

Delaware Coronavirus Tracker: Reopening; PPP Update; Forbearance Program; W-2 Scam Tips – 6.11.20

PPP Update

<https://home.treasury.gov/system/files/136/PPP-IFR-Revisions-to-First-Interim-Final-Rule.pdf>

The New Interim Final Rule #17 was published this morning along with the attached revised lender application and a revised borrower application found at

<https://home.treasury.gov/system/files/136/PPP-Borrower-Application-Form-Revised-June-2020.pdf>.

These materials provide little in the way of new information but do include a couple of clarifications that borrowers may find helpful—specifically providing that the new “60% Rule” for loan use and forgiveness results in proportionate reductions to loan forgiveness, and not a “cliff” (i.e., a barrier to any loan forgiveness). The clarification keeps hope alive that interest on PPP loans may be subject to forgiveness.

Key Takeaways from the Latest SBA Guidance

- The “covered period” governing loan use, loan eligibility, and related requirements refers to the period beginning on February 15, 2020 and ending on December 31, 2020, rather than ending on June 30, 2020. Importantly, this change eliminates any potential concern about borrowers being required to spend their PPP loans by June 30, 2020 to comply with the use requirements of PPP loans. No additional loan amounts are being provided to correspond to the expanded “use” period.
- The maturity for PPP loans provided on or after June 5, 2020 is extended from two years to five years. For earlier PPP loans, there is no automatic change to the maturity of the loan. Instead, lenders *may* agree to extend the maturity to five years, but are not required to do so. No criteria were provided by the SBA for lenders to apply in determining whether to agree to extend the maturity of loans originated before June 5, 2020.
- The term of PPP loans should be measured from the date the SBA assigned a loan number to the PPP loan, not the date on which the borrower actually received funding. However, the “covered period” still commences on the date of funding.
- The deferral on principal and interest payments on PPP loans was extended from six months to the date on which the SBA remits the loan forgiveness amount to the borrower’s lender (or notifies the lender that no forgiveness is allowed), as long as the borrower applies for loan forgiveness within 10 months after the end of their loan forgiveness covered period. If the borrower does not apply for forgiveness within 10 months after the end of their loan forgiveness covered period, then they must begin payments of principal and interest on or after the last day of that 10-month period.
- The loan forgiveness “covered period” was extended from eight weeks to 24 weeks (but in any event, ending no later than December 31, 2020). Borrowers who received their PPP loan before June 5, 2020 have the option to elect to use their original eight-week “covered period” rather than the extended 24-week period. This may be important for borrowers who need to make headcount reductions or salary or wage reductions after their initial eight-week period, but do not want their loan forgiveness to be reduced. The safe harbor regarding the restoration of full-time equivalent employees (“FTEs”) and salaries or wages is now defined by reference to the period ending December 31, 2020. It is unclear whether borrowers who choose the original eight week “covered period” will still be entitled to rely on the June 30, 2020 safe harbor for restoring FTEs and salaries or wages.

- The Paycheck Protection Program Flexibility Act of 2020 (“PPPFA”) changed a requirement that the SBA had announced in its first interim final rule that borrowers spend at least 75% of their loan proceeds on payroll costs. The PPPFA has lowered this threshold to 60%. The PPPFA also altered both the “use” requirement and the “forgiveness” requirements, although it appeared to use a “cliff” approach for forgiveness by providing that borrowers must spend at least 60% of their loan on payroll costs to qualify for forgiveness. The potential implication of this was that no forgiveness would be available if this threshold was not met. Interim final rule #17 and the new PPP loan application form clarify that the 60% test does not trigger an all-or-nothing outcome on loan forgiveness; instead, there would be a proportionate reduction in loan forgiveness if the 60% test is not satisfied. The clarification is important for borrowers who are already well into (or past) their original “covered period” for spending their PPP loan and qualifying for loan forgiveness. In making business decisions on how to spend PPP loan proceeds, such borrowers may have relied on the proportional reduction to forgiveness that was contemplated in the SBA’s initial interim final rule.
- There has been inconsistent guidance as to whether interest on a PPP loan would be eligible for forgiveness. Although it does not address this topic directly, interim final rule #17 reiterates language from the SBA’s initial interim final rule that refers to the forgiveness of interest. Additional clarification on this point may come when the SBA updates its loan forgiveness application form to address the changes required by the PPPFA.
- Interim final rule #17 and the new PPP loan application form include updated borrower certifications as to the 24-week “covered period” that applies for all PPP loan borrowers who obtain their loans on or after June 5, 2020. In addition, it provides updated certifications referring to the updated 60% requirement for loan use and forgiveness. The new PPP loan application form also refers to the ability for seasonal businesses to use historic average monthly payroll costs based on any 12-week period between May 1, 2019 and September 15, 2019. This updated form does not impact borrowers who have already obtained their PPP loan.

Although the new SBA guidance may leave many questions still unanswered, this guidance is focused only on updates to the SBA’s initial interim final rule. Interim final rule #17 promises that there will be additional guidance regarding loan forgiveness and the SBA’s loan review procedures to address other recent statutory amendments.

Finally, the SBA is very aware of the disconnect with the recording the ACH info via e-Tran once recorded by the lender via the Dashboard Cares Act tab for Section 1102 (Lender Processing Fee). In addition, the main office of the SBA is working on the problem for all ACH account information provided to date that is currently not recorded via e-Tran and expects a resolution later this week.

Yesterday’s U.S. Senate Small Business Committee hearing featured a discussion about these documents and may be found at:

<https://www.sbc.senate.gov/public/index.cfm/hearings?ID=C0E44E40-CC47-469C-9404-BE3EB4020AA0>

In addition, there was also a hearing in the U.S. House Small Business Committee about Economic Injury Disaster Loans and that may be found at:

<https://www.youtube.com/watch?v=KxsEpEQWEKq&feature=youtu.be>

Mortgage Forbearance

The Association is pleased to host a panel discussion on **Mortgage Insurance: Loss Mitigation and Claims during COVID-19, focusing on: the industry challenges on loss mitigation issues including forbearance, loan modifications, and payment deferral** on Friday, April 12, at 11:00 am using a webinar format with a telephone call-in option. To register or to send questions in advance, please send your name, title, and contact information to complianceconnection@ccua.org. An agenda and meeting materials will be forwarded to all registered attendees upon registration.

Coronavirus W-2 Scam Tips

With just over one month before the extended tax deadline arrives, cyber-criminals will likely continue to attempt W-2-based business email compromises in hopes that hurried and distracted employees will unwittingly deliver W-2s without much hesitation. To date, cyber-criminals engaged in an assortment of clever phishing attacks, from emails with hyperlinks disguised as Center for Disease Control (CDC) guidance, to text messages offering purported COVID-19 cures.

What Does a W-2-based Business Email Compromise Look Like?

In a W-2 scam, cyber-criminals typically impersonate an executive of the credit union and make an urgent request via email, such as asking for all employee W-2 forms or other tax-related documents containing employee personal information.

Because W-2s contain social security numbers and other personal information, as well as wages, withheld taxes, and other data, cyber-criminals can either submit a false tax refund in an employee's name, or they might sell this valuable information to identity thieves on the dark web. Either scenario presents financial and reputational risks for credit unions who fall victim to a W-2 scam.

How Can Credit Unions Protect Against a W-2 Scam?

The transition to remote working made in response to the pandemic has elevated the challenge for spotting fake emails or other social engineering types of attacks, which often rely on confusion or misdirection. Below are five tips credit unions should consider to address the rebirth of W-2 scams, particularly if employees are working remotely.

1. **Verify the Request By Phone or Secure Communication.** Even if employees are working remotely, verifying the request is one of the basic and most reliable ways to protect against W-2 scams. Recipients can either call the requesting person to ask if he or she meant to request all employee W-2s, or they can also use a secure communication platform to speak with the requesting person.
2. **Deploy Domain Message Authentication Reporting and Conformance ("DMARC") Authentication.** DMARC authentication is an email protocol that helps prevent cyber-criminals from spoofing a credit union's domain. This authentication method typically provides reports that analyze all systems used to send email from a credit union's domain and identify which emails are legitimate. Based on these reports, a credit union can reconfigure email settings to recognize those emails flagged as illegitimate. DMARC authentication also screens emails based on reconfigured settings and automatically rejects emails that do not conform to the settings so that employees never see the illegitimate email.
3. **Revisit Data Loss Prevention Policies and Mechanisms.** Credit unions may already have in place Data Loss Prevention ("DLP") policies and mechanisms that govern what data can be sent via email. DLP policies impose conditions on shareable content and implement actions that automatically apply to certain information or locations. By properly configuring a credit union's DLP policy, an employee can be prevented from sending an email that contains sensitive financial data or otherwise personally identifiable information. For example, in Microsoft Office 365, DLP policies can be adjusted to identify this information across several locations, such as

Exchange, SharePoint, OneDrive, and Microsoft Teams. DLP policies can also send automatic email notifications and policy tips to train employees who attempted to violate the policy.

4. **Simulated W-2 Scams.** In-person training may not be feasible for many employees right now, but that does not mean that a credit union cannot monitor how employees respond to suspicious emails. Consider using simulated W-2 attacks to identify employees who consistently respond to emails from spoofed domains or to emails that contain awkward phrasing or poor grammar (both of which are hallmarks of W-2 scams). One approach is to send "test" emails to employees from our security professionals posing as executives requesting urgent assistance with a project.
5. **Ensure Employee Accounts and Devices are Protected.** Employee credentials are at increased risk of theft in remote working environments, and a W-2 business email compromise is even more effective if the request comes from an employee's actual email address and not a spoofed domain from an imposter. For many, shifting to a remote working environment pulls them out from under the protection of in-office network and device protection. Consider surveying employees to determine who is connected to a credit union's Virtual Private Network (VPN). Also consider providing training for securing home networks, such as changing default Wi-Fi passwords and router passwords and disabling Remote Administration Access to routers, by videoconference, so that visual learners are able to watch another professional walk them through basic security measures. Finally, revisit any password policies currently in place. If a credit union does not have a password policy, then the National Institute of Standards and Technology (NIST) password guidelines offer guidance for securing passwords or contact the Association.



Paycheck Protection Program
Lender's Application - Paycheck Protection Program Loan Guaranty
Revised June 2020

OMB Control No.: 3245-0407
 Expiration Date: 10/31/2020

The purpose of this form is to collect identifying information about the Lender, the Applicant, the loan guaranty request, sources and uses of funds, the proposed structure (which includes pricing and the loan term), and compliance with SBA Loan Program Requirements. This form reflects the data fields that will be collected electronically from lenders; no paper version of this form is required or permitted to be submitted. As used in this application, "Paycheck Protection Program Rule" refers to the rules in effect at the time you submit this application that have been issued by the Small Business Administration (SBA) implementing the Paycheck Protection Program under Division A, Title I of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act).

Instructions for Lenders

All Paycheck Protection Program (PPP) loans are processed by all Lenders under delegated authority from SBA. This application must be submitted and signed electronically in accordance with program requirements, and the information requested is to be retained in the Lender's loan file.

A. Lender Information	
Lender Name: _____	Lender Location ID: _____
Address: _____	City: _____ St: _____ Zip: _____
Lender Contact: _____	Ph: () - _____ Cell or Ext: () - _____
Contact Email: _____	Title: _____

B. Applicant Information	
Applicant	Check One: <input type="checkbox"/> Sole Proprietor <input type="checkbox"/> Partnership <input type="checkbox"/> C-Corp <input type="checkbox"/> S-Corp <input type="checkbox"/> LLC <input type="checkbox"/> Independent contractor <input type="checkbox"/> Eligible self-employed individual <input type="checkbox"/> 501(c)(3) nonprofit <input type="checkbox"/> 501(c)(19) veterans organization <input type="checkbox"/> Tribal business (sec. 31(b)(2)(C) of Small Business Act) <input type="checkbox"/> Other
	Applicant Legal Name: _____
	DBA: _____ Business Tax ID: _____
	Applicant Address: _____ City, State, Zip: _____
	Applicant Primary Contact: _____ Phone: () - _____

C. Loan Structure Information							
Amount of Loan Request:	\$	Guarantee %:	100%	Loan Term in # of Months:	60	Payment:	Deferred
Applicant must provide documentation to Lender supporting how the loan amount was calculated in accordance with the Paycheck Protection Program Rule and the CARES Act, and Lender must retain all such supporting documentation in Lender's file.							
Interest Rate:	1%						

D. Loan Amount Information	
Average Monthly Payroll multiplied by 2.5	\$
Refinance of Eligible Economic Injury Disaster Loan, net of Advance (if applicable; see Paycheck Protection Program Rule)	\$
Total	\$

E. General Eligibility <i>(If the answer is no to either, the loan cannot be approved)</i>	
<ul style="list-style-type: none"> • The Applicant has certified to the Lender that (1) it was in operation on February 15, 2020 and had employees for whom the Applicant paid salaries and payroll taxes or paid independent contractors, as reported on Form(s) 1099-MISC, (2) current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant, (3) the funds will be used to retain workers and maintain payroll or make mortgage interest payments, lease payments, and utility payments, and (4) the Applicant has not received another Paycheck Protection Program loan. ☐ Yes ☐ No • The Applicant has certified to the Lender that it (1) is an independent contractor, eligible self-employed individual, or sole proprietor or (2) employs no more than the greater of 500 employees or, if applicable, meets the size standard in number of employees established by the SBA in 13 C.F.R. 121.201 for the Applicant's industry. ☐ Yes ☐ No 	

F. Applicant Certification of Eligibility <i>(If not true, the loan cannot be approved)</i>	
<ul style="list-style-type: none"> • The Applicant has certified to the Lender that the Applicant is eligible under the Paycheck Protection Program Rule. ☐ True 	

G. Franchise/License/Jobber/Membership or Similar Agreement <i>(If applicable and no, the loan cannot be approved)</i>	
<ul style="list-style-type: none"> • The Applicant has represented to the Lender that is is a franchise that is listed in SBA's Franchise Directory. ☐ Yes ☐ No 	

H. Character Determination <i>(If no, the loan cannot be approved)</i>	
<ul style="list-style-type: none"> The Applicant has represented to the Lender that neither the Applicant (if an individual) nor any individual owning 20% or more of the equity of the Applicant is subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction, or is presently incarcerated, or on probation or parole. 	<input type="checkbox"/> Yes <input type="checkbox"/> No
<ul style="list-style-type: none"> The Applicant has represented to the Lender that neither the Applicant (if an individual) nor any individual owning 20% or more of the equity of the Applicant has within the last 5 years, for any felony: 1) been convicted; 2) pleaded guilty; 3) pleaded nolo contendere; or 4) been placed on any form of parole or probation (including probation before judgment). 	<input type="checkbox"/> Yes <input type="checkbox"/> No

I. Prior Loss to Government/Delinquent Federal Debt <i>(If no, the loan cannot be approved)</i>	
<ul style="list-style-type: none"> The Applicant has certified to the Lender that neither the Applicant nor any owner (as defined in the Applicant's SBA Form 2483) is presently suspended, debarred, proposed for debarment, declared ineligible, voluntarily excluded from participation in this transaction by any Federal department or agency, or presently involved in any bankruptcy. 	<input type="checkbox"/> Yes <input type="checkbox"/> No
<ul style="list-style-type: none"> The Applicant has certified to the Lender that neither the Applicant nor any of its owners, nor any business owned or controlled by any of them, ever obtained a direct or guaranteed loan from SBA or any other Federal agency that is currently delinquent or has defaulted in the last 7 years and caused a loss to the government. 	<input type="checkbox"/> Yes <input type="checkbox"/> No

J. U.S. Employees <i>(If no, the loan cannot be approved)</i>	
<ul style="list-style-type: none"> The Applicant has certified that the principal place of residence for all employees included in the Applicant's payroll calculation is the United States. 	<input type="checkbox"/> Yes <input type="checkbox"/> No

K. Fees <i>(If yes, Lender may not pass any agent fee through to the Applicant or offset or pay the fee with the proceeds of this loan)</i>	
<ul style="list-style-type: none"> Is the Lender using a third party to assist in the preparation of the loan application or application materials, or to perform other services in connection with this loan? 	<input type="checkbox"/> Yes <input type="checkbox"/> No

SBA Certification to Financial Institution under Right to Financial Privacy Act (12 U.S.C. 3401)

By signing SBA Form 2483, Borrower Information Form in connection with this application for an SBA-guaranteed loan, the Applicant certifies that it has read the Statements Required by Law and Executive Orders, which is attached to Form 2483. As such, SBA certifies that it has complied with the applicable provisions of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401) and, pursuant to that Act, no further certification is required for subsequent access by SBA to financial records of the Applicant/Borrower during the term of the loan guaranty.

Lender Certification

On behalf of the Lender, I certify that:

- The Lender has complied with the applicable lender obligations set forth in paragraphs 3.b(i)-(iii) of the Paycheck Protection Program Rule.
- The Lender has obtained and reviewed the required application (including documents demonstrating qualifying payroll amounts) of the Applicant and will retain copies of such documents in the Applicant's loan file.

I certify that:

- Neither the undersigned Authorized Lender Official, nor such individual's spouse or children, has a financial interest in the Applicant.

Authorized Lender Official: _____
Signature

Date: _____

Type or Print Name: _____

Title: _____

NOTE: According to the 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 burden for completing this form, including time for reviewing instructions, gathering data needed, and completing and reviewing the form is 25 minutes per response. Comments or questions on the burden estimates should be sent to U.S. 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, Rm. 10202, Washington DC 20503. **PLEASE DO NOT SEND FORMS TO THESE ADDRESSES.**