



Afina, LLC

CPA & Business Advisors

PPP Loan “Forgiveness Clarifications”

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Disclaimer

- We have prepared this presentation on how to effectively plan for Paycheck Protection Program (PPP) loan forgiveness and evaluate requesting an Economic Injury Disaster Loan. With PPP loan payments starting to be disbursed to approved borrowers, now is the time to begin planning how you will spend the funds, and document that spending over the next eight weeks to ensure you receive the full loan forgiveness you are entitled to. Regulations continue to evolve and be published. Afina, LLC and its Managing Partner's goal is to provide the most up to date information, along with our insights and current understanding of these programs and regulations to help you navigate your business response to COVID-19. The rules regarding SBA programs are constantly being refined and clarified by the SBA and other agencies. In certain instances, the guidance being provided by the agencies and/or the financial institutions is in direct conflict with other competing guidance, regulations and/or existing laws. Due to the evolving nature of the situation and the lack of final published rules, Afina, LLC and its Managing Partner cannot guarantee that additional changes or updates won't be needed or forthcoming and the original advice given by Afina, LLC and its Managing Partner may be affected by the evolving nature of the situation. You need to evaluate and draw your own conclusions and determine your Company's best approach relative to participation within these programs based on your Company's specific circumstances, cash flow forecast and business strategy. In situations where resources are provided by third parties, those services should be covered under a separate agreement directly with that service provider. Afina, LLC and its Managing Partner is not responsible for the actions of any other third party. Afina, LLC and its Managing Partner encourages you to contact your legal counsel to address the legal implications of the impact of the CARES Act and specifically your participation in any of the SBA programs.*

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PPP Loan Stats

Puerto Rico Stats

- Loans: 36,417
- Amount disbursed: \$1,784,635,577

United States Stats

- Total loans: 4,761,770
- Total disbursed: \$518,854,055,472
- Top 5 categories: (1) Health Care and Social Assistance; (2) Professional, Scientific, and Technical Services; (3) Construction; (4) Manufacturing Accommodation and Food Services; (5) Retail Trade
- Amount of Funding Remaining: \$134,453,990,454
- Overall average loan size is: **\$108K**

Summary

On June 23, 2020, the Treasury and Small Business Administration (SBA) released the Interim Final Rule (IFR) providing updates to the PPP loan program enacted by the PPP Flexibility Act.

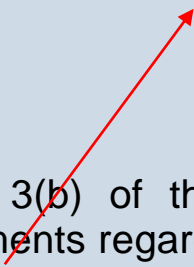
Significant updates include:

- New 60/40 rule replaces the previous 75/25 rule.
- New Rehire Date from June 30, 2020, to December 31, 2020.
- The forgiveness covered period (Covered Period) expanded to 24 weeks, with an 8-week option if a loan was funded prior to June 5, 2020.
- Two new FTE Reduction Exemptions/Safe Harbors were introduced.
- A borrower may apply for loan forgiveness any time.
- New Form 3508EZ

General

- Section 3(b) of the Flexibility Act amended the requirements regarding forgiveness of PPP loans to reduce, **from 75 percent to 60 percent**, the portion of PPP loan proceeds that must be used for payroll costs for the full amount of the PPP loan to be eligible for forgiveness.

8-week or 24-week options



Maturity

- Section 2(a) of the Flexibility Act provides a **minimum maturity of five years for all PPP loans made on or after the date of enactment of the Flexibility Act (June 5, 2020), and permits lenders and borrowers to extend the maturity date of earlier PPP loans by mutual agreement.**
- Section 3(c) of the Flexibility Act extended the deferral period for PPP loans to the date that SBA remits the forgiveness amount to the lender.

Changes to the First Loan Forgiveness Rule

What is the general process to obtain loan forgiveness?

- To receive loan forgiveness, a **borrower must complete and submit the Loan Forgiveness Application (SBA Form 3508, 3508EZ, or lender equivalent)** to its lender (or the lender servicing its loan).
- As a general matter, the lender will review the application and make a decision regarding loan forgiveness. The **lender has 60 days from receipt of a complete application to issue a decision to SBA.**
- If the lender determines that the borrower is entitled to forgiveness of some or all of the amount applied for under the statute and applicable regulations, **the lender must request payment from SBA at the time the lender issues its decision to SBA.**
- SBA will, subject to any SBA review of the loan or loan application, remit the appropriate forgiveness amount to the lender, **plus any interest accrued through the date of payment, not later than 90 days after the lender issues its decision to SBA.**

What is the general process to obtain loan forgiveness?

- If applicable, **SBA will deduct EIDL Advance Amounts** from the forgiveness amount remitted to the Lender as required by section 1110(e)(6) of the CARES Act.
- If SBA determines in the course of its review that the **borrower was ineligible** for the PPP loan based on the provisions of the CARES Act, SBA rules or guidance available at the time of the borrower's loan application, or the terms of the borrower's PPP loan application (for example, because the borrower lacked an adequate basis for the certifications that it made in its PPP loan application), **the loan will not be eligible for loan forgiveness.**

What is the general process to obtain loan forgiveness?

The lender is responsible for notifying the borrower of remittance by SBA of the loan forgiveness amount (or that SBA determined that no amount of the loan is eligible for forgiveness) and the date on which the borrower's first payment is due, if applicable.



If SBA determines that the full amount of the loan is eligible for forgiveness and remits the full amount of the loan to the lender, the lender must mark the PPP loan note as “paid in full” and report the status of the loan as “paid in full” on the next monthly 1502 report filed by the lender.

The general loan forgiveness process described above applies only to loan forgiveness applications that are **not reviewed by SBA** prior to the lender's decision on the forgiveness application. A separate interim final rule on SBA Loan Review Procedures and Related Borrower and Lender Responsibilities describes SBA's procedures for reviewing PPP loan applications and loan forgiveness applications.

Deferral Period and Forgiveness

- Section 3(c) of the Flexibility Act provides that if the borrower does not apply for forgiveness of a loan **within 10 months after the last day of the covered period**, the PPP loan is no longer deferred, and the borrower must begin paying principal and interest.

When must a borrower apply for loan forgiveness or start making payments on a loan?

- A borrower may submit a loan forgiveness application **any time on or before the maturity date of the loan** – including before the end of the covered period – **if the borrower has used all of the loan proceeds for which the borrower is requesting forgiveness.**



- If the borrower applies for forgiveness before the end of the covered period and has reduced any employee's salaries or wages in excess of 25 percent, **the borrower must account for the excess salary reduction for the full 8-week or 24-week covered period**, as described in Part III.5.

- Under section 1106 of the CARES Act, certain provisions regarding the forgiveness of PPP loans are limited to the “covered period.” “Covered period,” as that term is used in section 1106 of the CARES Act, was originally defined as the eight-week period beginning on the date of the origination of a covered loan.
- **However**, section 3(b) of the Flexibility Act extended the length of the covered period as defined in section 1106 of the CARES Act **from 8 to 24 weeks**, while allowing borrowers that received PPP loans before June 5, 2020 to elect to use the original eight-week covered period.

**For borrowers who received the PPP loan on or after June 5th, the 24-week option automatically applies.*

Payroll Costs Eligible for Loan Forgiveness

When must payroll costs be incurred and/or paid to be eligible for forgiveness?

- In general, **payroll costs paid or incurred during the covered period are eligible for forgiveness.**
- For purposes of loan forgiveness, the covered period is the 24-week period beginning on the date the lender disburses the PPP loan.
- Alternatively, a borrower that received a PPP loan before June 5, 2020 may elect for the covered period to end eight weeks after the date of disbursement of the PPP loan.
- Under section 3(b)(1) of the Paycheck Protection Program Flexibility Act of 2020, the loan forgiveness covered period of any borrower will end no later than December 31, 2020.



When must payroll costs be incurred and/or paid to be eligible for forgiveness?

- Borrowers may seek forgiveness for payroll costs for the applicable covered period beginning on either:
 - (1) the **date of disbursement** of the borrower's PPP loan proceeds from the Lender (i.e., the start of the covered period); or
 - (2) the **first day of the first payroll cycle** in the covered period (the "alternative payroll covered period").

Payroll costs are considered **paid on the day that paychecks are distributed**, or the borrower originates an ACH credit transaction.

Payroll costs incurred during the borrower's last pay period of the covered period or the alternative payroll covered period are eligible for forgiveness **if paid on or before the next regular payroll date**; otherwise, payroll costs must be paid during the covered period (or alternative payroll covered period) to be eligible for forgiveness.

Payroll costs are generally incurred on the day the employee's pay is earned (i.e., on the day the employee worked). **For employees who are not performing work but are still on the borrower's payroll, payroll costs are incurred based on the schedule established by the borrower** (typically, each day that the employee would have performed work).

When must payroll costs be incurred and/or paid to be eligible for forgiveness?

When must payroll costs be incurred and/or paid to be eligible for forgiveness?

Example:

- A borrower that received a PPP loan before June 5, 2020 and elects to use an eight-week covered period has a bi-weekly payroll schedule (with payments made every other week). The borrower's eight-week covered period begins on **June 1 and ends on July 26**. The first day of the borrower's first payroll cycle that starts in the covered period is June 7. The borrower may elect an alternative payroll covered period for payroll cost purposes that starts on **June 7 and ends 55 days later (for a total of 56 days), on August 1**.
- Payroll costs paid during this alternative payroll covered period are eligible for forgiveness. In addition, payroll costs incurred during this alternative payroll covered period are eligible for forgiveness if they are paid on or before the first regular payroll date occurring after August 1. Payroll costs that were both paid and incurred during the covered period (or alternative payroll covered period) may only be counted once.

Are there caps on the amount of loan forgiveness available for **owner-employees and self-employed individuals'** own payroll compensation?

- Yes. For borrowers that received a PPP loan before June 5, 2020 and elect to use an eight-week covered period, the amount of loan forgiveness requested for owner-employees and self-employed individuals' payroll compensation is **capped at eight weeks' worth (8/52) of 2019 compensation** (i.e., approximately 15.38 percent of 2019 compensation) or **\$15,385 per individual**, whichever is less, in total across all businesses.
- **For all other borrowers**, the amount of loan forgiveness requested for owner-employees and self-employed individuals' payroll compensation is capped at **2.5 months' worth (2.5/12) of 2019 compensation** (i.e., approximately 20.83 percent of 2019 compensation) or **\$20,833 per individual**, whichever is less, in total across all businesses.

Are there caps on the amount of loan forgiveness available for **owner-employees and self-employed individuals'** own payroll compensation?

- In particular, **C-corporation owner-employees (Corporación Regular)** are capped by the amount of their 2019 employee cash compensation and employer retirement and health insurance contributions made on their behalf.
- **S-corporation owner-employees** are capped by the amount of their 2019 employee cash compensation and employer retirement contributions made on their behalf, but employer health insurance contributions made on their behalf cannot be separately added because those payments are already included in their employee cash compensation.
- ***Schedule C or F filers (Cuentapropistas, Anejo M, 1040-PR)** are capped by the amount of their owner compensation replacement, calculated based on 2019 net profit.

Are there caps on the amount of loan forgiveness available for owner-employees and self-employed individuals' own payroll compensation?

- **General partners** are capped by the amount of their **2019 net earnings from self-employment** (reduced by claimed section 179 expense deduction, unreimbursed partnership expenses, and depletion from oil and gas properties) **multiplied by 0.9235**.
- For **self-employed individuals**, including Schedule C or F filers and general partners, **retirement and health insurance contributions** are included in their net self-employment income and therefore **cannot be separately added** to their payroll calculation.
- *The Administrator, in consultation with the Secretary, determined that it is appropriate to limit the forgiveness of owner compensation to either eight weeks' worth (8/52) of their 2019 compensation (up to \$15,385) for an eight-week covered period or 2.5 months' worth (2.5/12) of their 2019 compensation (up to \$20,833) for a 24-week covered period per owner in total across all businesses.*

A **nonpayroll cost** is eligible for forgiveness if it was:

1. paid during the covered period; or
2. incurred during the covered period and paid on or before the next regular billing date, even if the billing date is after the covered period.

*Use of the Alternative Payroll Covered Period is **not permitted** for these expenses.

When must
nonpayroll costs
be incurred and/or
paid to be eligible
for forgiveness?

Example:

- A borrower that received a loan before June 5, 2020 uses a 24-week covered period that begins on June 1 and ends on November 15. The borrower pays its electricity bills for June through October during the covered period and pays its November electricity bill on December 10, which is the next regular billing date. The borrower may seek loan forgiveness for its June through October electricity bills, because they were paid during the covered period. In addition, the borrower may seek loan forgiveness for the portion of its November electricity bill through November 15 (the end of the covered period), because it was incurred during the covered period and paid on the next regular billing date.

When must nonpayroll costs be incurred and/or paid to be eligible for forgiveness?

Reductions to Loan Forgiveness Amount

Section 1106 of the CARES Act, as amended by Section 3(b)(2) of the Flexibility Act, specifically requires certain reductions in a borrower's loan forgiveness amount based on reductions in:

- **(1) full-time equivalent employees;**
- **(2) or in employee salary and wages**
- Flexibility Act also adds exemptions from reductions in loan forgiveness amounts based on employee availability and business activity.
- In addition, SBA and Treasury have adopted a regulatory exemption to the reduction rules for borrowers that have offered to restore employee hours at the same salary or wages, even if the employees have not accepted.



Reductions to Loan Forgiveness Amount – Wages/salary reduction

Example:

A borrower is using a 24-week covered period. This borrower reduced a full-time employee's weekly salary from \$1,000 per week during the reference period to \$700 per week during the covered period. The employee continued to work on a full-time basis during the covered period, with an FTE of 1.0.

In this case, the first \$250 (25 percent of \$1,000) is exempted from the loan forgiveness reduction. The borrower seeking forgiveness would list **\$1,200** (\$50 x 24 weeks) as the salary/hourly wage reduction for that employee (**the extra \$50 weekly reduction multiplied by 24 weeks**).

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- ***If the borrower applies for forgiveness before the end of the covered period, it must account for the salary reduction for the full or 24-week covered period (totaling \$1,200).***

Reductions to Loan Forgiveness Amount – Wages/salary reduction

Example:

A borrower that received a PPP loan before June 5, 2020 has elected to use an eight-week covered period. This borrower reduced a full-time employee's weekly salary from \$1,000 per week during the reference period to \$700 per week during the covered period. The employee continued to work on a full-time basis during the covered period, with an FTE of 1.0. In this case, the first \$250 (25 percent of \$1,000) is exempted from the loan forgiveness reduction. The borrower seeking forgiveness would list \$400 as the salary/hourly wage reduction for that employee (**the extra \$50 weekly reduction multiplied by eight weeks**).

Reductions to Loan Forgiveness Amount – FTEs (1)

Will a borrower's loan forgiveness amount be reduced if the borrower reduced the hours of an employee, then offered to restore the reduction in hours, but the employee declined the offer?



No. In calculating the loan forgiveness amount, a borrower may exclude any reduction in full-time equivalent employee headcount that is attributable to an individual employee if:

- The borrower made a good faith, **written offer** to restore the reduced hours of such employee;
- the **offer was for the same salary or wages** and same number of hours as earned by such employee in the last pay period prior to the reduction in hours;
- the **offer was rejected by such employee;** and
- the **borrower has maintained records** documenting the offer and its rejection.

Also new! Borrowers are exempted from the loan forgiveness reduction arising from a proportional reduction in FTE employees during the covered period if the borrower is able to document in good faith the following:

- (1) an **inability to rehire** individuals who were employees of the borrower on February 15, 2020; and
- (2) an **inability to hire similarly qualified individuals for unfilled positions on or before December 31, 2020.**



*Borrowers are required to inform the applicable state unemployment insurance office of any employee's rejected rehire offer within 30 days of the employee's rejection of the offer. Further information regarding how borrowers will report information concerning rejected rehire offers to state unemployment insurance offices will be provided on SBA's website.

Reductions to Loan Forgiveness Amount – FTEs (2)

Reductions to Loan Forgiveness Amount – FTEs (2 & 3)

The **documents** that borrowers should maintain to show compliance with this exemption include, but are not limited to,

the written offer to rehire an individual,

a written record of the offer's rejection, and

a written record of efforts to hire a similarly qualified individual.



Borrowers are also exempted from the loan forgiveness reduction arising from a reduction in the number of FTE employees during the covered period if the borrower is able to document in good faith an **inability to return to the same level of business activity as the borrower was operating at before February 15, 2020**, due to compliance with requirements established or guidance issued between March 1, 2020 and December 31, 2020

- Guidance, the borrower satisfies the Flexibility Act's exemption and will not have its forgiveness amount reduced because of a reduction in FTEs during the covered period, if the borrower in good faith maintains records regarding the:
 - 1) **reduction in business activity; and**
 - 2) **the local government's shutdown orders that reference a COVID Requirement or Guidance** as described above.

Reductions to Loan Forgiveness Amount - FTEs

What should a lender review?

1

Confirm receipt of the **borrower certifications** (Page 2)

2

Confirm **receipt of the documentation** the borrower must submit (Instructions)

3

Confirm the **borrower's calculations** (Worksheets)

4

Confirm that the borrower made the **calculation on Line 10** (Line 1 by 0.60).



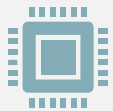
Confirm receipt of the **borrower certifications (Page 2)**



Confirm **receipt of the documentation the borrower must submit (Instructions)**




Confirm the **borrower's calculations (Worksheets)**



Confirm that the borrower made the **calculation on Line 7 (Line 1 by 0.60)**.

When the borrower submits SBA Form 3508EZ or lender's equivalent form, the lender shall:



Responsibility of Borrower

- Providing an accurate calculation of the loan forgiveness amount is the **responsibility of the borrower**, and the borrower attests to the accuracy of its reported information and calculations on the Loan Forgiveness Application Form.
- Lenders are expected to perform a good-faith review, in a reasonable time, of the borrower's calculations and supporting documents concerning amounts eligible for loan forgiveness.
- **The borrower shall not receive forgiveness without submitting all required documentation to the lender.**

What is the timeline for the lender's decision on a loan forgiveness application?

- When the lender issues its decision to SBA determining that the borrower is not entitled to forgiveness in any amount, the lender must provide SBA with the reason for its denial.
- The lender must also notify the borrower in writing that the lender has issued a decision to SBA denying the loan forgiveness application. SBA reserves the right to review the lender's decision in its sole discretion. **Within 30 days of notice from the lender, a borrower may notify the lender that it is requesting that SBA review the lender's decision by reviewing the loan** in accordance with 2.c. below. **Within 5 days of receipt,** the lender must notify SBA of the borrower's request for review.



SBA FORM 3508EZ

SBA Form 3508EZ

- The Borrower can apply for forgiveness of your Paycheck Protection Program (PPP) loan using this SBA Form 3508EZ if:
 1. Borrower is a self-employed individual, independent contractor, or sole proprietor who had no employees.
 2. Borrower did not reduce annual salary or hourly wages of any employee by more than 25 percent, **AND**, Borrower did not reduce the number of employees or the average paid hours of employees between January 1, 2020 and the end of the Covered Period.
 3. Borrower did not reduce annual salary or hourly wages of any employee by more than 25 percent, **AND**, Borrower was unable to operate during the Covered Period at the same level of business activity as before February 15, 2020,



Thank you!

“An investment in knowledge pays the best interest.” — Benjamin Franklin

