

## FAQ – CARES ACT Payroll Protection Program: Loan Forgiveness

**Disclaimer:** This document is not meant as legal or financial advice. It was prepared in response to questions from a survey circulated by Catholic Charities USA on November 9, 2020, and in consultation with our advisors, Arent Fox. It reflects our and our advisors' best understanding at this time; however, not all official guidance regarding PPP loan forgiveness has come out, and it is subject to change. All decisions should be made in consultation with your local legal and financial advisors and your lender with reference to the official guidance from the US Treasury Department.

### I. Government Funded Positions

***If a government contract or grant-funded position ended during the covered period, and, therefore reduced FTE, is there a forgiveness penalty? Can such an agency use the EZ application?***

The PPP does not distinguish between “funded” positions and “unfunded” positions when calculating the FTE-based forgiveness reduction. Accordingly, such an FTE reduction would be treated the same as any other FTE reduction.

However, there are other safe harbors provided by the PPP Flexibility Act that nullify the FTE reduction altogether. For example, if the organization has been unable to maintain business operations at the same level as before the pandemic due to compliance with CDC guidance (and related state and local rules and regulations), the Borrower's forgiveness will not be reduced due to the resulting FTE reduction. Each organization should look closely at its operations since receiving the PPP loan and the ways in which CDC guidance has affected their return to pre-COVID levels of business to determine whether they qualify for this safe harbor.

If an entity is not eligible for the “reduction in business operations” safe harbor, and has reduced FTEs during the entity's Covered Period, then the entity is **not** eligible to use the EZ application. The full forgiveness application includes instructions on calculating the FTE reduction. Note that there is not a special adjustment for a reduction in a “funded” position vs. an “unfunded” position.

### II. The EZ vs. Full Loan Forgiveness Application

***If FTE were reduced, but then rehired before the applicable dated, which is dependent on the chosen covered period, can an agency use the EZ application? How is this accounted for in the application?***

Yes. The EZ Application Instructions include the following proviso: “(Ignore reductions that arose from an inability to rehire individuals who were employees on February 15, 2020 if the Borrower was unable to hire similarly qualified employees for unfilled positions on or before December 31, 2020. Also ignore reductions in an employee’s hours that the Borrower offered to restore and the employee refused. See 85 FR 33004, 33007 (June 1, 2020) for more details.)” Thus, it is implied that if FTEs were reduced and then restored, prior to the safe harbor date in the CARES Act/PPP Flexibility Act, you can still use the EZ Application since the reduction of FTEs for PPP forgiveness purposes has been cured.

In the first section of the EZ Application, it asks the Borrower for “Employees at Time of Loan Application” and “Employees at Time of Forgiveness Application”. Since the employees in question were hired back, the FTE numbers should be the same for both entries.

***If there have be FTE reductions that are exempt from loan forgiveness reductions, can an agency put the same starting and ending FTE in order to use the EZ form?***

The application should always provide accurate information as to the number of employees, even if the employees at the time of loan application and employees at the time of forgiveness application are different. Note that your bank’s application portal may struggle with this, in which case you should discuss with your bank representative whether there is a work around, or if the full forgiveness application will be required.

That said, if the FTE reductions are exempt because they are due to an inability to rehire or hire similarly qualified employees for unfilled positions and or due to reductions in employee’s hours that the Borrower offered to restore and the employee refused, then per the EZ Application’s Instructions, those reductions should be ignored.

If the FTE reductions are exempt because of the “reduction in business operations” safe harbor, those reductions should not be ignored, but you should certify to that effect by initialing the last certification of the EZ Application.

### **III. Unused Portion of a PPP Loan**

***How does an agency return an unused portion of the loan?***

Similar to any portion of the loan that is not forgiven, an unused portion of the loan must be repaid to the bank. The promissory note should include information about where payments are to be made.

***Are payments or fees required on the unused portion?***

Interest (1% per annum) accrues on PPP loans from the disbursement date, so there may be some small incremental amount payable. Note that Borrowers should look carefully at the extended Covered Period provided by the PPP Flexibility Act to determine whether there are, in fact, unused portions of the PPP loan when using the 24-week Covered Period instead of the original 8-week Covered Period.

**IV. Other FTE Reductions*****If FTE is reduced because of a death during the covered period, is there a reduction in forgiveness?***

The forgiveness regulations do not explicitly mention death as an exception to the FTE reduction. However, the regulations specify an intention not to penalize an employer for actions of an employee, and from the employer's perspective (for the purpose of PPP forgiveness) an employee death is analogous to a voluntary departure.

On the loan forgiveness application, we advise treating a deceased employee in the same fashion as a voluntary resignation. Note that when dealing with voluntary resignations, the regulations specify that an employer must maintain records demonstrating that the employee voluntarily resigned.

**V. Loan Necessity Questionnaire (for loans \$2M+)****Under current guidance, are PPP loans considered necessary if taken before using funds from an endowment?**

There has been nothing that has come out to change this original guidance that PPP loans can be used before funds from an endowment. We believe the Loan Necessity Questionnaire will be an SBA tool to more heavily scrutinize and flag for audit potential classes of borrowers. The Questionnaire has been selectively rolled out and we remain hopeful that Congress in the coming months and/or the new Biden Administration will take a more borrower-friendly view of the Questionnaire.

**There have been mixed messages from banks and the SBA about when the questionnaire is due. If an agency has not started the loan forgiveness process, can they be required to fill in and submit the questionnaire?**

Unless your bank requires you to fill out the Questionnaire along with your forgiveness application, we would advise holding off on filling it out until your bank mandates that it be submitted. As noted above, we are awaiting further guidance and clarity regarding the Questionnaire, and thus, would advise delaying its execution, if possible, until such guidance is forthcoming or if jeopardizes your forgiveness application.

However, you may prepare a “reaffirmation” memo taking into account some of the metrics identified in the Questionnaire. That way the relevant information is captured and can be used to support the applicant’s need if later challenged. This should be done in conjunction with counsel/financial advisors.