



PPP FLEXIBILITY ACT OF 2020:

What Are Your Options Now?

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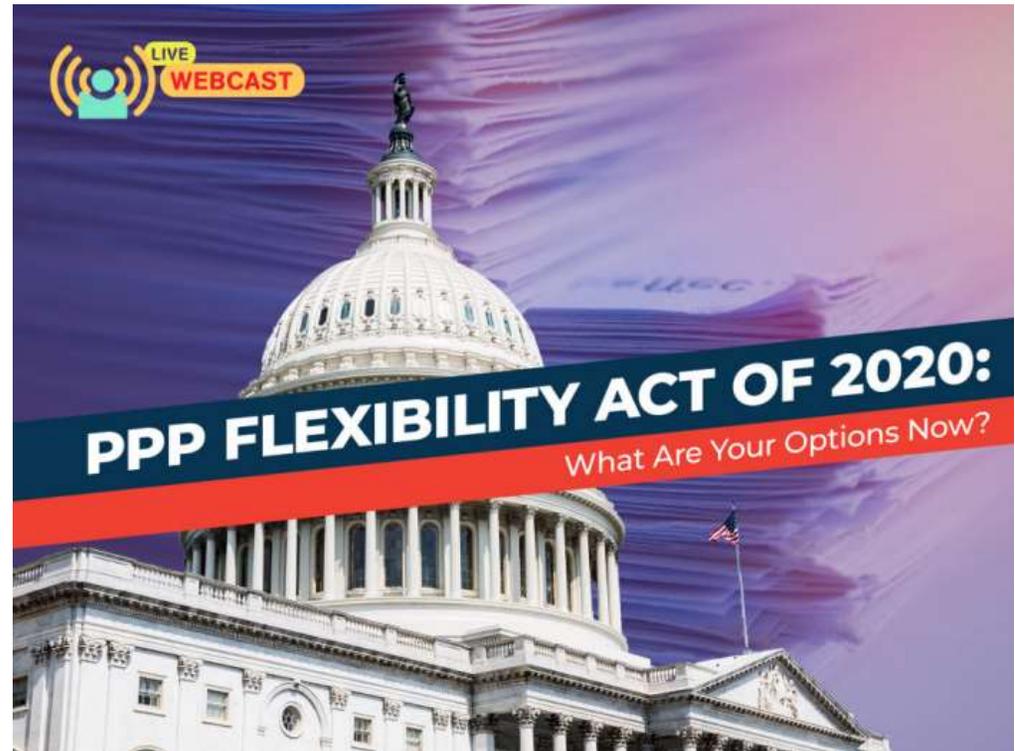
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PAYCHECK PROTECTION PROGRAM (PPP): OVERVIEW

- Historic program in both volume and purpose
- More than 4.5 million loans provided to small businesses
- More than \$510 billion funds lent
- You can still apply through June 30, 2020
 - Over \$100 billion in funds remain



ROLE OF THE: U.S. SMALL BUSINESS ADMINISTRATION (SBA)

- Unique program compared to typical SBA loans
 - Usually provide funding for growth and loans to be repaid
 - PPP funds are meant to be forgiven and new guidance further reinforces that
- Provides final approval if funds are forgiven or not
 - Could take 90 days or more



ROLE OF THE: BANK

- Acts as a facilitator only
- Provide a “good faith” review of documentation
 - 60-day window to review
- Issues package to SBA



ROLE OF THE: BORROWER

- Document as much of your records and receipts as possible
- Obligation to understand the SBA's rules on eligibility and the documentation requirements associated with your loan
- Attest that all documentation is accurate
- Consult with your tax, legal and accounting advisors for final forgiveness calculations
- Submit completed application to bank



PPP LOANS: FLEXIBILITY ACT UPDATE

- Deferral period moved from 6 to 10 months
- Loan maturity changed from 2 to 5 years
 - If funds provided after June 5, 2020: 5-year maturity
 - If funds provided before June 5, 2020: 2-year maturity
 - Option to change to 5-years only if mutually agreed upon by the borrower and the bank
- 1% interest rate remains



IMPORTANT NOTES

- Guidance from the SBA and the Government is NOT final
 - You should continue to monitor the SBA's website for updated guidance
 - Changes made often
- First Midwest Bank does not provide tax, legal, or accounting advice to our bank clients or borrowers for the SBA PPP. Please consult with your tax, legal and accounting advisors during the Forgiveness process





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PAYCHECK PROTECTION PROGRAM REFRESHER

- Paycheck Protection Program (PPP) loan created under CARES legislation, passed into law March 27, 2020.
- Focused on providing funding to small businesses to assist them with employee payroll, lease payments, interest on mortgages, and utilities.
- Potential forgiveness if spent in the required manner over the eight-week period after the loan was disbursed.
- Delay in issuing this guidance and a slowdown in operations concerned borrowers. **They feared they would be unable to maximize their PPP loan forgiveness.**
- In mid-May, SBA provided guidance on loan forgiveness to assist borrowers.



PAYCHECK PROTECTION PROGRAM REFRESHER

- Payroll costs:
 - Amount of gross salary, wages, and tips, up to annualized level of \$100,000 per individual;
 - Exception for owner-employees: Lower of \$100,000 annualized or 2019 actual gross salary.
 - Covered benefits for employees including health care, retirement, and state taxes imposed on employee payroll paid by the employer (not subject to the \$100,000 limitation); and
 - Self-employed or sole proprietors: Owner compensation replacement, calculated based on the net profit from the 2019 Form 1040 Schedule C, up to a maximum of 8/52 (potentially 24/52) of the 2019 net profit.
- Expenses must be paid or incurred.
 - Potential to include more than 8 weeks' (or 24 weeks') worth of expenses.
 - Must pay costs incurred on or before next regular payroll date.



PAYCHECK PROTECTION PROGRAM REFRESHER

- Alternative Payroll Covered Period: For administrative convenience, Borrowers with a biweekly (or more frequent) payroll schedule may elect to calculate eligible payroll costs using the eight-week (56-day) period that begins on the first day of their first pay period following their PPP Loan Disbursement Date (the “Alternative Payroll Covered Period”). For example, if the Borrower received its PPP loan proceeds on Monday, April 20, and the first day of its first pay period following its PPP loan disbursement is Sunday, April 26, the first day of the Alternative Payroll Covered Period is April 26 and the last day of the Alternative Payroll Covered Period is Saturday, June 20. Borrowers who elect to use the Alternative Payroll Covered Period must apply the Alternative Payroll Covered Period wherever there is a reference in this application to “the Covered Period or the Alternative Payroll Covered Period.” However, Borrowers must apply the Covered Period (not the Alternative Payroll Covered Period) wherever there is a reference in this application to “the Covered Period” only.



PAYCHECK PROTECTION PROGRAM REFRESHER

- Non-Payroll costs: Relating to agreements dated before February 15, 2020.
 - Rent on real and personal property – must be market rent.
 - Utilities.
 - Interest on mortgage and debt obligations secure by real or personal property.
- Expenses must be paid or incurred.
 - Potential to include more than 8 weeks' (or 24 weeks') worth of expenses.
 - Pay April utilities in May, pay May utilities in June, incur June utilities and pay by standard due date.



PAYCHECK PROTECTION PROGRAM REFRESHER

- Reduction in forgiveness:
 - Reduction in full-time equivalent ("FTE") headcount – based on 40-hour work week.
 - Numerator: The average number of full-time equivalent (FTE) employees of the borrower during the covered period
 - Denominator: The lower of:
 - The average number of FTE per month from February 15, 2019 through June 30, 2019; or
 - The average number of FTE per month from January 1, 2020 through February 29, 2020.
 - Regular vs. Simplified approach.
 - Reduction in wages:
 - If the salary or hourly wages of an employee earning less than \$100,000 is reduced by greater than 25% of what the employee was earning in the most recent quarter before the loan was disbursed.
- Exceptions: FTE headcount and wage levels restored by December 31, 2020 (prior to PPPFA June 30, 2020).



OVERVIEW OF “PAYCHECK PROTECTION ACT FLEXIBILITY ACT OF 2020”

- Congressional leaders and the Administration reached an agreement on the latest piece of legislation dealing with the Coronavirus (COVID-19).
- This is **Congress’ fifth bill in the last three months.**
- **The “Paycheck Protection Program Flexibility Act of 2020” (H.R. 7010)** is essentially a revision of a portion of the much larger CARES Act (“Phase 3”).
- This bill passed Congress on June 3, 2020 and was signed into law by the President on Friday, June 5, 2020.
- The SBA issued **Revisions and Additional Revisions to the First Interim Rule** on June 11, 2020 and June 12, 2020.



OVERVIEW OF “PPPFA”

Paycheck Protection Program Flexibility Act of 2020

- **This legislation extends the PPP loan forgiveness “covered period” from 8 weeks to 24 weeks.**
- The 24-week period runs from the date the loan was originated, but 24 weeks cannot extend beyond December 31, 2020.
- **Longer covered period critical for many borrowers nearing end of their initial eight-week timeframe and whose operations were closed or suspended under state law.** The 24 weeks should permit more PPP loan to be forgiven.
- **Please note** - the employee compensation limits still apply. Loan forgiveness will continue to max out at \$100,000 for annual employee salary. For 24 weeks, this translates to ~ **\$46,153** cap per employee (this was \$15,385 under 8-week period).
- The SBA will hopefully issue guidance confirming new compensation limit for 24-week period.



OVERVIEW OF “PPPFA”

Paycheck Protection Program Flexibility Act of 2020

- PPP loan term previously two-year period for loans made before June 5, 2020.
- **Under PPPFA, the loan term pushed out to five years** for loans made on or after June 5, 2020 (for amounts not forgiven that need to be repaid by borrower).
- Borrowers with loans made before June 5, 2020 may approach their lender for a longer term up to five years.
- **PPPFA** also extends the date any loan payments begin until the date the lender receives notification of forgiveness from the SBA or 10 months after the close of the 24-week period or October 31, 2020 (whichever comes first). Was previously six months after loan originated.



OVERVIEW OF “PPPFA”

Paycheck Protection Program Flexibility Act of 2020

- New law replaces “75/25 rule” introduced by SBA with a “60/40 rule.”
- Thus, 60% of PPP loan must be used for payroll costs and 40% for non-payroll costs (lease payments, interest on mortgages, and utilities).
- Other non-payroll costs can account for higher portion of loan but is likely less a concern due to 24 weeks of expenses available now.
- SBA and Treasury statement (June 8) indicates there is no "cliff" if borrower spends less than 60% on payroll costs and the borrower will still be eligible for partial loan forgiveness.
- Interim Final Rule on Revision to First IFR (June 11) clarifies this is a proportional limit on non-payroll costs as a share of borrower’s forgiveness amount rather than a threshold for recognizing any forgiveness.



OVERVIEW OF “PPPFA”

Paycheck Protection Program Flexibility Act of 2020

- The bill **defers to December 31, 2020 (from June 30, 2020)** date a borrower can have Full-Time Equivalents (FTEs) and employee compensation back to the same threshold as the borrower had on February 15, 2020.
- If the borrower gets their payroll back to this level, the PPP loan forgiveness will not be reduced.
- Additional SBA guidance may be necessary to address this new date for FTE purposes.



OVERVIEW OF “PPPFA”

Paycheck Protection Program Flexibility Act of 2020

- Another favorable change in the PPPFA provides that the PPP loan forgiveness will not be reduced as a result of a decline in FTEs if the borrower is able to show one of the following two situations apply:
 1. **An inability to rehire individuals** who were employees of the borrower as of February 15, 2020, and **the inability to hire similarly qualified employees** for unfilled positions **by December 31, 2020.**
 2. **An inability to return to the same level of business activity as the business or borrower was operating at prior to February 15, 2020, due to the borrower needing to comply with requirements established by the CDC or other government agencies for the period starting on March 1, 2020 and ending on December 31, 2020.** The compliance relates to maintaining standards for sanitation, social distancing, or any other worker or customer safety requirements from the Coronavirus pandemic.
- SBA guidance will be needed to interpret the above exemptions.



OVERVIEW OF “PPPFA”

Paycheck Protection Program Flexibility Act of 2020

- Allowable exclusions from FTE test.
 - An employee was fired for cause.
 - An employee voluntarily resigned.
 - An employee voluntarily requested and received a reduction in their hours.
 - An employer offered in writing to rehire employee, but employee refused offer.
 - An inability to rehire individuals and the inability to hire similarly qualified employees.
 - An inability to return to the same level of business activity due to the borrower needing to comply with requirements established by the CDC or other government agency.



OVERVIEW OF “PPPFA”

Interim Final Rule on Revisions to the First Interim Rule (June 11, 2020)

Updated Certification - If funds are knowingly used for unauthorized purposes, you may be legally liable such as for charges for fraud.

Interim Final Rule on Additional Revisions to the First Interim Rule (June 12, 2020)

- Was: ineligible if 20% or greater owner convicted of a felony within the last 5 years
- Now: ineligible if 20% or greater owner is:
 - Incarcerated
 - On probation
 - On parole
 - Presently subject to indictment, criminal information, arraignment or other means by which formal charges are brought in any jurisdiction
 - Convicted of a felony involving fraud, bribery, embezzlement or a false statement in a loan application or an application for federal financial assistance within the last 5 years **or**
 - Convicted of any other felony within the last year



OVERVIEW OF “PPPFA”

Paycheck Protection Program Flexibility Act of 2020

- PPPFA also allows borrowers that obtain PPP loan forgiveness to receive payroll tax deferral (another CARES provision).
- Thus, the 6.2% employer share of FICA for period March 27, 2020 through December 31, 2020 can be deferred with: (1) 50% due on December 31, 2021; and (2) 50% due on December 31, 2022.
- Prior to the PPPFA, borrowers could not defer these payroll taxes after they received notification of their loan forgiveness.
- This is in effect a short-term loan and provides some additional working capital for borrowers.



OVERVIEW OF “PPPFA”

Paycheck Protection Program Flexibility Act of 2020

- Further, bill provides that borrowers who received a PPP loan prior to PPPFA becoming law can still utilize the present eight-week period.
- Borrower may want to compare options to see which is preferred.
- Current guidance does not provide option of applying for forgiveness between the 8- and 24-week time periods.
- If 24-week period is elected, borrower should consider timing of forgiveness and year-end tax returns and financial statements.



OVERVIEW OF “PPPFA”

	Original PPP	Updated for PPPFA
Covered period	8 weeks	24 weeks ¹
Payroll vs. Non-payroll	75%/25%	60%/40%
Maximum gross wages per individual	\$15,385	\$46,153 ²
Deadline for restoring wages or FTE count	June 30, 2020	December 31, 2020
Exceptions to FTE count		Expanded exceptions
Deferral period	6 months	Date forgiveness is determined
Term of loan	2 years	5 years ³
Deferral of payroll taxes	Only until forgiveness granted	Eligible after forgiveness as well

1. Borrowers who received PPP loans prior to June 5, 2020 can elect to use an 8-week period, if desired. Additionally, the covered period will end the sooner of the 24-week period ending or December 31, 2020.

2. To be confirmed in future guidance, but this is based on 24 weeks of an annual salary of \$100,000.

3. The lender has the option to require borrowers to adhere to the 2-year term if the PPP loan was issued prior to June 5, 2020.



CONCLUSION

Final comments and next steps

- SBA guidance needed on PPPFA.
- Additional legislation possible over next several weeks on Coronavirus.
- HEROES passed House in Mid-May. Unlikely to move forward in Senate, but still could have several provisions included in compromised bill with Senate and administration.
- Uncertain now what may be contained in this further legislation. Also, unsure of its timetable, and whether there will be bi-partisan support for more legislation.
- **Stay tuned for further developments from Congress and the IRS.**



LIGHTNING ROUND QUESTIONS

- Can I choose a period in between 8 and 24 weeks?
- Does 24-week period require an opt in?
- Can I reapply for more money?
- If my money is all spent, when can I apply for forgiveness?
- Is the forgiveness taxable?
- How long do I have to maintain my FTE count under the 24-week period?
- Has the SBA issued new forms and instructions for forgiveness?
- How does an EIDL loan impact forgiveness?



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