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## COVID-19 Update

### CARES Act—FAQs about SBA's PPP Loans; Impact on UMC Organizations

**April 28, 2020—Updated: May 14, 2020; June 2, 2020, June 4, 2020**

The following frequently asked questions relate to *Paycheck Protection Program (PPP) loans* from the Small Business Administration (SBA) under the federal **Coronavirus Aid, Relief, and Economic Security Act** (CARES Act).

**IMPORTANT—RECENT CHANGES TO PPP:** Late on **June 3, 2020**, Congress enacted the **Paycheck Protection Program Flexibility Act of 2020 (H.R. 7010)**. If signed by the President, H.R. 7010 would modify the PPP by:

- Lengthening the PPP loan forgiveness period from 8 weeks to 24 weeks after the date of origination (no later than **December 31, 2020**), although borrowers can opt out of this extension;
- Lowering the percentage of PPP proceeds that must be used for payroll costs from 75% to 60%;
- Increasing the PPP loan repayment period from 2 years to 5 years (for amounts not forgiven);
- Providing more flexibility for employers who are not able to rehire employees because of the lingering effects of COVID-19—allowing such employers to minimize reduction in forgivable amounts;
- Extending the PPP loan payment deferral period; and
- Allowing borrowers with PPP loans to take full advantage of the [payroll tax deferral provision](#) of the CARES Act.

These changes would be effective as of the date of enactment of the CARES Act—**March 27, 2020** (so would appear to apply to existing PPP loans).

*We will continue to update this FAQ document as the SBA issues new regulations and other guidance.*

**Q1: Our local church/annual conference/general agency/organization received PPP loan proceeds from our bank. Can the loan be forgiven?**

**A1:** Yes. According to the [regulations from the SBA](#) (SBA PPP Rule), the amount of loan forgiveness can be up to the full principal amount of the loan and any accrued interest, *if the borrower uses all of the loan proceeds for “forgivable purposes” and employee and compensation levels are maintained.*

On **May 15, 2020**, the SBA published a [loan forgiveness application with instructions](#) (Forgiveness Application). Borrowers must complete the Forgiveness Application and submit it to their lenders in order to request forgiveness of PPP loans. Further, on **May 22**, the SBA published [additional regulations about forgiveness](#) (Forgiveness Rule) to assist borrowers. GCFA and Wespath have partnered to create a [Guidance for United Methodist Borrowers on the PPP Loan Forgiveness Application](#). The SBA also published on **May 22** [regulations about PPP loan reviews by the SBA](#) (Loan Review Rule), which is also important for borrowers to understand, as explained below.

**Q2: What are “forgivable purposes”? Which costs qualify for forgiveness?**

**A2:** The following costs incurred during the eight-week period following the date of the loan (the date the lender approved the loan) will qualify for loan forgiveness:

- Total amount of payroll costs (Payroll Costs)
- Payments of *interest* on mortgage obligations that were incurred **before February 15, 2020**
- Rent payments on leases dated **before February 15, 2020**
- Utility payments under service agreements dated **before February 15, 2020**

However, no more than 25% of the loan forgiveness amount can be non-Payroll Costs. The SBA determined that the non-payroll portion of forgiven loans should be limited to preserve employment.

**Q3: What constitutes Payroll Costs that are eligible for PPP loan forgiveness?**

**A3:** Employers’ Payroll Costs eligible for loan forgiveness *include*:

- *Compensation* (salary, wages, commissions or similar compensation) to employees whose principal place of residence is the United States
- *Cash tips or the equivalent*
- *Vacation, parental, family, medical or sick leave payments*
- *Severance or separation pay*
- *Payments for employee benefits* consisting of:
  - Group health care coverage, including insurance premiums
  - Retirement benefits
- *Payment of state and local taxes* assessed on compensation of employees

Payroll Costs **do not include**:

- *Employer’s share of Social Security taxes* (FICA)
- *Compensation in excess of an annual salary of \$100,000* paid to any employee
- *Compensation of any employee whose principal residence is outside the U.S.*
- *Qualified sick and family leave wages covered by tax credits under the Families First Coronavirus Response Act (FFCRA)*

**Q4: Are clergy housing allowance costs included in Payroll Costs (i.e., eligible for loan forgiveness)?**

**A4:** Yes, we believe costs associated with the clergy housing allowance should be included in Payroll costs (see page 3 of our [Loan Forgiveness Application Guidance](#). The Department of Treasury (Treasury) has been regularly updating its published [frequently asked questions](#) (Treasury FAQs), to clarify certain aspects of the PPP. The following Q&A (#32) is now included in the Treasury FAQs:

***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 include all cash compensation paid to employees, subject to the \$100,000 annual compensation per employee limitation.*

Before that answer was added to the Treasury FAQs, there was anecdotal evidence that some lenders had taken the position that a housing allowance should *not* be included, as it is not expressly described in the CARES Act or in the SBA PPP Rule. How this is treated may vary from bank to bank, and some may still argue that a housing allowance provided to clergy cannot be included, even though the Treasury FAQs do not include such a limitation.

**Q5: Are the following employer expenses included in Payroll Costs (i.e., eligible for loan forgiveness):**

- **Comprehensive Protection Plan (CPP) premiums?**
- **Employer-paid premiums for other welfare benefits, such as life insurance or disability income insurance (i.e., through a plan like UMLifeOptions or from a commercial insurer)?**

**A5:** It appears **these costs are not eligible** for loan forgiveness. The CARES Act, SBA PPP Rule, and Forgiveness Rule describe only *group health plan costs/premiums* and *retirement plan contributions* as employee benefits costs that are considered Payroll Costs for PPP loan forgiveness. Premiums for welfare plan benefits, such as CPP or UMLifeOptions, are neither retirement nor group health benefits. Unless further guidance from the SBA clarifies that welfare plan costs are Payroll Costs, it is safer to assume they are not eligible.

**Q6: Can you include Payroll Costs that are incurred “with respect to” the eight-week forgiveness period but not yet paid? For example, would accrued costs for employee benefits (such as retirement plan contributions) be eligible Payroll Costs if they are accrued during the eight-week forgiveness period but not remitted until later in the year, after the eight-week forgiveness period ends (e.g., at the end of a month, quarter or year)?**

**A6:** The Forgiveness Rule clarifies that Payroll Costs that are incurred, but not paid, during the eight-week forgiveness period **can** be included in forgivable Payroll Costs, as long as they are paid by the end of the next regular pay period for the borrower/employer.

**Q7: Can our annual conference choose to delay the HealthFlex premium deferral that Wespath is allowing to a later time (e.g., after our eight-week period) to maximize the loan forgiveness amount?**

**A7:** No. Under the deferral opportunity for HealthFlex premiums, even though your annual conference will receive an invoice from Wespath, normal May premium payments will be deferred until August, and June premium payments will be deferred until September.

**Q8: In order to maximize the loan forgiveness amount, can our annual conference pay HealthFlex premiums during the eight-week forgiveness period despite Wespath's offer for deferral of those premiums?**

**A8:** Yes. You can forgo the HealthFlex premium deferral and make payments in May and June.

**Q9: Could our annual conference pay a *portion* of the HealthFlex premiums during our eight-week forgiveness period, for example for the conference office staff to whom our PPP loan relates, while benefiting from the HealthFlex deferral period for our other covered lives (e.g., clergy and staff at local churches)?**

**A9:** Yes. The annual conference could split the premium payment as described in this question. The annual conference should let Wespath know which employee premiums it intends to pay. Wespath's HealthFlex staff can assist with documentation confirming the payment is for health care premiums of the designated employees, in case the PPP lender, or SBA, requires such documentation as a condition of forgiveness.

**Q10: Are moving expense reimbursements considered eligible Payroll Costs? If we pay moving expense reimbursements during the eight-week forgiveness period, is that amount forgivable?**

**A10:** The answer is unclear. Moving expense reimbursements do not seem to fall squarely within the CARES Act's or SBA PPP Rule's definitions of Payroll Costs.

However, [guidance from the SBA about calculating maximum loan amounts](#) indicates in question 7 that nonprofits can use the amount of Payroll Costs in line 5c—column 1 of *Form 941*. For other nonprofits, this line of *Form 941* would include moving expense reimbursements. It would follow that if these reimbursements can be included in calculation of the total loan amount, and the total PPP loan amount can be “fully forgiven,” then moving expense reimbursements should also be included in the loan forgiveness amount. Moreover, Treasury's answer to the housing allowance question (Q&A #4 above) seems to support treating moving expense reimbursements as Payroll Costs (i.e., eligible for loan forgiveness), as that answer indicates that Payroll Costs includes “all cash compensation paid to employees, subject to the \$100,000 annual compensation per employee limitation.”

**Q11: Could a PPP recipient employer *increase* salaries, employer retirement plan contributions, or the employer share of health plan premiums for the period of the PPP loan in order to increase what it spends on Payroll Costs (and, as a result, maximize the forgivable amount)?**

**A11:** The answer is not entirely clear. There does not appear to be a prohibition on these actions in the text of the CARES Act or the SBA PPP Rule. The Forgiveness Rule states that Payroll Costs may include bonuses or hazard pay paid or incurred during the eight-week forgiveness period, as long as the recipient employee's total compensation does not exceed \$100,000 annually (or \$15,385 during the eight-week forgiveness period). Because bonuses and hazard pay are a form of increased compensation, it could be argued that other increases to compensation and benefits would qualify as Payroll Costs. However, as explained below, any PPP loan is subject to review by the lender and the SBA, including whether the borrower qualifies for forgiveness. In addition, there are numerous references and applicants' certifications in the CARES Act and the SBA PPP Rule to “maintaining” Payroll Costs, which might be read to limit a loan recipient's ability to include increased Payroll Costs when calculating the forgivable amount.

Absent explicit authorization in the CARES Act or its related regulations for including specific increases in compensation and benefits in Payroll Costs, we encourage caution in taking such actions.

**Q12: Can we prepay retirement and health benefit costs to increase what we spend on Payroll Costs?**

**A12:** The SBA has not provided guidance specifically about any “prepaying” of Payroll Costs, but the Forgiveness Application makes it clear that prepayments are prohibited in other areas, such as mortgage interest. Unless and until the SBA explicitly states prepayments of costs are acceptable, borrowers should exercise caution in this area.

**Q13: Do Payroll Costs include apportionments or assessments related to retirement (pension) plan or annual conference health plan costs paid by the local church even when the local church’s pastor is not covered in the annual conference plan?**

**A13:** Some annual conferences may assess costs to local churches to support certain employee benefit plans, like the annual conference’s group health plan, even when a local church’s appointed clergy employee is not covered in the plan. This may reflect UMC polity-related connectional values and beliefs about shared support or connectional sharing of risks. These UMC polity-based practices have First Amendment anti-entanglement implications. Local churches including such costs in Payroll Costs could argue, if challenged, that they are required to pay for these health insurance costs (through the apportionment process), whether the current pastor participates or not. Thus, it is a fixed “payroll cost” that it is required by the Church—sometimes the pastor participates in that plan, and sometimes not. In its [FAQs for faith-based organizations](#), the SBA states: “a faith-based organization that receives a loan will retain its independence, autonomy, right of expression, religious character, and authority over its governance, and no faith-based organization will be excluded from receiving funding because leadership with, membership in, or employment by that organization is limited to persons who share its religious faith and practice.”

Nonetheless, even with such ecclesiastical basis and a secular anti-entanglement argument that these costs could be considered Payroll Costs, PPP lenders and the SBA may struggle to understand that such charges could be Payroll Costs for employee benefits related to current employees of the borrower. Similarly, UMC borrowers might struggle to provide easy-to-understand documentation of the basis for these costs being Payroll Costs. This may be even more difficult for a lender or the SBA to understand in cases where there is not a current local church employee participating in the particular employee benefit plan or plans to which the costs relate. Borrowers might benefit from exercising caution in this regard and discussing the matter with counsel.

**Q14: If a PPP recipient employer sequesters the PPP loan proceeds in a separate bank account (for tracking purposes), would it be reasonable to continue to have Payroll Cost EFTs and disbursements run through the employer’s usual bank account (because, for example, vendors’ contracts, account links and checks are already set up for that account), but then use the account with the PPP loan funds to reimburse the regular payroll bank account periodically?**

**A14:** Generally speaking, cash is fungible. The account in which the dollars are kept and which dollars are used to fulfill payroll is less relevant than the accounting process to demonstrate that the PPP funds ultimately are used predominantly for Payroll Costs. In any case, PPP loan recipients should maintain meticulous records of how the loan proceeds are used to support the recipient’s request for forgiveness.

The setup described in the question may not be necessary for the loan funds, but may be helpful in documenting how the loan proceeds are used.

**Q15: Can the government audit a UMC annual conference, local church or other organization that receives PPP loan funds?**

**A15:** Possibly. In the SBA's [FAQs for faith-based organizations](#), the SBA states: "[r]eceipt of a loan through any SBA program constitutes *Federal financial assistance* and carries with it the application of certain nondiscrimination obligations." The SBA also states: "[a]ny legal obligations that you incur through your receipt of this loan are not permanent, and once the loan is paid or forgiven, those nondiscrimination obligations will no longer apply." Additionally, the SBA Rules state: "All loans guaranteed by the SBA pursuant to the CARES Act will be made consistent with constitutional, statutory, and regulatory protections for religious liberty, including the First Amendment to the Constitution, the Religious Freedom Restoration Act..."

But, when a nonprofit receives "Federal financial assistance" and expends more than \$750,000 in federal dollars in a year, the organization is most likely required to have an independent financial audit referred to as a "Single Audit." The [Single Audit Act of 1984, as amended in 1996](#), seeks to ensure organizations receiving federal grants use the funds in compliance with the federal government's requirements. The SBA's PPP guidance so far has been silent about the question of audits; and mainly has allowed lenders to rely on certification by, and financial information from, borrowers, without requiring the lenders to do significant examination or independent underwriting or verification.

**Q16: I've read a lot about scrutiny of PPP loans by the government and that seems to have led some borrowers to return funds. Why is that?**

**A16:** The PPP attracted scrutiny from lawmakers and the media related to loan recipients that were not necessarily intended to be beneficiaries of the program (e.g., some large national restaurant chains and some publicly traded companies). As a result, in late April Treasury FAQ #31 clarified for lenders that a borrower must make a required certification—i.e., that the "[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the [a]pplicant"—in good faith, which must take into account the borrower's current business activity and its ability to access other sources of liquidity sufficient to support its ongoing operations in a manner that is not significantly detrimental to its business.

Shortly thereafter, Treasury added Treasury FAQ #37 and issued [regulatory guidance creating a safe harbor](#) for return of PPP funds. For borrowers that determine, in retrospect, that their loans may not have been necessary, the SBA and Treasury would allow such borrowers to return loan funds on or before **May 7, 2020**. Treasury has subsequently extended the deadline on two different occasions, with the current safe harbor being **May 18, 2020**. The SBA and Treasury will deem borrowers that return funds **by May 18, 2020**, to have made the certification regarding need in good faith. This safe harbor provided borrowers with an opportunity to further evaluate their circumstances and bases for eligibility. It is up to each borrower to determine the need for the loan based on its facts and circumstances and any current economic uncertainty.

**Q17: Will the government review borrowers' PPP loans?**

**A17:** In some cases, yes. In Treasury FAQ #39, SBA stated that Treasury and SBA will review all PPP loans in excess of \$2 million, in addition to some other loans as appropriate, following the lender's submission of the borrower's loan forgiveness application. Treasury and SBA have issued further guidance about

this review process. According to the Loan Review Rule, the “SBA may review any PPP loan, as the Administrator deems appropriate.” The SBA may review (i) whether a borrower is eligible under PPP, (ii) whether the borrower calculated the loan amount correctly and spent the proceeds on allowable costs, and (iii) whether the borrower is entitled to forgiveness. The Loan Review Rule states the SBA may review a loan of any size if the information submitted by the lender (e.g., the bank or credit union) indicates the borrower may be ineligible, or that the borrower might not be eligible for the loan amount or forgiveness request.

If the SBA determines a borrower may be ineligible for a PPP loan, the loan amount or requested forgiveness amount, then the SBA will require the lender to obtain additional information from the borrower. The SBA will consider all additional information provided by a borrower in response to the SBA’s inquiry. Failure to respond to the SBA’s inquiry may result in a determination of ineligibility by the SBA.

**Q18: How will we know if our PPP loan will be reviewed by the SBA?**

**A18:** Under the Loan Review Rule, the SBA will notify the lender if the SBA will review a loan. The lender must notify the borrower within five business days of notice of review from the SBA. The lender must then send the SBA a copy of the initial loan application, the loan forgiveness application, and all supporting documentation within five business days. The SBA may undertake a review at any time, at the SBA’s discretion. As explained below in Q&A20, borrowers should retain all documentation related to PPP loans for six years after the loan is fully forgiven or repaid.

**Q19: What happens if the SBA determines we are ineligible for our PPP loan or for the requested forgiveness amount?**

**A19:** According to the Loan Review Rule, if the SBA determines a borrower is ineligible to receive a PPP loan, the SBA will direct the lender to deny the loan forgiveness application. If the SBA determines the borrower is ineligible for the loan amount or the requested loan forgiveness amount, the SBA will direct the lender to deny the loan forgiveness application, in whole or in part. The SBA may also seek repayment of the outstanding PPP loan balance or pursue other available remedies. The Loan Review Rule does not specify what those “remedies” may be. Moreover, the SBA intends to issue a separate rule establishing a process for borrowers to appeal ineligibility determinations.

**Q20: What sort of records should we keep in case our loan is reviewed by the SBA or we later need to undergo an audit?**

**A20:** The Forgiveness Application instructions state the borrower must retain PPP documentation in its files for **six years after the date the loan is forgiven or repaid in full** and must permit authorized representatives of the SBA, including representatives of its Office of Inspector General, to access such files on request.

**Q21: Is there guidance about good faith certification of need for a PPP loan?**

**A21:** On **May 13**, Treasury added FAQ #46, which clarified how the SBA and Treasury will assess borrowers’ certifications. *All recipients of PPP loans of less than \$2 million are deemed to have made their certification in good faith.* As noted in Treasury FAQ #37, all loans over \$2 million will be reviewed (note that the SBA retains the right to review loans under \$2 million, too). Importantly, borrowers with loans larger than \$2 million 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. However, if the SBA determines through its review process that the borrower's need was not adequately justified, it appears the SBA may deny forgiveness of the loan and seek repayment of the loan balance. If the borrower repays the loan after such review and request, it appears the SBA will not pursue other enforcement actions.

**Q22: How should a UMC borrower account for a PPP loan?**

**A22:** Neither the Forgiveness Rule nor the Loan Review Rule specify how borrowers should account for the loans during the forgiveness review period. Borrowers should consult with accountants or other similar financial advisers on this matter until the SBA or Treasury issues further guidance.

**MORE INFORMATION**

Additional information about PPP loans for local churches and other UMC organizations is available online:

- PPP Loan [Application Form and UMC Guidance](#)
- [Guidance for United Methodist Borrowers on the PPP Loan Forgiveness Application](#)
- [CARES Act summary](#) (see pp. 11-13 for PPP info)

Wespath and GCFA continue to closely monitor developments related to COVID-19. Please check these webpages for periodic updates:

- [General Council on Finance and Administration](#)
- [Wespath Benefits and Investments](#)

***The information above should not be considered legal or tax advice. Plan participants, annual conferences, local churches, or other employers or parties affiliated with The United Methodist Church (UMC) should consult with counsel in considering the application of the CARES Act to their circumstances.***

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