following is currently in effect:

1. For employees working for small employers (1-10 employees), employees who are subject to a mandatory or precautionary order of quarantine or isolation due to COVID-19 will receive unpaid time off and the ability immediately to qualify for paid family leave and temporary disability benefits, plus full job protection.
2. For employees working for medium sized employers (11-99 employees) and small employers (1-10 employees) with a net income of \$1 million a year, employees who are subject to a mandatory or precautionary order of quarantine or isolation due to COVID-19 will receive five paid days off at their normal salary or average weekly wage and the ability immediately thereafter to qualify for paid family leave and temporary disability benefits, plus full job protection.
3. For employees working for large employers (100 or more employees) and public employers, who are subject to a mandatory or precautionary order of quarantine or isolation due to COVID-19 will receive paid time off at their normal salary or average weekly wage for the entirety of the quarantine (up to 14 days), plus full job protection.
4. A “mandatory or precautionary order of quarantine or isolation” is defined to mean an “order of quarantine or isolation issued by the State of New York, the Department of Health, local board of health, or any government entity duly authorized to issue such order due to COVID-19.” Thus, a doctor’s quarantine arguably would not qualify an employee for COVID-19 related paid leave.
5. All employees subject to a mandatory or precautionary order of quarantine or isolation due to COVID-19 are given full job protection during time of absence, and have the right to be free from any form of retaliation for taking such leave.