GUIDANCE FOR UNITED METHODIST BORROWERS ON THE PAYCHECK PROTECTION PROGRAM LOAN FORGIVENESS APPLICATION[1]

June 3, 2020—Updated June 4, 2020

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.

Specific to PPP loan forgiveness, H.R. 7010 would:

- Lengthen 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;
- Lower the percentage of PPP proceeds that must be used for payroll costs from 75% to 60%; and
- Provide more flexibility for employers who are not able to rehire employees because of the lingering effects of COVID-19.

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). Before completing a forgiveness application, *which will almost certainly be revised if H.R. 7010 becomes law*, borrowers might benefit from awaiting additional guidance from the SBA.

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

Guidance on PPP Loan Forgiveness Application

Unlike the model loan application published by the Small Business Administration ("SBA"), the Paycheck Protection Program Loan Forgiveness Application ("Application"), issued pursuant to the Coronavirus Aid, Relief and Economic Security Act (CARES Act), includes extensive instructions on how it is to be completed. The below guidance is **not** meant to be a substitute for those instructions, or its associated regulations: the Interim Final Rules on Requirements – Loan Forgiveness ("Forgiveness IFR") and SBA Loan Review Procedures and Related Borrower and Lender Responsibilities ("Loan Review IFR"). Instead, it is intended to serve as supplementary

[1] All references in these guidelines are to the Paycheck Protection Program Loan Forgiveness Application posted on the SBA website as of June 2. Your lender may create its own equivalent of the Application.

information to assist United Methodist borrowers when filling out the Application, and thus will only address certain sections/topics.

Per the Forgiveness IFR, the Application must be completed and submitted to your lender, who will have a maximum of 60 days to review it and determine if you are entitled to forgiveness. If your lender subsequently requests payment of the forgivable amount from the SBA, the SBA may conduct its own review of the loan. Your lender will ultimately notify you of the amount determined to be forgivable.

> **NOTE:** This general process from the Forgiveness IFR does **not** apply to forgiveness applications associated with loans that have been reviewed by the SBA **prior to** your lender's decision on the forgivable amount. Those reviews are governed by the Loan Review IFR, and more general information on that process is available in previously posted FAQs (UMC PPP FAQs), which are updated from time to time.

The below guidance is organized to follow the order of items in the Application. However, *we strongly encourage United Methodist borrowers to review the full Application before starting to complete it,* as they will need to first complete the PPP Schedule A Worksheet, even though it is printed later in the Application.

Loan Forgiveness Calculation Form and Instructions (Pages 1-4)

Employees at Time of Loan Application. Elsewhere in the Application, full-time equivalency ("FTE")[2] must be calculated. Here, it seems to be asking for a simple headcount, which would include both full-time and part-time employees as of the date the *loan* application was signed. Because, as explained below, we believe amounts paid to clergy staff members are includable in Payroll Costs, they should be included in this count.

Employees at Time of Forgiveness Application. This should be the total full-time and part-time employees (including clergy staff members) as of the date this Application is signed.

Covered Period and Alternative Payroll Covered Period. The Covered Period begins on the date the loan was disbursed—if unknown, the date should be readily available from the lender—and ends at the conclusion of eight weeks (56 days). Use of the Alternative Payroll Covered Period is **only** available to borrowers who process payroll **at least as frequently as every two weeks**. This option allows those borrowers—but **not** those with semi-monthly or monthly payroll periods—to avoid having to prorate one or more payroll periods because they do not exactly line up with the eight weeks of the Covered Period.

While some borrowers will prefer to calculate and use the Alternative Payroll Covered Period, all borrowers will need to know the dates of the Covered Period. As the instructions indicate, even borrowers using the alternative option must apply the standard Covered Period in certain

[2] The Forgiveness IFR defines "full-time equivalent employee" as one that "works 40 hours or more, on average, each week."

situations. The following table illustrates which date range **must** be used in specific instances by borrowers **who have elected to use the Alternative Payroll Covered Period**:[3]

Section/Line	Covered Period	Alternative Payroll Covered Period
Page 3, Lines 2-4	X	
Page 6, Lines 1-9		X
Page 9, Table 1		X
Page 9, Table 2		X

<u>If Borrower (together with affiliates, if applicable) received PPP loans in excess of $2 million</u>. Whether or not this box must be checked is based on the **original** amount of the loan received. Thus, a borrower that received a loan of $2.5 million and then later returned $750,000 prior to submitting the Application would still need to check this box.

This item is likely included in the Application because of question and answer #39 of the SBA's FAQ for Lenders and Borrowers, which states loans in excess of $2 million will be reviewed when the borrower's loan forgiveness application is received.

<u>Line 1 – Payroll Costs</u>.

"Payroll Costs" **include**:

- Salaries, wages, commissions, or similar compensation;
- Payment of cash tips or equivalents;
- Vacation, parental, family medical, or sick leave;
- Severance payments;
- Health care benefits, including insurance premiums;
- Retirement benefits; and
- State or local tax assessed on said compensation.

Payroll Costs do **not** include:

- The employer's share of FICA;[4]
- Compensation in excess of an annual salary of $100,000 paid to any employee;
  - **<u>NOTE</u>**: The instructions state this cap on per employee compensation must be prorated for the Covered Period. **Thus, no more than $15,385[5] in compensation should be included for any individual employee.**
- Compensation of any employee whose principal residence is outside the US; or
- Qualified sick and family leave wages covered by tax credits under the Families First Coronavirus Response Act (FFCRA).

[3] Borrowers that do not use the Alternative Payroll Covered Period will simply use the dates of the Covered Period in each instance.
[4] See question 16 in the SBA's FAQ for Lenders and Borrowers for additional guidance and examples.
[5] $15,385 = $100,000 annual limit ÷ 52 weeks x 8 weeks

Clergy Salary. Our view is that salary paid to clergy staff members should be included in Payroll Costs, as such clergy are treated as employees for income tax purposes and are issued a Form W-2 to report their compensation. This distinguishes them from "independent contractors" which, according to SBA guidance, are issued *Forms 1099-MISC* to report their compensation and are not to be treated by loan applicants as employees (because the independent contractors themselves may apply for a PPP loan). Clergy staff members are unlikely to be treated as independent contractors and be eligible for a PPP loan if they were to apply. These differences from independent contractors or other self-employed individuals may be unknown to banks and their employees. If a bank states the salary a local church pays to its pastor cannot be included in Payroll Costs, explaining that clergy staff members are treated as self-employed **only** for Social Security and Medicare purposes might help get a different answer from the bank.

Clergy Housing Allowance. Our view is the housing allowance paid to a clergy staff member is appropriately included when calculating Payroll Costs. A housing allowance paid to a clergy staff member is part of his or her compensation. This portion of the compensation happens to be designated as a housing allowance for purposes of income tax exclusion, but it remains part of the clergy staff member's compensation. Other items that are exempt from income taxation, such as group health plan premiums and pre-tax elective deferrals to retirement plans, are included in Payroll Costs. That a housing allowance is potentially nontaxable would thus not appear to automatically exclude it from the scope of Payroll Costs. The SBA's FAQ for Lenders and Borrowers states "the cost of a housing stipend or allowance provided to an employee as part of compensation" is included in the definition of Payroll Costs. Before that answer was added to the FAQ, 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 regulations. 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 FAQ does not include such a limitation. If a United Methodist borrower is able to include the amount of a housing allowance in its calculation of Payroll Costs, it is important to remember that the inclusion of the combined salary and housing allowance paid to a single clergy staff person would be subject to the $100,000 limit. **Note that the rental value of an in-kind parsonage or church-paid utilities should not be considered Payroll Costs.**

Costs of Other Benefits. It appears that other employer-provided benefits, such as death and disability benefits under the UMC's Comprehensive Protection Plan (CPP) for clergy or UMLifeOptions for lay employees, are **not** included in Payroll Costs.

Payments to Furloughed Employees. The Forgiveness IFR states the calculation of Payroll Costs may include those paid and incurred during the Covered Period or Alternative Payroll Covered Period that are associated with furloughed employees.

Bonuses and Hazard Pay. The Forgiveness IFR also states the calculation of Payroll Costs may include any bonuses or hazard pay paid or incurred during the Covered Period or Alternative Payroll Covered Period, as long as the employee's total compensation does not exceed $100,000 annually.

Paid vs. Incurred. The instructions state Payroll Costs “incurred or paid” are to be included. The use of “incurred” is important to allow borrowers to maximize the amount that can be forgiven. **However, in order to be included in the calculation, incurred Payroll Costs must actually be paid “on or before the next regular payroll date.”**

> **EXAMPLE**: Local Church pays its employees semi-monthly, on the 15th and last day of each month. Local Church’s Covered Period is April 29 to June 23.[6] Local Church paid its employees four times during that span—on April 30, May 15, May 31, and June 15. All Payroll Costs associated with those pay dates should be included when determining the amount to report on Line 1. In addition, Local Church *incurred* at least eight additional days of Payroll Costs that were not paid during the Covered Period—*i.e.*, the amounts earned by Local Church’s employees from June 16 through June 23. As long as Local Church pays those incurred costs by the next regular payroll date (June 30), those amounts should also be included in determining the amount to report on Line 1.[7]

Prepayments. The SBA has not provided specific guidance about any “prepaying” of Payroll Costs, but the Application makes it clear in other areas, such as mortgage interest, that prepayments are prohibited. Unless and until the SBA explicitly states such prepayments are acceptable, caution should be exercised in this area.

<u>Line 2 – Business Mortgage Interest Payments</u>. Note that this is limited to interest payments only, and any prepayment is explicitly excluded from the allowable amount.

<u>Line 4 – Business Utility Payments</u>. The instructions indicate the SBA has determined “utilities” is limited to costs for electric, gas, water, telephone, internet access, and transportation.

Costs Paid vs. Incurred for Lines 2-4

The instructions state costs associated with these lines can be forgiven if incurred during the Covered Period, as long as they are paid by the next billing date. The Forgiveness IFR provides this helpful example:

> *A borrower’s covered period begins on June 1 and ends on July 26. The borrower pays its May and June electricity bill during the covered period and pays its July electricity bill on August 10, which is the next regular billing date. The borrower may seek loan forgiveness for its May and June electricity bills, because they were paid during the covered period. In addition, the borrower may seek loan forgiveness for the portion of its July electricity bill through July 26 (the end of the covered period), because it was incurred during the covered period and paid on the next regular billing date.*

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[6] Local Church does not have the option to use the Alternative Payroll Covered Period because its payroll period is less frequent than bi-weekly.

[7] This example assumes Local Church pays it employees **in arrears**. An example of an incurred cost that might not be paid by the next regular payroll period is a bonus that is paid only on an annual basis, and at the end of the year.

<u>Schedule A and Instructions (Pages 5-6)</u>

<u>Line 7 – Total amount paid by Borrower for employer contributions to employee retirement plans</u>. The instructions state this amount should **not** include pre-tax or after-tax contributions by employees. This avoids double counting of these amounts, as they are already included in Line 1 of Schedule A, as part of Cash Compensation.

<u>Line 9 – Total amount paid to owner-employees/self-employed individual/general partners</u>. The regulations relating to this line should not be applicable to United Methodist borrowers.

<u>Line 11 – Average FTE during the Borrower's chosen reference period</u>. The instructions for the Worksheet to Schedule A set forth a method for calculating FTE, as follows:

> *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.*

For this Line 11, that calculation method must be applied to one of the specified "reference periods." Most United Methodist borrowers will have to use a reference period of either February 15, 2019 to June 30, 2019 or January 1, 2020 to February 29, 2020. Any that are seasonal employers have a third available option—"a consecutive twelve-week period between May 1, 2019 and September 15, 2019." To maximize its loan forgiveness amount, the reference period that minimizes any change in the number of FTEs should be used.

<u>Instructions for PPP Schedule A Worksheet (Pages 7-8)</u>

<u>Employee Name</u>. Because, as explained above and in the <u>Guidance For United Methodist Local Churches On The Paycheck Protection Program Borrower Application Form</u> ("UMC PPP Guidance Tool"), we believe amounts paid to clergy staff members are includable in Payroll Costs, and they should be listed as employees in this Application.

<u>Cash Compensation</u>. Because, as explained above and in the <u>UMC PPP Guidance Tool</u>, our view is a housing allowance provided to a clergy staff member is includable in Payroll Costs, such amount should be included here. However, the rental value of an in-kind parsonage or church-paid utilities should **not** be included.

<u>Average FTE</u>. The local church will need to calculate average full-time employees during its Covered Period or Alternative Payroll Covered Period by following the instructions.

> **EXAMPLE:** Local Church has three employees. Its pastor worked 40 hours per week, and its administrator worked 37.5 hours per week, during the applicable eight-week period. Its janitor worked the following schedule during that time: 10 hours per week for three weeks, 5 hours per week for two weeks, and 8 hours per week for three weeks. Local Church's Average FTE would be 2.1, if it used the

calculation method in the instructions.[8] However, Local Church would also have the option to use the "simplified method" from the instructions, which would produce an Average FTE of 2.0.[9]

United Methodist borrowers should use the calculation method that results in the **higher** Average FTE, thus minimizing the impact on the forgivable amount.

<u>Salary/Hourly Wage Reduction</u>. This is another basis upon which the forgivable amount could be reduced. United Methodist borrowers should simply work through the calculations presented here to determine the amount of any reduction, or whether the safe harbor will apply.

<u>Documents that Each Borrower Must Submit with its PPP Loan Forgiveness Application (Page 10)</u>

<u>Payroll</u>.

Item b.i. A local church that is not required to file a *Form 941* because its only employee is its pastor (who has not elected to do voluntary withholding) will need to provide some other record of salary paid to the pastor.[10] For United Methodist borrowers that do file *Form 941*, it is typically filed quarterly, so it may be easier to wait until after *Form 941* has been filed at the end of a quarter (e.g., after June 30) to apply for forgiveness and provide documentation.

Item c. As noted above, borrowers' contributions to retirement plans and employer-provided group health or health insurance plans are counted in Payroll Costs. Wespath will work with borrowers that are plan sponsors of such plans through Wespath[11] to provide documentation of employer contributions made to those plans. Local churches are **not** the plan sponsors of the Clergy Retirement Security Program ("CRSP") and thus will need to work with their annual conferences to document contributions to those plans, as well as for any other plans where the annual conference has been set up as the program sponsor, rather than the local church.[12]

Wespath will work with annual conferences to accept defined benefit contributions to CRSP earlier than the end of the year for certain clergy (e.g., clergy included in annual conference

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[8] The average hours worked during the eight-week period must be calculated for each employee and then divided by 40 (rounded to the nearest tenth). Calculations for the pastor (40 hours averaged per week ÷ 40 = 1) and administrator (37.5 ÷ 40 = .9375 = .9 after rounding) are straightforward, while the janitor's is a bit more complicated. The janitor averaged 8 hours worked per week – [(10x3) + (5x2) + (8x3)] ÷ 8 = [30 + 10+ 24] ÷ 8 = 64 ÷ 8 = 8—which results in a final calculation of .2 (8 ÷ 40). Thus, Local Church's total Average FTE in Box 2 of Table 1 on the PPP Schedule A Worksheet would be 2.1 (1.0 + .9 +.2).

[9] The administrator and janitor would count as .5 because they worked less than 40 hours per week, while the pastor, who worked at least 40 hours each week, would count as 1.0.

[10] Such alternative documentation could be a charge conference compensation sheet, supported by bank statements showing EFT or ACH drafts for payroll, paycheck stubs, or cancelled church bank account checks. United Methodist borrowers should work with their lenders to determine what alternative forms of documentation will be deemed acceptable.

[11] These plans include certain retirement plans—United Methodist Personal Investment Plan (UMPIP), Horizon 401(k) Plan, defined contribution and defined benefit components of the Clergy Retirement Security Program, and the Retirement Plan for General Agencies—and the group health plan called HealthFlex.

[12] Such other plans may include UMPIP, and health plans for clergy and lay employees. If a local church is unsure of whether it is the plan sponsor for any particular employee benefit plan, it should contact the annual conference office.

payroll such as district superintendents, directors of connectional ministry, and other clergy). This may assist plan sponsors in using PPP funds for forgivable Payroll Costs during the Covered Period. Wespath will provide confirmation and related information for such contributions to assist plan sponsors who are PPP borrowers in supplying their lender with documentation related to the Application.

Also, as explained in earlier UMC PPP FAQs, Wespath will work with annual conferences wishing to pay a portion of the HealthFlex premiums during their Covered Periods while the annual conference benefits from the HealthFlex premium deferral period. Annual conferences that wish to pay HealthFlex premiums as Payroll Costs for certain covered lives to whom the PPP loan relates (such as conference office staff and clergy on conference payroll) while simultaneously deferring premiums related to other annual conferences covered lives (such as clergy and lay staff at local churches) 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 for loan forgiveness purposes.

As noted above, under the Forgiveness IFR, Payroll Costs may include incurred costs, like premium or contribution obligations to employee health and retirement plans incurred during the Covered Period but not yet paid, **but only if the incurred costs are actually paid "on or before the next regular payroll date."**

> *As administrator and recordkeeper for the UMC retirement plans and HealthFlex, Wespath cannot 1) determine what costs or what portions of employee benefit plan contributions are forgivable payroll costs under the PPP, nor 2) represent that any particular amounts are forgivable.*

FTE. Some local churches might not file *Form 941*, and many United Methodist borrowers do not submit state quarterly business reports or unemployment tax filings. Such borrowers will need to provide alternative payroll records.[13]

Nonpayroll. United Methodist borrowers may need to contact their mortgage lender or landlord for evidence of mortgage interest or rent costs and evidence that the obligation (mortgage or lease) was in existence before February 15, 2020. Similarly, United Methodist borrowers may need to contact utility providers for documentation of utility costs, if such documentation—such as cancelled checks or bank statements showing EFT or ACH payments—is not already available.

Documents that Each Borrower Must Maintain but is Not Required to Submit (Page 10)

PPP Schedule A Worksheet. The borrower must complete the PPP Schedule A Worksheet (page 9 of the Application) with detailed information about all employees. However, it appears the PPP

[13] Such alternative documentation could be a charge conference compensation sheet, supported by bank statements showing EFT or ACH drafts for payroll, paycheck stubs, or cancelled church bank account checks. United Methodist borrowers should work with their lenders to determine what alternative forms of documentation will be deemed acceptable.

Schedule A Worksheet does not have to be submitted to its lender or the SBA, though the lender or SBA has the right to, and may ask for, such documentation under some review process.

It is important that PPP Schedule A Worksheet is completed accurately and is retained, along with any and all documents that support or evidence the information used to complete it.

Document Retention. In addition, United Methodist borrowers should retain, in the same file supporting the PPP loan and forgiveness applications, records of certification of need for the PPP loan (more information on the certification of need is available in the UMC PPP FAQs) and compliance with the terms of the PPP. **All of these records must be retained for six years after the loan is forgiven or repaid, because they may be reviewed at any time by the SBA upon request.**

Even though the SBA stated in its FAQs for Lenders and Borrowers that it would review loans greater than $2 million, in the Loan Review IFR, the SBA states plainly: **"For a PPP Loan of any size, SBA may undertake a review at any time in the SBA's discretion."**

PPP Borrower Demographic Information Form (Optional) (Page 11)

This form might assist the SBA in determining the reach of the PPP program to underserved communities. **This form is completely optional**. If a United Methodist borrower completes and submits the form, it may need to determine its "Principal." The form indicates for nonprofits the Principal is "the officers and directors of the Borrower." For a local church or charge conference, the Principal might be an authorized, named officer under the church's or charge's governing documents; otherwise, the Principal could be the chair of the board of trustees, chair of the church council, chair of the committee on finance, or the lead pastor.

The information above should not be considered legal or tax advice. Local churches or other UMC employers should consult with counsel in considering the application of the rules and regulations regarding PPP loans to their circumstances.