

Frequently Asked Questions for Paycheck Protection Loan Recipients: Part I¹

by NLI Staff

Main Questions

- If our organization received a Paycheck Protection Program (PPP) loan, what documentation should we maintain in our file regarding the loan application and the basis for determining our organization's eligibility?
- What steps should our organization take now to prepare to apply for loan forgiveness?

Updates

On June 05, 2020, the Paycheck Protection Program Flexibility Act ("PPP Flexibility Act") was signed into law. The PPP Flexibility Act makes several changes to the existing Paycheck Protection Program. Highlights of the changes include: (1) extension of the period during which eligible expenses may be forgiven from 8 to 24 weeks; (2) reduction of the percentage required to be applied to payroll costs from 75% to 60%; and (3) creation of additional exemptions from the loan forgiveness reduction penalty for businesses which have been unable to rebuild their workforce or return to normal business activity levels. For more information, see our recent blog. Note that the Small Business Administration ("SBA") is in the process of developing new guidance to implement these updates. These FAQ will be updated accordingly, and the latest information can also be found on the [Department of Treasury website](#).

On October 08, 2020, the SBA issued a new interim final rule with two significant changes impacting borrowers who (1) received \$50,000 or less in PPP loan funds; and (2) either are not part of an affiliate group which received \$2 million or more in total PPP loan assistance, or are exempt from SBA affiliation rules.² The new rule establishes a streamlined version of the SBA Form 3508, the SBA Form 3508S, which reduces the administrative burden of applying for forgiveness. Additionally, perhaps even more significantly, the new rule creates an exemption from the Coronavirus Aid, Relief, and Economic Security Act, §§ 1106(d)(2) and (3) loan forgiveness

¹ These frequently asked questions (FAQs) are based on available Small Business Administration (SBA) and Department of Treasury guidance and regulations, as well as the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). These FAQs are not comprehensive and do not interpret, highlights from available agency and legislative guidance. The FAQs should be read along with and in light of available laws, regulations, and guidance. The information in these FAQs is believed to be accurate as of the date of publication, but SBA and/or the Department of Treasury are issuing new guidance nearly every day. For the most up to date information, consult the [Department of Treasury's Paycheck Protection Program resource page](#).

²Note that many faith-based organizations may be exempt from the SBA affiliation rules and thus may be eligible to use the 3508S even if they are part of an affiliate group which received more than \$2 million in PPP assistance. See [85 FR 20817](#) for more information.

Updated: November 05, 2020

reduction penalty that generally applies to employers who reduced workforce levels or staff salaries in excess of a specific threshold.

Sources

These FAQs were prepared as of August 07, 2020 based on the following Small Business Administration (“SBA”) and/or Treasury Department resources:

1. [Coronavirus Aid, Relief, and Economic Security Act, §§ 1102 and 1106.](#)
2. [Paycheck Protection Program Flexibility Act.](#)
3. SBA [Interim Final Rules Implementing the CARES Act.](#)
4. [SBA Frequently Asked Questions about the Paycheck Protection Program \(PPP\).](#)
5. [SBA PPP Loan Application and Instructions.](#)
6. [SBA PPP Form 3508 Loan Forgiveness Application and Instructions.](#)
7. [SBA PPP Form 3508EZ Loan Forgiveness Application and Instructions.](#)
8. [SBA PPP Form 3508S Loan Forgiveness Application and Instructions.](#)
9. [SBA Guide for Calculating Loan Amounts.](#)
10. [SBA Interim Final Rule on Paycheck Protection Program—SBA Loan Review Procedures and Related Borrower and Lender Responsibilities.](#)
11. [SBA Interim Final Rule on Business Loan Program Temporary Changes; Paycheck Protection Program—Requirements—Loan Forgiveness.](#)
12. [Extended Authority for Commitments for the PPP.](#)
13. [SBA Frequently Asked Questions \(FAQs\) on PPP Loan Forgiveness.](#)
14. [SBA Interim Final Rule on Additional Revisions to Loan Forgiveness and Loan Review Procedures.](#)

Small Business Administration and CARES Act Definitions

Covered Period ([CARES Act § 1106\(a\)\(3\)](#); [PPP Flexibility Act § 3](#))– the period beginning on the first date the organization received PPP funds from the lender. The borrower now can elect whether this period will be 8 or 24 weeks. For clarity, this FAQ document will refer to this as the “Eligible Expense Covered Period” to avoid confusion with the CARES § 1102 “Covered Period.”

Alternative Payroll Covered Period ([Loan Forgiveness Application Instructions](#)) – the 56-day, 8-week period that begins on the first day of the first pay period following the first date the organization received PPP funds from the lender (for administrative convenience, borrowers with a biweekly or more frequent payroll schedule may use this method to calculate eligible payroll costs). Note: The Alternative Payroll Covered Period was created by the SBA, not the CARES Act. Therefore, the PPP Flexibility Act did not expressly extend the Alternative Payroll Covered Period to allow borrowers to choose between an 8-week or 24-week loan period.

Covered Expenses ([CARES Act § 1106\(a\)\(7\)](#); [SBA PPP FAQ, Question 20](#)) – include:

- Payroll costs
 - Cash compensation below \$100,000 annually,

Updated: November 05, 2020

- Employer contributions for employee health insurance,
- Employer contributions to employee retirement plans,
- Employer payments of state and local taxes assessed on employee compensation;
- Business mortgage interest payment (for obligations on real or personal property incurred before February 15, 2020),
- Business rent or lease payments (pursuant to lease agreements in force before February 15, 2020), and
- Business utility payments (on utilities, including electricity, water, heat, gas, transportation, and internet, for which service began before February 15, 2020)

Documentation of Loan Application and Acceptance

What are some of the loan application records which the SBA requires PPP borrowers to maintain?

As a general rule, according to page 10 of the [SBA Form 3508 Loan Forgiveness Application](#), a PPP borrower should maintain copies of: (1) the loan application, (2) the detailed summary of the amounts claimed; (3) source documents used to make the calculations for the loan amount; and (4) source documents to demonstrate that the organization had employees on February 15, 2020 and that eligible nonpayroll obligations and services were in place prior to February 15, 2020. The document retention requirements are very similar for each version of the SBA Form 3508. For the SBA Form 3508EZ and 3508S, the borrower must also retain documentation for its certifications of eligibility to use the form. For the full SBA Form 3508, the borrower must retain additional documentation related to the statements made in the Schedule A Worksheet.

For example, the loan application requires the applicant to state its average monthly payroll during the twelve-month period prior to the loan. The PPP borrower should maintain copies of its calculation of the average monthly payroll amount. The PPP borrower should also maintain copies of direct deposits, check numbers, IRS Form 941, and other payroll records demonstrating the figures used to calculate the “average monthly payroll” amount.

Other loan application-related documents that a PPP borrower should retain in its file include:

- A signed board resolution (or meeting minutes) approving the loan application and acceptance of the Paycheck Protection loan funds;
- Written authorization of the individual who submitted the loan application on behalf of the organization (in many cases, this could be based on a delegation of authority to a particular officer in the resolution that approved the loan application; for some individuals, this may be a reference to the individual’s job description as set forth in employment documents or the bylaws (See Question 11 of the [SBA PPP Loan FAQ](#));
- Written documentation of the basis for the organization’s determination that “economic uncertainty” made the loan necessary (this could include factors such as local shutdown orders, decreasing revenues, financial market instability, and rising infection statistics in relevant geographies);

Updated: November 05, 2020

- Written documentation of the organization's determination of its eligibility for the loan, including documentation showing the number of employees, and eligibility for applicable exemptions, such as (to the extent applicable) the exemption to the affiliation rules;
- Written documentation of the calculations made to determine the organization's maximum loan amount; and
- Written confirmation that nonpayroll expenses were in place prior to February 15, 2020;

Examples of Source Documents for Nonpayroll Expenses

- **Business Mortgage Interest Payments:** Copies of lender amortization schedule, cancelled checks, or lender account statements beginning February 2020 or before and ending one month after the end of the Eligible Expense Covered Period
- **Business Rent or Lease Payments:** Copies of current lease agreement, receipts, or lessor account statements beginning in February 2020 or before and ending one month after the end of the Eligible Expense Covered Period
- **Business Utility Payments:** Copies of invoices, cancelled checks, or account statements beginning in or before February 2020 and ending after the Eligible Expense Covered Period
- Written confirmation that the board or an appropriate corporate officer received copies of and reviewed the final loan agreement.

Documentation of Use of Loan Funds

How does the SBA recommend PPP borrowers track expenditures of loan funds?

According to page 10 of the [SBA Form 3508 Loan Forgiveness Application](#), during the period when the loan is outstanding, a PPP borrower should carefully document the expenses for which the loan funds are used and should **maintain these documents for six years after the loan is repaid or loan forgiveness is received**. This documentation is important both to: (1) support the organization's application for loan forgiveness, and (2) demonstrate that all loan funds were applied for Covered Expenses.

If the organization maintains its records properly, by the end of the Eligible Expense Covered Period, most or all the documentation necessary for the loan forgiveness application should already be consolidated.

Some examples of best practices for loan documentation include:

- Segregate the PPP loan funds in a separate bank account, rather than commingling them with the organization's existing funds and pay Covered Expenses directly from the segregated account holding the loan funds;

Updated: November 05, 2020

- Create a spreadsheet to track Covered Expenses for each day during the Eligible Expense Covered Period (or Alternative Payroll Covered Period, as applicable), both on an accrual basis and a cash basis, making sure that at least 60% of the loan funds are used for payroll costs, as required by current SBA guidance (See PPP Flexibility Act, § 3(b)(2); see also question 2(o) of [SBA Interim Final Rule 1](#));³
- Track each type of payroll cost (cash compensation, health insurance, retirement payments, and state and local taxes assessed on employee compensation) separately according to the type of cost. Further separate the subcategory of cash compensation by employee (each employee would have a row under the category “cash compensation” in an expense tracker);
- Create a database or file consolidating source documents;

Examples of Source Documents ([SBA Loan Forgiveness Application, Page 10](#))

- **Payroll Documents:** tax filings reported to the IRS, state income, payroll, and unemployment insurance filings, checks, direct deposit records, records of state and local taxes assessed on the compensation of employees
- **Utilities Statements:** cancelled checks, payment receipts, transcripts of accounts for electricity, water, heat, gas, transportation, and internet
- **Mortgage or Rent Invoices:** cancelled checks, payment receipts, transcripts of accounts
- **Healthcare and Retirement Payments:** payment receipts, cancelled checks, and other records of payment for group health care coverage and retirement
- Assign responsibility for maintaining the Covered Expense tracker to a specific individual and ensure that the individual has appropriate training and necessary technology/materials; and
- If the organization’s workforce was reduced, maintain documentation for any of the applicable exceptions and safe harbors set forth in [the PPP Loan Forgiveness Application: Schedule A Worksheet](#), including documentation of voluntary resignation, termination for cause, or voluntary request for reduced hours, and, for employees laid off due to the pandemic, a written offer of rehire and, if the employee declines the offer, a written statement from the employee to that effect.⁴

Compliance with Applicable Regulations During the Period of the Loan

³ Some templates and tutorials are available free of charge online, for example through [Quickbooks University](#), [Financially Simple](#), [Prix Fixe Accounting](#). These sites are provided as examples only. NLI has not reviewed and does not endorse any of these offerings.

⁴ 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. FAQ 40

Updated: November 05, 2020

Based on SBA guidance, are there any new procedures the organization should implement during the term of the loan?

The SBA has announced that loans of more than \$2 million will be reviewed, and all loans will be subject to review, at the discretion of the SBA (see question 39 and 46 of FAQ). Loans of less than \$2 million will be deemed to have been necessary but remain subject to review. Accordingly, regardless of the loan size, the organization should comply with applicable obligations and document such compliance.

On the PPP loan application, borrowers must make certifications regarding the accuracy of the statements in the application, as well as commit to certain conduct during the period of the loan (see [SBA Form 2483: PPP Loan Application](#), Page 2, and [Interim Final Rule 1, Question 2\(t\)](#)).

PPP borrowers should establish protocol for compliance and identify a staff member to oversee compliance with each requirement. For example, the organization may temporarily establish a written policy to prioritize the purchase of American-made products. The organization should also implement a procedure to buy American-made when possible and document the business reason when foreign-origin products are purchased instead.

PPP borrowers should also review applicable federal nondiscrimination requirements. Question 1 of the SBA [final rule on nondiscrimination](#) states that, for nonprofit fund recipients, compliance with the nonprofit organization's existing federal nondiscrimination obligations will be deemed compliance with SBA nondiscrimination requirements during the loan period. The SBA rule also states that religious entities retain independence regarding its membership and employment of individuals to carry out the nonprofit's religious work.⁵ Organizations should carefully review applicable federal nondiscrimination requirements and the organization's implementing policies and procedures, as this is an important dimension of PPP loan compliance.

Based on available guidance, what are other considerations and best practices for PPP borrowers during the period of the loan?

PPP borrowers should: (1) keep up with new guidance at [treasury.gov](#); (2) confirm and reinforce the organization's religious identity for legal purposes; and (3) communicate with the board regarding the use of the loan funds.

In addition to tracking expenditures and implementing procedures to comply with the loan certifications and SBA regulations, PPP borrowers should also keep up with new SBA guidance. Because the PPP was implemented very rapidly, the SBA and [Department of Treasury](#) have been issuing clarifying guidance on a rolling basis to address problems and clear up confusion. For example, the PPP [FAQ document](#) is updated several times each week. To keep key leaders up to

⁵ See Section III(1) of SBA Interim Final Rule on Paycheck Protection Program—Nondiscrimination and Additional Eligibility Criteria and Question 5 of the SBA FAQ Regarding Participation of Faith-Based Organizations in the PPP and Economic Injury Disaster Loan Program (EIDL).

Updated: November 05, 2020

date, the organization should designate an individual responsible for tracking updates to the administration of the loan programs.

Organizations also should review their corporate documents, employee handbook, and other documentation to evaluate whether the organization's religious identity is clearly articulated and to take any necessary steps to update those documents as appropriate. Our friends at ADF have compiled a helpful [religious liberty checklist](#) that organizations can use to self-assess the extent to which they are following best practices for religious organizations.

Finally, during the loan period, the board should be updated regularly on the use of the loan funds and relevant updates. This could be done through a meeting or via email summaries. As always, if a meeting is held, written minutes should be developed and kept in the corporate records.

Legal Disclaimer: This resource contains general educational information related to legal concepts, but this information does not constitute legal advice. Anyone seeking legal advice is strongly encouraged to consult with a licensed attorney regarding any of the matters discussed herein. Although licensed attorneys work with NLI, NLI is not a law firm and does not undertake legal representation on behalf of any clients. Further, no licensed attorney working with or on behalf of NLI agrees to undertake legal representation on behalf of any client unless the terms of such representation are set forth in a separate, written representation agreement.