

## COVID-19 Update

### CARES Act Update—PPP Flexibility Act Should Help UMC Borrowers

On **June 5, 2020**, President Trump signed into law *H.R. 7010*—the **Paycheck Protection Program Flexibility Act of 2020** (PPPFA), which received nearly unanimous bipartisan support in Congress. As explained below, the PPPFA allows significant new flexibility to borrowers under the Paycheck Protection Program (PPP), which is the forgivable loans program for small businesses created under the Coronavirus Aid, Relief and Economic Security Act (CARES Act). Generally, the PPPFA gives PPP borrowers more time to spend PPP loan proceeds and makes it easier for borrowers to qualify for loan forgiveness. Many United Methodist local churches and annual conferences are PPP borrowers.

On **June 11, 2020**, the Department of the Treasury (Treasury) and the Small Business Administration (SBA) issued revisions to their **interim final rule governing the PPP** (PPP Revised Rule). Treasury and the SBA intend to publish further PPP guidance about forgiveness and loan reviews soon and will revise forms based on the changes made by the PPPFA.

#### BACKGROUND

The PPP provides assistance to small businesses, including nonprofit organizations, through loans from the SBA. PPP loans are forgivable—thus, essentially becoming grants if forgiven. The loans are intended to help small businesses with costs such as employee payroll, lease payments, interest on mortgages, and utilities, in the face of reduced revenues resulting from state and local shelter-in-place orders related to the coronavirus pandemic and other pandemic-related economic challenges. [Wespath and the General Council on Finance and Administration (GCFA) have described various PPP details in prior publications (see pg. 3).]

#### PAYCHECK PROTECTION PROGRAM FLEXIBILITY ACT OF 2020 OVERVIEW

The PPPFA makes several key modifications to the initial PPP guidelines enacted **March 27, 2020**. Key changes are summarized below.

**Covered Period Extended:** PPPFA extends the loan forgiveness “covered period” during which a borrower must spend PPP loan proceeds (Covered Period) from eight weeks following loan disbursement to the **earlier of: (i) 24 weeks after loan disbursement, or (ii) December 31, 2020**. *PPPFA applies this longer Covered Period to existing PPP loans.* However, borrowers with existing loans (loans issued **before June 5, 2020**) have the option to use *either* the 24-week Covered Period or their initial eight-week Covered Period.

- Borrowers that have already spent all or most loan proceeds may prefer the *shorter* Covered Period.
- Many borrowers that were nearing the end of their initial eight-week Covered Period may welcome the *longer* Covered Period.

Borrowers will want to keep in mind that employee *compensation limits* still apply to forgivable Payroll Costs (**\$100,000 for annual salary**, which would be roughly \$46,153 for 24 weeks).

**Reduced Payroll Cost Threshold:** PPPFA reduces the minimum amount of loan proceeds that must be spent on payroll costs (Payroll Costs) in order to qualify for forgiveness. SBA regulations originally required borrowers to spend at least 75% of forgivable loan proceeds on Payroll Costs; but the PPPFA lowers that threshold to **60%**. In other words, as much as 40% of the amount to be forgiven can be spent on permissible non-payroll expenses, such as mortgage interest, rent and utilities.

Lowering the PPPFA's Payroll Costs limit should allow more borrowers to qualify for loan forgiveness. Despite some uncertainty in the text of the PPPFA, the SBA stated in the PPP Revised Rule: *"While the [PPPFA] provides that a borrower shall use at least 60 percent of the PPP loan for payroll costs to receive loan forgiveness, the [SBA], in consultation with [Treasury], interprets this requirement as a proportional limit on nonpayroll costs as a share of the borrower's loan forgiveness amount, rather than as a threshold for receiving any loan forgiveness."*

In the PPP Revised Rule the SBA states that it will issue revised and additional regulations about loan forgiveness soon.

**Extended Maturity:** PPPFA extends the loan repayment period for the unforgiven portion of a PPP loan from two years to **five years**. *However, this longer term applies only to new PPP loans issued after enactment of the PPPFA (after June 6, 2020)*. Borrowers can work with lenders to mutually modify loan maturity terms for loans issued prior to the PPPFA.

**Full-Time Equivalent Safe Harbor Extension:** The PPPFA extends the deadline for borrowers to restore employment for employee headcount (if it has furloughed or laid off workers) and thereby avoid a reduction in their loan forgiveness amounts. PPPFA extends the employment deadline from June 30 to **December 31, 2020**.

- Borrowers that reduced employee headcounts **between February 15 and April 26, 2020** have until **December 31, 2020** to re-employ workers or hire new workers, in order to *not* have loan forgiveness amounts affected by reduction in employee headcount.
- PPPFA also extends until **December 31, 2020** (from June 30, 2020) the date a borrower can have full-time equivalents (FTEs) and employee compensation at the same threshold as the borrower had on **February 15, 2020**.

Additional SBA guidance should further clarify this safe harbor.

**New Exemption Based on Employee Availability:** PPPFA provides a new exemption from a potential reduction in the amount of loan eligible for forgiveness. This new exemption provides that a borrower's forgiveness amount will *not be reduced* due to a reduction in employee headcount *if the borrower can document in good faith one of the following:*

- Borrower is **unable to rehire** employees employed as of **February 15, 2020**, or is unable to hire similarly qualified employees, to return to its February 15 employment level by **December 31, 2020**; or
- Borrower cannot return to the same level of business activity as **before February 15, 2020**, due to the need to comply with social distancing, sanitation, or other COVID-19 related requirements issued by the Department of Health and Human Services, the Centers for Disease Control and Prevention, or the federal Occupational Safety and Health Administration (OSHA) **from March 1 through December 31, 2020**.

These two relief situations allowing flexibility for borrowers that cannot rehire at full capacity will need further SBA guidance.

**Payment Deferral Extended:** PPPFA extends the payment deferral period from six months after the loan disbursement until **the date on which the SBA informs the lender of the portion of the loan that is forgivable**. However, if a borrower does not apply for loan forgiveness within 10 months after the last day of the Covered Period, the deferral period ends after such 10-month period.

**Payroll Tax Deferral:** PPPFA allows all PPP borrowers to defer payment of the employer share of the Social Security tax (FICA) under a separate provision of the CARES Act. Wespath described the CARES Act "Payroll Tax Delay" provision in an **earlier publication**. Previously, PPP borrowers were prohibited from taking advantage of the Payroll Tax Delay once the borrower had part of the loan forgiven. So, for PPP borrowers, the 6.2% employer share of FICA taxes for the period **March 27 through December 31, 2020 can be deferred**, essentially making the delayed taxes an interest-free loan. These taxes must be paid in 2021 and 2022, with 50% due on **December 31, 2021** and 50% due on **December 31, 2022**.

**End of Program:** In the Revised PPP Rule, the SBA announced: *"the last day on which a lender can obtain an SBA loan number for a PPP loan is **June 30, 2020**."* This reflects the **public announcement** by Treasury and SBA that *"new rules will confirm that June 30, 2020 remains the last date on which a PPP loan application can be approved."*

#### **ONGOING GUIDANCE**

The SBA and Treasury will now need to revise certain forms and guidance that they have issued regarding the PPP to reflect the changes made by the PPPFA. Wespath will continue to monitor guidance from the SBA and update our assistance documents for UMC borrowers linked below.

#### **MORE INFORMATION**

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

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

We are working to update these documents as necessary to reflect the latest guidelines.

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.***