



## P.R. Treasury Department Circular Letter CC RI 20-26 of June 3, 2020 deals with local program announced by the Governor on May 14, 2020

There is apparently movement regarding the aids announced by Gov. Wanda Vázquez about the 2.2 billion dollars of Federal funds assigned to Puerto Rico for the Covid-19 Pandemic. She had said that 250M would go in the form of up to \$5,000 grants to small businesses or micro-enterprises and 100M for medium-sized companies grants of up to \$10,000. The government claims that the disbursement of Program funds will be subject to the strictest standards to ensure compliance with federal regulations and best practices which include audits.

The Program will be supervised by a Disbursement Oversight Committee and administered by the Department of the Treasury of Puerto Rico. Applications are being accepted since June 5, 2020.

### ***What small businesses are eligible?***

1. 2-49 employees and it includes non-profits.
2. Any legal structure (i.e. DBA, Corporations) is allowed.
3. Be registered in the Merchants Registry.
4. Has had a Covid-19

documented expense.

5. Agree to provide documents and auditing requests.
6. Agree to return funds if non-compliance is detected or if funds are not spent by December 31, 2020.
7. Funds cannot be used for payroll expenses if the entity has received a PPP (Federal or Local)

### ***What medium businesses are eligible?***

1. Those with 50-500 employees including non-profits.
2. Agree or comply with

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All information and opinions rendered are not intended to be legal advice or opinion but a general educational orientation regarding recent developments affecting business in Puerto Rico. Readers should seek experienced professional/legal advice for their specific situation and facts.

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- above-referenced points 2-7.
3. Can receive other Grants but only expenses not covered by those grants (past or future) can be claimed.

**Allowable Expenditures**

1. Necessary expenditures due to Covid-19.
2. Incurred between March 1 and December 30, 2020.
3. For more details: <https://home.treasury.gov/policy-issues/cares/state-and-local-governments>.

**Ineligible Expenditures**

1. Expenses covered or to be covered by any federal, state or private insurance programs.
2. Employee bonuses.
3. Severance payments
4. Debt refinances, executive bonuses, or unnecessary expenses for continued

- operations under Covid-19.
5. For more details: <https://home.treasury.gov/policy-issues/cares/state-and-local-governments>.

Applications will be processed using the SURI Program commencing on June 5, 2020. Submissions will be accepted on a first come basis until funds are expended. All supporting documents should be kept for 5 years. To determine the amount of employees the information included in Form 499-R-1B for the trimester ending in March 31, 2020 will be the base. If no 499 was filed for that period then the one for the period ending in December 31, 2019 will be used.

Two documents are key to understand and process this Program. The May 23, 2020 Program Guidelines and the Internal Revenue Circular Letter





## PPP loans are more flexible for the forgiveness phase of the program

20-26 of June 3, 2020.

Quickly, in bipartisan way and without much noise President Trump signed into law the Paycheck Protection Program Flexibility Act (PPPFA) on June 5, 2020. The House had approved the bill (417-1) on May 27 and the Senate approved it unanimously on June 3. The changes in a nutshell are as follows:

### **1. The 75%/25% formula goes to 60%/40%**

The original PPP had established that businesses could use up to 25% for limited non-payroll uses but the remaining 75% had to be used in payroll costs as defined in the Act. That number now goes to 60% so for rent/mortgage, utilities and/or interest on loans, the amount goes up to 40%. In other words, the eligible uses remain the same but

the quantity increases which aides the companies that were having difficulties meeting the numbers because the comeback has been slower than originally expected.

### **2. The 8-week time period is extended to 24 weeks.**

The original bill had established that the funds, in order to qualify for forgiveness, had to be spend in the 8-week period commencing upon disbursement. Many people who chose the PPP route instead of the Employee Retention Tax Credit (ERTC) found out the hard way that this short period was not enough because they had not rehired most of the employees in that period (ERTC's can be requested for salaries paid from March 13 to December 31, 2020.). This extension, depending on the date of disbursement puts



the deadline at the end of 2020, which makes it easier to qualify, if we achieve some kind of normalcy by year's end.

### ***3. The June 30 deadline to rehire was pushed to December 31, 2020.***

The second hurdle, and still a dangerous one to jump over, is this requirement to calculate the forgiveness of the loan. Once you can satisfy the auditors that you spend the money appropriately (payroll costs wise) you need to compare the quantity of employees that you had before the Pandemic to those on payroll on June 30 (now December 31). Your claim for forgiveness will be adjusted downwards by the same percentage that your rehiring failed to be 100%. Once again, there is no change in how the calculation is done; it just gives more time to comply with the requirement. This gives more time to "return to normalcy" which has been much more slower than initially thought of. For many businesses the relaxing or end of the stay at home

rules has not meant that consumers have gone back to the same level of consumption, therefore the volume does not justify the rehiring of 100% of the workforce.

### ***4. It's easier to fulfill the rehiring definition.***

The only exception allowed before the PPPFA was to be able to show, in writing, that an offer to return to work had been refused by the employee. The new criteria is that the employer is: (a) unable to rehire an individual who was an employee of the eligible recipient on or before February 15, 2020; (b) is able to demonstrate an inability to hire similarly qualified employees on or before December 31, 2020; or (c) is able to demonstrate an inability to return to the same level of business activity as such business was operating at prior to February 15, 2020. We will have to wait for the Interim Rules to be published to better understand how the employers can meet the new criteria. At this stage every effort to rehire from within the ranks or

from outside should be detailed and documented as well as the economic movement of the business and the sector if possible.

### ***5. The repayment period is expanded to 5 years.***

In the original PPP the employer had two years to repay any amount not forgiven. The PPPFA allows for the loan to continue for 5 years at 1% interest. The first payment is due six months after the SBA determination of the amount forgiven. Given the various deadlines the first payment could be in the summer of 2021.

### ***Worrisome areas that were not addressed in the PPPFA***

One of the thorny issues that are lurking in the PPP waters is if the business qualified for the product. As PRBI has pointed out repeatedly in previous issues, the Secretary of the Treasury has said that all loan over 2M will be audited and those under are open to scrutiny, not only on how the money was spent but if the businesses qualified to begin with. Given the nature of the product, directed to cash strapped operations, the company must not have had other sources of liquidity, either internal or external, nor from the parent company or owner, be it a privately held operation or publicly traded corporation.

Given the quantity of loans it stands to reason that the agency will not be able to audit all of them, but the larger the amount the more attractive for a full audit. It is important to carefully document everything in order to ascertain that the loan is not revoked and full payment required. Once again, once the new regulations are published employers will be in a better position to fully understand the benefits of this Act.



## After the PPPFA the changes to the ERTC should be forthcoming

As we discussed, the bipartisan PPPFA takes care of many of the concerns the PPP beneficiaries were voicing and although lobbyist are charging full steam ahead with the areas that were unattended PRBI sources think there will not be many more changes before the elections.

On the ERTC side of CARES however there is ample movement being discussed as PRBI informed in previous issues. The most important changes are expanding the amount of credit (up to \$36,000 per employee) and that the same business is able to use both products (PPP and ERTC) as long as there is no double dipping. Given the almost unanimous approval of the PPPFA and the expressed consensus by ranking members of the Republicans in the House it is very likely that the incumbents, in an election year, will favorably look upon

expanding the ERTC.

If you have not applied for either program you should immediately call Synergi Partners Puerto Rico (787-433-8000) for a free consultation regarding which program is best for your operation in order to file your petition. Remember the funds allotted are nationwide and on a first come basis. If you have already obtained a PPP you still could benefit from a relationship with the experts at Synergi to be ready to move when these changes are approved. Remember the consultation is free and they work on a contingency basis so you only pay when the reimbursement is processed and deposited in your account. Both for profit and non-profit organizations qualify for this benefit. You can also write to [SynergiPuertoRico@synergipartners.com](mailto:SynergiPuertoRico@synergipartners.com).