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SBA Paycheck Protection Program (PPP) Loan Forgiveness: In Brief

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SUMMARY

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SBA Paycheck Protection Program (PPP) Loan Forgiveness: In Brief

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act; P.L. 116-136) created the Small Business Administration (SBA) Paycheck Protection Program (PPP) to provide short-term, low-interest loans that could be forgiven under specified circumstances to certain small business and nonprofits. For more information on Coronavirus Disease 2019-related (COVID-19-related) assistance to small businesses, including a summary of enacted legislation and select bills, see CRS Report R46284, *COVID-19 Relief Assistance to Small Businesses: Issues and Policy Options*, by Robert Jay Dilger and Bruce R. Lindsay.

Congress initially authorized $349 billion for SBA 7(a) loans, including PPP loans, which were available through June 30, 2020. Lending began on April 3, 2020, and the initial authorization was exhausted by April 16. On April 24, 2020, Congress authorized another $310 billion ($659 billion total) for 7(a) loans—including PPP loans—in the Paycheck Protection Program and Health Care Enhancement Act (P.L. 116-139). Lending resumed on April 27, 2020, and stopped, once again, on June 30, 2020, as required by the CARES Act. Lending resumed on July 6, 2020, following enactment of An Act to Extend the Authority for Commitments for the Paycheck Protection Program (P.L. 116-147).

The act extended the authorization for issuing new PPP loans from June 30, 2020, to August 8, 2020; it authorized $659 billion for PPP loan commitments and $30 billion for 7(a) loan commitments. The SBA stopped accepting new PPP loan applications on August 8, 2020. As of that date, the SBA had approved over 5.2 million PPP loans, totaling more than $525 billion.

P.L. 116-260, the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (Division N, Title III of the Consolidated Appropriations Act of 2021), among other provisions, extended the PPP through March 31, 2021, increased the program's authorization amount from $659 billion to $806.45 billion, and authorized second-draw PPP loans of up to $2 million. P.L. 117-2, the American Rescue Plan Act of 2021, among other provisions, increased the PPP authorization amount to $813.7 billion. P.L. 117-6, the PPP Extension Act of 2021, extended the acceptance of PPP applications through May 31, 2021, and authorized the SBA to process any pending applications submitted on or before that date through June 30, 2021.

As required by law, the SBA stopped accepting new PPP applications on May 31, 2021, and it had approved over 11.8 million PPP loans, totaling nearly $800 billion.

Initially, PPP loans used for payroll expenses and for specified nonpayroll operating costs paid or incurred during an eight-week "covered period" following the loan's origination date could be fully forgiven if the borrower met certain payroll and employment retention criteria. Borrowers were required by SBA regulations to use at least 75% of the loan forgiveness amount on payroll costs and the remainder on eligible mortgage interest, rent, and utility payments in order to receive full loan forgiveness. The 75% payroll requirement was reduced to 60% by the Paycheck Protection Program Flexibility Act (P.L. 116-142). The act also extended the PPP loan forgiveness covered period from 8 weeks after the loan's origination date to the earlier of 24 weeks after the loan's origination date or December 31, 2020. The act also provides borrowers that received a PPP loan prior to the date of enactment (June 5, 2020) the option to use the CARES Act's loan forgiveness covered period of eight weeks after the loan's origination date.

This In Brief report discusses statutes, regulations, and agency guidance relevant to the PPP loan forgiveness process and determination. A summary of the Paycheck Protection Program Flexibility Act is also provided.

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Introduction

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act; P.L. 116-136) created the Small Business Administration (SBA) Paycheck Protection Program (PPP) to provide short-term, low-interest "covered loans" that could be forgiven in whole or in part under specified conditions to small businesses eligible to participate in the SBA's 7(a) loan guarantee program and any business, 501(c)(3) nonprofit organization, 501(c)(19) veteran's organization, or tribal business not currently eligible that has not more than 500 employees or, if applicable, the SBA's size standard in number of employees for the industry in which they operate. Sole proprietors, independent contractors, and eligible self-employed individuals are also eligible to receive a covered loan.[1] For more information on Coronavirus Disease 2019-related (COVID-19-related) assistance to small businesses, including a summary of enacted legislation and select bills, see CRS Report R46284, *COVID-19 Relief Assistance to Small Businesses: Issues and Policy Options*, by Robert Jay Dilger and Bruce R. Lindsay.

Congress initially authorized $349 billion for SBA 7(a) loans—including PPP loans—which were available through June 30, 2020, had a 100% SBA loan guarantee, no borrower fees, a 1% interest rate, and a two-year term. Loan payments were deferred for six months. Loan amounts were capped at the lesser of (1) 2.5 times the average total monthly payments by the applicant for payroll costs incurred during the one-year period before the date on which the loan is made, plus the outstanding balance of any Economic Injury Disaster Loan (EIDL) made on or after January 31, 2020, that is refinanced as part of a covered loan or (2) $10 million. Lending began on April 3, 2020, and the initial authorization was exhausted by April 16.

On April 24, 2020, Congress authorized another $310 billion ($659 billion total) for 7(a) loans—including PPP loans—in the Paycheck Protection Program and Health Care Enhancement Act (P.L. 116-139). Lending resumed on April 27, 2020, and stopped, once again, on June 30, 2020, as required by the CARES Act.

Lending resumed on July 6, 2020, following enactment of An Act to Extend the Authority for Commitments for the Paycheck Protection Program (P.L. 116-147). The act extended the authorization for issuing new PPP loans from June 30, 2020, to August 8, 2020; and it authorized $659 billion for PPP loan commitments and $30 billion for 7(a) loan commitments. As required by the act, the SBA stopped accepting new PPP loan applications on August 8, 2020. As of that date, the SBA had approved over 5.2 million PPP loans, totaling more than $525 billion.

P.L. 116-260, the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (Division N, Title III of the Consolidated Appropriations Act of 2021), enacted on December 27, 2020, among other provisions, extended the PPP through March 31, 2021 (the PPP loan application portal reopened on January 11, 2021); increased the program's authorization amount from $659 billion to $806.45 billion; and authorized second-draw PPP loans of up to $2 million.

P.L. 117-2, the American Rescue Plan Act of 2021, among other provisions, increased the PPP authorization amount to $813.7 billion. P.L. 117-6, the PPP Extension Act of 2021, extended the

[1] For purposes of determining not more than 500 employees, the term employee includes individuals employed on a full-time, part-time, or other basis. Also, special eligibility considerations are provided for certain businesses and organizations. For example, businesses operating in NAICS Sector 72 (Accommodation and Food Services industry) that employ not more than 500 employees per physical location are also eligible for a covered loan. Affiliation rules are also waived for (1) NAICS Sector 72 businesses, (2) franchises, and (3) SBIC-owned businesses. In other words, these businesses would not be denied a covered loan solely because they employ more than 500 employees across multiple businesses under common ownership.

acceptance of PPP applications through May 31, 2021, and authorized the SBA to process any pending applications submitted on or before that date through June 30, 2021.

As required by law, the SBA stopped accepting new PPP applications on May 31, 2021, and it had approved over 11.8 million PPP loans, totaling nearly $800 billion.

Initially, PPP loans used for payroll expenses and for specified nonpayroll operating costs paid or incurred during an eight-week "covered period" following the loan's origination date could be fully forgiven if the borrower met certain payroll and employment retention criteria. Borrowers were required by SBA regulations to use at least 75% of the loan forgiveness amount on payroll costs and the remainder on eligible mortgage interest, rent, and utility payments in order to receive full loan forgiveness.[2]

On May 18, 2020, the SBA released the first version of the borrower's application for PPP loan forgiveness (Form 3508).[3] On May 22, the SBA posted an interim final rule (IFR) on PPP loan forgiveness on its website. The interim final rule was published in the *Federal Register* on June 1, 2020.[4]

In an effort to make it easier for borrowers to receive full loan forgiveness, especially those with relatively high mortgage interest, rent, or utility costs, the at least 75% payroll requirement imposed by the SBA through regulations was statutorily reduced to at least 60% by the Paycheck Protection Program Flexibility Act (P.L. 116-142). The act also

- extended the PPP loan forgiveness covered period from 8 weeks after the loan's origination date to the earlier of 24 weeks after the loan's origination date or December 31, 2020;
- provides borrowers that received a PPP loan prior to the date of enactment (June 5, 2020) the option to use the CARES Act's loan forgiveness covered period of eight weeks after the loan's origination date;
- provides borrowers a "safe harbor" from the loan forgiveness rehiring requirement if the borrower is unable to rehire an individual who was an employee of the recipient on or before February 15, 2020, or if the borrower can demonstrate an inability to hire similarly qualified employees on or before December 31, 2020;
- provides borrowers another "safe harbor" from the loan forgiveness rehiring requirement if the business can document that it was unable to operate between February 15, 2020, and the end of the covered period at the same level of business activity as before February 15, 2020, due to compliance with requirements established or guidance issued between March 1, 2020, and December 31, 2020, by the U.S. Department of Health and Human Services (HHS), the Centers for Disease Control and Prevention (CDC), or the Occupational Safety and Health Administration (OSHA), related to the maintenance of standards for sanitation, social distancing, or any other worker or

[2] Small Business Administration (SBA) and Department of the Treasury (Treasury), "Interim Final Rule—Business Loan Program Temporary," 85 *Federal Register* 20811, April 15, 2020, at https://home.treasury.gov/system/files/136/PPP—IFRN%20FINAL.pdf.

[3] SBA, "Paycheck Protection Program—Loan Forgiveness Application," at https://home.treasury.gov/system/files/136/3245-0407-SBA-Form-3508-PPP-Forgiveness-Application.pdf.

[4] SBA and Treasury, "Interim Final Rule - Business Loan Program Temporary," 85 *Federal Register* 33004, June 1, 2020.

customer safety requirement related to COVID-19 (the SBA indicates that this safe harbor includes state and local government directives based on these requirements or guidance);[5]

- establishes a minimum PPP loan maturity of five years for loans made on or after the date of enactment;
- extends the PPP loan deferral period from 6 months (under SBA regulations) to the date that the SBA remits the borrower's loan forgiveness amount to the lender or, if the borrower does not apply for loan forgiveness, 10 months after the end of the borrower's loan forgiveness covered period; and
- eliminates the exception in the CARES Act preventing taxpayers who receive PPP loan forgiveness from delaying the payment of employer payroll taxes.[6]

The act also specified that, as long as the borrower submits an application for loan forgiveness within 10 months of the covered period (typically 8 or 24 weeks), the borrower is not required to make any PPP loan payments until the forgiveness amount is remitted to the lender by the SBA. SBA guidance indicates that

> If the loan is fully forgiven, the borrower is not responsible for any payments. If only a portion of the loan is forgiven, or if the forgiveness application is denied, any remaining balance due on the loan must be repaid by the borrower on or before the maturity date of the loan. Interest accrues during the time between the disbursement of the loan and SBA remittance of the forgiveness amount. The borrower is responsible for paying the accrued interest on any amount of the loan that is not forgiven. 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.[7]

On June 16, 2020, the SBA

1. released a revised version of Form 3508 to account for Paycheck Protection Program Flexibility Act changes;[8]

[5] SBA and Treasury, "Business Loan Program Temporary Changes; Paycheck Protection Program—Revisions to Loan Forgiveness and Loan Review Procedures Interim Final Rules," 85 *Federal Register* 38309, June 26, 2020.

[6] Section 2302 of the CARES Act allows employers and self-employed individuals to defer, or postpone, the employer share of the Social Security payroll tax through the end of 2020. Deferred tax liability can be paid in two installments: one due by December 31, 2021, and the second by December 31, 2022. The Social Security trust funds are not affected. See CRS Report R46279, *The Coronavirus Aid, Relief, and Economic Security (CARES) Act—Tax Relief for Individuals and Businesses*, coordinated by Molly F. Sherlock. Section 2302 prohibited taxpayers who obtain PPP loan forgiveness from also benefiting from deferral. Internal Revenue Service (IRS) guidance had indicated that employers who obtain a PPP loan are able to defer their payroll taxes. However, "Once an employer receives a decision from its lender that its PPP loan is forgiven, the employer is no longer eligible to defer deposit and payment of the employer's share of Social Security tax due after that date." See IRS, "Deferral of employment tax deposits and payments through December 31, 2020," at https://www.irs.gov/newsroom/deferral-of-employment-tax-deposits-and-payments-through-december-31-2020.

[7] SBA, "Paycheck Protection Program Frequently Asked Questions (FAQs) on PPP Loan Forgiveness, as of August 11, 2020," at https://www.sba.gov/document/support-frequently-asked-questions-ppp-loan-forgiveness (hereinafter SBA, "Paycheck Protection Program Frequently Asked Questions (FAQs) on PPP Loan Forgiveness, as of August 11, 2020").

[8] SBA, "Paycheck Protection Program—Loan Forgiveness Application Form (revised 6/16/2020)," at https://www.sba.gov/document/sba-form-paycheck-protection-program-loan-forgiveness-application.

2. released an EZ loan forgiveness application (Form 3508EZ) requiring fewer calculations and less documentation than the standard loan forgiveness application form for borrowers that meet specified criteria;[9] and
3. published in the *Federal Register* an interim final rule summarizing revisions to the first interim final rule resulting from the enactment of the Paycheck Protection Program Flexibility Act.[10]

On June 22, 2020, the SBA posted an interim final rule detailing revisions to the initial interim final rule on PPP loan forgiveness on its website. On June 26, 2020, the SBA published the interim final rule in the *Federal Register*.[11]

The SBA began accepting PPP lender loan forgiveness submissions on August 10, 2020, and began issuing decisions on these submissions, and remitting funds to lenders, on October 2, 2020. In an effort to expedite the processing of lender loan forgiveness submissions, on October 8, 2020, the SBA, in consultation with Treasury, released a simpler borrower loan forgiveness application form for PPP loans of $50,000 or less (Form 3508S).[12]

P.L. 116-260, among other provisions,

- expanded the list of allowable uses of proceeds and loan forgiveness to include personal protective equipment, supplier costs, software payments, cloud

[9] SBA, "Paycheck Protection Program, PPP Loan Forgiveness Application Form 3508EZ," at https://www.sba.gov/document/sba-form-paycheck-protection-program-ez-loan-forgiveness-application.

Borrowers can use the EZ loan forgiveness application if they meet any one of the following three criteria: (1) the borrower is a self-employed individual, independent contractor, or sole proprietor who had no employees at the time of the PPP loan application and did not include any employee salaries in the computation of average monthly payroll in the Borrower Application Form; (2) the borrower did not reduce annual salary or hourly wages of any employee by more than 25% during the covered period or the alternative payroll covered period (as defined below) compared with the period between January 1, 2020, and March 31, 2020, and 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; or (3) the borrower did not reduce annual salary or hourly wages of any employee by more than 25% during the covered period or the alternative payroll covered period compared with the period between January 1, 2020, and March 31, 2020, and was unable to operate during the covered period at the same level of business activity as before February 15, 2020, due to compliance with requirements established or guidance issued between March 1, 2020, and December 31, 2020, by the Secretary of Health and Human Services, the Director of the Centers for Disease Control and Prevention, or the Occupational Safety and Health Administration, related to the maintenance of standards of sanitation, social distancing, or any other work or customer safety requirement related to COVID-19. The covered period is either (1) the 24-week (168-day) period beginning on the PPP loan disbursement date or (2) if the borrower received its PPP loan before June 5, 2020, the borrower may elect to use an 8-week (56-day) covered period. The alternative payroll covered period is available for borrowers with a biweekly (or more frequent) payroll schedule. They may elect to calculate eligible payroll costs using the 24-week (168-day) period or for loans received before June 5, 2020, at the election of the borrower, the 8-week (56-day) period that begins on the first day of their first pay period following their PPP loan disbursement date.

[10] SBA, "Business Loan Program Temporary Changes; Paycheck Protection Program—Revisions to First Interim Final Rule," 85 *Federal Register* 36308-36312, June 16, 2020.

[11] SBA and Treasury, "Business Loan Program Temporary Changes; Paycheck Protection Program—Revisions to Loan Forgiveness and Loan Review Procedures Interim Final Rules," 85 *Federal Register* 38304-38312, June 26, 2020.

[12] SBA, "SBA and Treasury Announce Simpler PPP Forgiveness for Loans of $50,000 or Less," at https://www.sba.gov/article/2020/oct/08/sba-treasury-announce-simpler-ppp-forgiveness-loans-50000-or-less.

Borrowers using SBA Form 3508S (or lender's equivalent form) to apply for PPP loan forgiveness are "exempt from any reductions in the borrower's loan forgiveness amount based on reductions in full-time equivalent (FTE) employees (section 1106(d)(2) of the CARES Act) or reductions in employee salary or wages (section 1106(d)(3) of the CARES Act) that would otherwise apply." See SBA, "Business Loan Program Temporary Changes; Paycheck Protection Program—Additional Revisions to Loan Forgiveness and Loan Review Procedures Interim Final Rules," 85 *Federal Register* 66216, October 19, 2020.

computing, other human resources and accounting needs, and property damage costs from the 2020 public disturbances that are not covered by insurance;

- allows borrowers to select a PPP loan forgiveness covered period of either 8 weeks after the loan's origination date or 24 weeks after the loan's origination date regardless of when the loan was disbursed; and
- created a simplified loan forgiveness application process for loans of $150,000 or less, which includes an application form that is not more than one page in length and only requires borrowers to provide a description of the number of employees the borrower was able to retain because of the loan, the estimated amount of the loan amount spent on payroll costs, and the total loan amount. Borrowers must also attest that they complied with all PPP loan requirements. Borrowers must retain relevant employment records for four years following submission of the form and other relevant records for three years. The SBA retains the right to review and audit these loans for fraud. Reporting of demographic information is optional.[13]

On January 19, 2021, the SBA issued a revised SBA Form 3508S, which increased the loan amount for which the form could be used from $50,000 to $150,000. The revised form was shortened to one page, as required by P.L. 116-260, and no longer requires the submission of supporting loan forgiveness documentation, as mandated by the act.[14] Loans of $150,000 or less account for about 93% of all PPP loans.[15]

As of October 3, 2021, the SBA had received over 7.4 million applications for PPP loan forgiveness, totaling more than $583.3 billion and issued over 7.2 million payments, totaling more than $561.2 billion.[16]

This In Brief report discusses statutes, regulations, and agency guidance relevant to the PPP loan forgiveness process and determination. A summary of the Paycheck Protection Program Flexibility Act is also provided.

PPP Forgiveness Provisions and Process

The PPP loan forgiveness process is summarized and key terms are defined below, followed by an explanation of situations in which loan forgiveness amounts may be reduced.[17]

[13] P.L. 116-260 also repealed the requirement that borrowers deduct the amount of their EIDL advance payment from their PPP loan forgiveness amount if the advance payment was refinanced into their PPP loan.

[14] SBA, "Business Loan Program Temporary Changes; Paycheck Protection Program—COVID Revenue Reduction Score, Direct Borrower Forgiveness Process, and Appeals Deferment," 86 *Federal Register* 40922, July 30, 2021.

[15] SBA, "Business Loan Program Temporary Changes; Paycheck Protection Program—COVID Revenue Reduction Score, Direct Borrower Forgiveness Process, and Appeals Deferment," 86 *Federal Register* 40923, July 30, 2021.

[16] SBA, "Forgiveness Platform Lender Submission Metrics," October 3, 2021, at https://www.sba.gov/document/report-ppp-forgiveness-platform-lender-submission-metrics-reports.

[17] The CARES Act gives private lenders "delegated authority" to issue PPP loans. These lenders (e.g., banks, credit unions, community financial institutions) have enrolled with SBA to issue PPP loans (or SBA loans, generally). SBA is not issuing the loans directly to borrowers.

Forgiveness Application Process

Borrowers complete the SBA loan forgiveness application (SBA Form 3508, SBA Form 3508EZ, or, for loan forgiveness submissions of $150,000 or less, SBA Form 3508S) or a lender equivalent for PPP loan forgiveness and submit it to their lender, who is to then make a decision on the application within 60 days after submission.

The revisions to SBA Form 3508S were expected to expedite PPP loan forgiveness processing. However, many smaller PPP lenders informed the SBA that they did not have "the technology or human resources to develop efficient electronic loan forgiveness platforms to process the new streamlined loan forgiveness application" and many lenders reported that they were overwhelmed by the volume of PPP loan forgiveness applications.[18] In response, the SBA made available to PPP lenders, effective July 28, 2021, an option to allow their Form 3508S-eligible PPP borrowers to apply for PPP loan forgiveness through a new, online SBA Direct Borrower Forgiveness Portal. Upon receipt of SBA notice that an eligible PPP borrower had completed Form 3508S online, the lender reviews the application and issues a loan forgiveness decision to the SBA using the online platform.

When the SBA Direct Borrower Forgiveness Portal launched on August 4, 2021, about 600 lenders had opted into the new process, and by September 22, 2021, that number had increased to about 1,400 lenders.[19] The SBA maintains a list of PPP lenders participating in the new direct loan forgiveness process on its website.[20] To encourage Form 3508S-eligible PPP borrowers to use the new online portal, the SBA provides these borrowers a partially pre-populated Form 3508S that the borrower can complete online.

The SBA reports that, as of September 22, 2021, more than 1 million PPP borrowers had used the new online portal, requesting more than $17 billion in loan forgiveness. The SBA also reports that it takes PPP borrowers, on average, about six minutes to complete Form 3508S online and that borrowers who used the SBA Direct Borrower Forgiveness Portal received their PPP loan forgiveness decision within a week.[21]

Borrowers must retain documentation substantiating the information provided for six years after the date the loan is forgiven or repaid in full and make it available to the SBA, including representatives of its Office of Inspector General, upon request.

If the lender determines that the borrower is entitled to some or all of the applied forgiveness amount, then the lender must request payment from the SBA. SBA is to review all loans in excess of $2 million following the lender's submission of the borrower's loan forgiveness application.[22]

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[18] SBA, "Business Loan Program Temporary Changes; Paycheck Protection Program—COVID Revenue Reduction Score, Direct Borrower Forgiveness Process, and Appeals Deferment," 86 *Federal Register* 40923, July 30, 2021.

[19] The SBA Direct Borrower Forgiveness Portal can be accessed at https://directforgiveness.sba.gov/requests/borrower/login/?next=/.

[20] SBA, "PPP lenders participating in direct forgiveness," effective September 23, 2021, at https://www.sba.gov/document/support-ppp-lenders-participating-direct-forgiveness.

[21] SBA, "In Less Than Two Weeks, Paycheck Protection Program Direct Borrower Forgiveness Portal Surpasses Expectations, Accepts More Than 340K Submissions," August 18, 2021, at https://www.sba.gov/article/2021/aug/18/less-two-weeks-paycheck-protection-program-direct-borrower-forgiveness-portal-surpasses-expectations.

[22] SBA may also review other smaller loans as it deems appropriate, following the lender's submission for loan forgiveness. During a review process, SBA could choose to review the initial PPP loan application, forgiveness application, or both. (In addition, borrowers may request that SBA review the lender's forgiveness decision.) See FAQ #39 in SBA, "Paycheck Protection Program Frequently Asked Questions," at https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf.

About 0.25% of all approved PPP loans are larger than $2 million (29,733 of 11.8 million), representing slightly more than 13.6% of approved loan amounts ($109.3 billion of $800 billion).[23]

The SBA is then to remit the appropriate forgiveness amount to the lender, plus any interest accrued through the payment date, no later than 90 days after the lender issues its decision to SBA. The borrower must repay any amount not forgiven within the PPP loan's two-year or, if the application received an SBA loan number on or after June 5, 2020, five-year maturity period.

Payroll Costs

In general, only payroll costs paid *or* incurred during the 8-week (56 consecutive days) or 24-week (168-day) "covered period" are eligible for forgiveness. Borrowers can consistently apply one of two start dates: (1) the date that their lender disbursed their PPP loan or (2) the first day of their first payroll cycle in the covered period (termed the "alternative payroll covered period").[24] Payroll costs incurred during the borrower's last pay period of the covered period are eligible for forgiveness only if paid on or before the next regular payroll date. This is intended for the borrower's administrative convenience. In addition, any payroll costs that were incurred before the covered period but paid during the covered period are eligible for loan forgiveness.

Compensation to furloughed employees, even if they are not performing their day-to-day functions, is considered a "payroll cost" eligible for forgiveness.

No more than $15,385 in cash compensation per individual during the 8-week covered period and $20,833 in cash compensation per individual during the 24-week covered period is eligible for forgiveness.[25] Noncash compensation for employee health insurance, employer contributions to employee retirement plans, and payment of state and local taxes assessed on employee compensation are not subject to this limitation.

Self-employed individuals (e.g., sole proprietors, independent contractors) are limited to forgiveness based on their positive net profit or earnings amounts from their 2019 federal income tax filings.[26] The SBA has labeled this as "owner compensation replacement."

Nonpayroll Costs

Initially, nonpayroll costs eligible for forgiveness included payments for the following expenses:

1. interest on any business mortgage obligation on real or personal property,
2. business rent obligations on real or personal property under a lease agreement, and

[23] SBA, "Paycheck Protection Program (PPP) Report (Approvals through 8/8/2020)," at https://www.sba.gov/document/report-ppp-2020-data-reports; and SBA, "Paycheck Protection Program (PPP) Report (Approvals through 5/31/2021)," at https://www.sba.gov/document/report-paycheck-protection-program-weekly-reports-2021.

[24] Payroll costs are considered paid on the day that paychecks are distributed or the borrower originates an automated clearing house (ACH) credit transaction.

[25] SBA, "Paycheck Protection Program Frequently Asked Questions (FAQs) on PPP Loan Forgiveness, as of August 11, 2020," p. 4.

[26] CRS Insight IN11341, *SBA's Paycheck Protection Program (PPP) Loans and Self-Employed Individuals*, by Sean Lowry.

3. business utility payments for the distribution of electricity, gas, water, transportation, telephone, or internet access.[27]

As mentioned, P.L. 116-260 expanded the list of allowable uses of loan proceeds and PPP loan forgiveness to include personal protective equipment, supplier costs, software payments, cloud computing, other human resources and accounting needs, and property damage costs from the 2020 public disturbances that are not covered by insurance.

Eligible expenses must have been incurred, in force, or in service as of February 15, 2020. No more than 40% of the loan forgiveness amount can be attributed to nonpayroll costs.

Nonpayroll costs are eligible for forgiveness if they were paid during the covered period (even if they were incurred prior to the covered period) or incurred during the covered period and paid on the next regular billing date. If a billing cycle covers a period within and outside of the covered period, only the portion of the payment attributed to costs incurred during the covered period is eligible for forgiveness.

Reductions in Forgiveness

Under Section 1106 of the CARES Act, forgiveness for borrowers' PPP-eligible expenses during the covered period is to be reduced according to specified formulas (discussed below) if a borrower (1) reduces its full-time equivalent (FTE) employees (including employees who made more than $100,000), as compared to a reference period selected by the borrower, or (2) reduces the amount of salaries or wages paid to certain FTE employees by more than 25% below levels in a reference period selected by the borrower.[28] Reducing loan forgiveness means borrowers would have to repay some or all of their original PPP loan amount.

The CARES Act specified that these reductions would not take place if the borrower eliminated the reductions in FTEs or salaries and wages by no later than June 30, 2020. As mentioned, in recognition of the difficulties some small businesses were experiencing in rehiring employees, the Paycheck Protection Program Flexibility Act of 2020 (P.L. 116-142) allows borrowers to exclude any reduction in FTE employees if they are able to document in good faith (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. This is commonly referred to as the "rehiring provision."

The act also allows borrowers to exclude any reduction in FTE employees if they can document an inability to return to the same level of business activity the business was operating at before February 15, 2020, due to compliance with requirements established or guidance issued by the Secretary of HHS, the Director of the CDC, or OSHA, related to the maintenance of standards for

[27] Advance interest payments (prepayment) on a covered mortgage or loan principal payments are not eligible for forgiveness.

[28] Borrowers have the following options for their reference period: (1) February 15, 2019, through June 30, 2019; (2) January 1, 2020, through February 29, 2020; or (3) in the case of a seasonal employer, either of the two preceding methods or a consecutive 12-week period between May 1, 2019, and September 15, 2019. A "covered employee" is an individual who (1) was employed by the borrower at any point during the covered period or alternative payroll covered period and whose principal place of residence is in the United States and (2) received compensation from the borrower at an annualized rate less than or equal to $100,000 for all pay periods in 2019 or was not employed by the borrower at any point in 2019. See SBA, "Paycheck Protection Program Frequently Asked Questions (FAQs) on PPP Loan Forgiveness, as of August 11, 2020," pp. 8, 9.

sanitation, social distancing, or any other worker or customer safety requirement related to COVID-19.

In addition, effective October 14, 2020, the SBA administratively exempted borrowers of PPP loans of $50,000 or less from the FTE and wage reduction penalties.[29]

Calculating Full-Time Equivalent Employees

If the average number of FTE employees during the covered period is less than during the reference period selected by the borrower, then the forgiveness amount is reduced proportionately. For example, if an employer had an average of 100 FTE employees in its reference period and 80 FTE employees during the covered period, then it would be eligible for loan forgiveness on up to 80% (8/10) of its total eligible expenses (payroll and nonpayroll) during the covered period.

An FTE is defined as an employee who works 40 hours per week.[30] FTE employee counts are determined on an aggregate basis, based on the hours of all employees on the borrower's payroll divided by the number of employees. An employee working more than 40 hours per week is capped as counting as one FTE employee. For example, an employee who was paid 48 hours per week during the covered period would be considered to be 1.0 FTE employee. As an administrative convenience, employees who were paid for less than 40 hours per week may be counted in one of two ways: (1) based on the average hours worked per week, or (2) counting each part-time employee as 0.5 FTE employees. Borrowers must consistently apply their calculation methods across all employees.

Calculating Salaries and Wages

The amount of loan forgiveness is reduced by the amount of any reduction over 25% of an employee's total salary or wages during the covered period compared with the employee's total salary or wages during the most recent full quarter prior to the covered period. Employees who earned more than $100,000 in 2019 are not taken into account for the compensation reduction part of the reduction formula. In other words, such employees may have their pay reduced by more than 25% without affecting the borrower's forgiveness amounts.

The salary and wages reduction formula only applies to the decline in total salary or wages that is not attributed to FTE employee reductions. This is to prevent borrowers from being "doubly penalized" for FTE employee reductions. For example, an employee worked 40 hours per week during the reference period and was reduced to 20 hours per week during the covered period with no hourly wage reduction. Although the employee earned half the compensation during the covered period, the employer's forgiveness amount will only be reduced with respect to a reduction in FTE employees (from 1.0 to 0.5 FTE employees).

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[29] SBA, "Business Loan Program Temporary Changes; Paycheck Protection Program—Additional Revisions to Loan Forgiveness and Loan Review Procedures Interim Final Rules," 85 *Federal Register*, 66215-66216, October 19, 2020.

Although borrowers of PPP loans of $150,000 or less may use SBA Form 3508S, only borrowers of $50,000 or less are exempt from the FTE and salary/wage reduction penalties. See SBA, "Business Loan Program Temporary Changes; Paycheck Protection Program—COVID Revenue Reduction Score, Direct Borrower Forgiveness Process, and Appeals Deferment," 86 *Federal Register* 40922, July 30, 2021.

[30] Note that this is different than the 30 hour-per-week FTE employee definition and determination under the Affordable Care Act's Employer Shared Responsibility Provision. See CRS Report R45455, *The Affordable Care Act's (ACA's) Employer Shared Responsibility Provisions (ESRP)*, by Ryan J. Rosso.

Three other groups of employees do not affect a borrower's forgiveness:

1. employees who were laid off or forced to reduce their hours, but then declined their employer's subsequent offer to return to work or restore their previous schedules;[31]
2. employees who were fired for cause; and
3. employees who requested a schedule reduction.

The borrower must make a good faith certification attesting to the above conditions and maintain various documentation (e.g., employee-employer communications).

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[31] The offer must be for the same salary or wages and same number of hours as earned by such employee in the last pay period prior to the separation or reduction in hours. For example, an employer cannot offer an employee compensation at half the employee's previous pay rate or hours and qualify for the safe harbor.