

PPP Loan Forgiveness PPP Flexibility Act

June 2020

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The PPP Flexibility Act

- We expect:
 - Further guidance from the banks
 - Additional guidance is likely forthcoming from the SBA
 - That these SBA regulations and FAQs will continue to influence their forgiveness calculations

The PPP Flexibility Act amends the loan program by:

- Establishing that covered loans that have a remaining balance after applying any forgiveness shall have a minimum maturity of 5 years and a maximum maturity of 10 years from the date on which the borrower applies for PPP loan forgiveness.
 - This applies to any PPP loans originated on or after the effective date of the PPP Flexibility Act. Existing Borrowers (2-year loans) can agree with their lenders to a longer maturity date, which is in conformance with the Flexibility Act.

The PPP Flexibility Act amends the loan program by:

- Redefining the “covered period” during which PPP loan proceeds must be used to be the period beginning on 2/15/20 and ending on 12/31/20. .
 - Previously, this period ended on 6/30/20
 - For businesses that have not yet received PPP loan proceeds, the Flexibility Act does NOT extend the June 30 outside authorization date for the funding and federal guarantee of PPP loans.
 - Thus, potential Borrowers who have yet received PPP loans, must have their applications submitted and approved before June 30th.

The PPP Flexibility Act amends the loan program by:

- Extending the similarly-named but different “covered period” for forgiveness calculations from 8 weeks to 24 weeks from the origination date of a PPP loan.
- The Flexibility Act extends the forgiveness period to the earlier of:
 - 24 weeks after the loan disbursement date; or
 - December 31, 2020.
 - This change also allows the borrowers to gradually reopen over time

The PPP Flexibility Act

- Borrowers with pre-existing PPP loans outstanding as of the passage of the Flexibility Act (June 5, 2020) can opt-out of the extended forgiveness period
- Borrowers may instead elect the original 8-week covered period from loan disbursement
 - This flexibility was added to ensure that Borrowers are not prejudiced by the longer forgiveness period if they maintained FTEs and salary/wage levels and spent loan proceeds over the original 8-week

The PPP Flexibility Act amends the loan program by:

- Extending from 6/30/20 to 12/31/20 the period in which a borrower must eliminate any reduction in either
 - (1) the number of full-time equivalent employees or
 - (2) the salary or wages of such employees for purposes of the forgiveness reduction avoidance paths (described below)
 - This allows borrowers to better manage spending/rehiring as businesses re-open after COVID-19 public health restrictions loosen

The PPP Flexibility Act amends the loan program by:

- Providing for alternative FTE reduction relief in the event a borrower can document that it is unable, on or before December 31, 2020, either
 - (1) to rehire or replace individuals who left its employ during the pandemic, or
 - (2) to return to its pre-COVID level of business activity that existed on 2/15/2020 due to compliance with HHS, CDC, or OSHA requirements or guidelines in effect between 3/1/2020 through 12/31/2020

The PPP Flexibility Act amends the loan program by:

- Reducing from 75% to 60% the percentage of forgivable expenses that must be allocated to Payroll Costs.
- However, to receive loan forgiveness under this section, an eligible recipient must use at least 60 percent of the covered loan amount for payroll costs
 - This is currently in question and should be resolved by regulations (see Treasury Statement)

The PPP Flexibility Act

- It extends the 6-month deferral period for payment of loan interest, principal and fees to the date on which the amount of forgiveness is remitted to the lender.
 - Since this process could take (60 plus 90) days from the date the Borrower applies for forgiveness, this is could be a significant extension of the deferral period
 - Borrowers will be required to begin paying principal, interest, and fees on their loans 10 months after the end of the forgiveness covered period if they fail to apply for forgiveness

The PPP Flexibility Act

- The Act deletes the provision of the CARES Act that disallowed employers who obtain forgiveness of a PPP loan from deferring the employer portion of Social Security taxes.
 - Recipients of PPP loans will be able to defer such taxes in the same manner as other businesses that do not receive PPP loans

Payroll Costs

- Payroll Costs – Per PPP Loan Application eligible costs are costs either paid or incurred during the 8 or 24 week period.
 - Employee
 - Wages, salary, commissions, or tips (up to cap of \$100K/year/person)
 - Does NOT include payments to independent contractors
 - Vacation, parental, family, medical, or sick leave
 - Dismissal or separation payments
 - Payments for group health care benefits, including insurance premiums (excludes any pre-tax or after tax contributions by employees)
 - Retirement benefits (excludes any pre-tax or after tax contributions by employees)
 - Employer state or local taxes on compensation
 - Excludes (i) employer's share of Federal employment taxes and federal income tax withholding, (ii) compensation to an employee whose principal place of residence is outside the United States, and (iii) qualified sick/family leave under the Families First Coronavirus Response Act

Non-Payroll Costs

- Payments of interest on any mortgage obligations on real or personal property incurred before February 15, 2020
- Business rent or lease payments pursuant to lease agreements for real or personal property in force before February 15, 2020
- Covered utility payments: business payments for a service for the distribution of electricity, gas, water, transportation, telephone, or internet access for which service began before February 15, 2020

Reductions that Affect Forgiveness

- The full-time equivalency (FTE) Reduction
 - Compare FTEs During the Covered Period to two base periods to determine if there are any reductions:
 - Based Period 1 – January 1, 2020 – February 29, 2020
 - Based Period 2 – February 15, 2019 – June 30, 2019

FTE Calculation

The full-time equivalency (FTE) calculation is different than expected.

- Base method – for each employee, divide the average number of hours paid per week by 40 and round to the nearest tenth, capping any individual employee at 1
- Simplified method – each employee who works 40 hours or more per week is 1 FTE, and every other employee is assigned 0.5

Although borrowers have a choice between the two methods, they are required to use the same method consistently throughout this computation.



Forgiveness Reduction Based on Salary Decrease Adjustment

- The amount of forgiveness will be reduced by the amount of reduction in salary of any employee, to the extent such reduction exceeds 25% of the employee's salary during the most recent full quarter preceding the forgiveness period
 - This does not include the salary of any employee who earned over \$100,000 annualized for any pay period in 2019

PPP Flexibility Act

Again, borrowers can disregard these forgiveness reductions if the reduction in FTEs and/or salary/wages are eliminated by the outside rehire/salary restoration date

Allowable Uses vs. Forgivable Expenses

	<u>Allowable Uses (during the term of the loan)</u>	<u>Forgivable Expenses (during the covered period)</u>
1	Payroll costs (including salary, wages, retirement benefits, group health care benefits, state and local employment taxes, etc.) for employees whose principal place of residence is in the U.S.	Same (note: salary cap is \$15,385 for the 8-week period, \$46,154 for the 24-week period)
2	Interest on business mortgage obligations (but not prepayments or principal payments) on real or personal property	Interest on business mortgage obligations (but not prepayments or principal payments) on real or personal property, if the loan was incurred before 2/15/2020
3	Business rent for real and personal property	Business rent for real and personal property, if the lease was in effect before 2/15/2020
4	Business utilities (including electricity, gas, water, transportation, telephone and internet)	Business utilities (including electricity, gas, water, transportation, telephone and internet), if the service was in effect before 2/15/2020
5	Interest in any other debt obligations incurred before 2/15/2020	None
6	Costs related to the continuation of group health care benefits during periods of paid leave, and insurance premiums	None

Thank You For Your Time!



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