Paycheck Protection Program (PPP)
Overview of Flexibility Act and New Loan Forgiveness Applications, Plus Top Questions Answered

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Hello All,

Thank you for joining the M&T Bank Paycheck Protection Program update. We are excited to spend some time providing you with an overview of the Flexibility Act, give you some details on the new loan forgiveness applications and we’ll work to address a few of the most frequently asked questions.

I will be joining you throughout the session. My name is Ben Rager, and I am the Business Banking Education Manager here at M&T.

So, let’s get started!

What do you need to know about the Paycheck Protection Program Flexibility Act, also what is the PPP Flexibility Act?

One thing you need to know is that some guidance has changed since you initially applied for your PPP Loan. And as a result, you cannot rely on the original application, as the criteria has changed. The majority of the changes are a result of the Flexibility Act. And this Act was signed into law by the President on June 5, 2020. It was designed to give small businesses more flexibility, and time, to make qualifying expenditures for loan forgiveness.

Let’s review what the act covers:

First, it lengthens the forgiveness “covered period” from 8-weeks to 24-weeks, but not beyond December 31, 2020. Now, if you received your loan prior June 5, 2020, you maintain the option though to use the original 8-week period if you like. In addition, recent SBA guidance clarified that you may apply for forgiveness prior to the end of your covered period.

Alright, it also extends the PPP loan payment deferral period from 6 months, to the date in which your eligible forgiveness amount is remitted to the lender. For borrowers who do not apply for forgiveness within 10 months after the end of the covered period, the deferral period will end at that time.

Moving on, the flexibility act revises the 75/25 payroll/non-payroll cost minimum requirement to 60% payroll and 40% non-payroll. This is a big one! And we’ll discuss more on this topic in a few minutes.

The last point on this slide references that, if the loan was obtained on or after June 5, 2020 the loan term is now 5 years. If you received your loan prior to June 5, 2020, the loan term may be extended from the original 2 year term, up to 5 years upon the borrower and lender agreement.

The Flexibility Act still has a few more items though that we need to cover, so let’s go ahead and move on to the next slide.

There’s three more critical items that we want to address. The Flexibility Act allows you to delay your payroll tax payments through the end of 2020. This provision requires that the deferred employment tax be paid over the following two years, with half of the amount due by December 31, 2021, and the other half due by December 31, 2022.
Next, it provides additional exemptions from loan forgiveness reduction based on the inability to rehire to the same full time equivalent level or the ability to resume the prior levels of business activity. However, it requires you to have attempted to rehire to the same FTE level and/or have had the inability to return to the same level of business activity before February 2020 due to the health and safety ordinances. This is something that you will not only have had to make a good faith effort to rehire, but you will also be required document. We’ll review this in greater detail in a few minutes.

Finally, the Flexibility Act provides guidance on the payroll cost cap of $100,000 of annual pay per employee for the extended covered period. So if you are utilizing the 8-weeks covered period, the maximum is $15,385 per individual, if you are using the 24-weeks coverage period, the maximum of $46,154 is utilized per individual. If you are an owner employee, your pay is capped at 8-weeks, or a maximum of $15,385, or for the 24-weeks, the maximum is $20,833.

Now let’s transition to the Loan Forgiveness Application.

On June 16, 2020 the SBA issued updated loan forgiveness applications and instructions. There are two different forms, one is the Application Form EZ, and the other is the Standard application. It’s very important for you to understand the difference between the two, and which you are eligible to use. Depending on your situation, you may require more or less supporting documentation. We recommend printing the applications and reviewing them with your legal and tax professional. This will help you while you’re preparing to submit your forgiveness application.

Alright, so what do you need to know about applications?

You can actually apply for loan forgiveness at any time on or before the maturity date of the loan, including prior to the end of the Covered Period. Understanding timing is key. That’s why we recommend you consult your legal and tax advisors to help you through this process.

Next, the loan forgiveness expenses need to be collected prior to completing the loan forgiveness application via M&T’s online portal. And, if you’re using the long form, the 3508 application, you must complete the Schedule A worksheet ahead of time and then retain it for your records, even though you won’t have to supply the Schedule A with your documentation. This is incredibly important. Please utilize the resources that M&T Bank has available for you at www.mtb.com/business-informed to find details and information to help you prepare.

That website will also provide a list of documentation requirements. You can also refer to the SBA form 3508/3508EZ for the complete list of documentation requirements. Again, you will need gather and prepare these documents as part of the loan forgiveness application process.

Once you have gathered documentation and applied for forgiveness, you have to retain this information for 6 years. As I stated earlier, a common theme is document, document, document!

As referenced on the previous slide, there are two types of Applications. There is an EZ Loan Forgiveness Application and a standard Application. Based on the name, you can expect that the EZ Application would be a bit less complex. Which sounds good, right?

Well it is, but in order to qualify for the EZ Application, you must meet one of three criteria:
Option 1 outlined here on the left, is pretty straightforward. If you are a self-employed, an independent contractor, or a sole proprietor who had no employees at the time of the PPP loan application and you did not include any employee salaries when applying for your PPP funds, well you qualify for the EZ Application.

Option 2 and 3 outlined here in the middle and on the righthand side, are a little more detailed and they both have one common starting point outlined in the middle right here. Both require that you did not reduce annual salary or hourly wages of any employee by more than 25% during the Covered Period or during the Alternative Payroll Covered Period. This is in comparison to the period between January 1, 2020 and March 31, 2020. An example of what would make you INELIGIBLE is if you pay someone $50,000 and then you lower their salary by more than 25% then you wouldn’t be eligible to utilize the EZ application. Remember, both option 2 and 3 include this overarching requirement. By the way, I realize that I have referenced the terms Covered Period and the Alternative Payroll Covered Period several times. We will explain both of those terms on one of the future slides.

Alright, so what’s the difference between option 2 and 3 then?

Option two indicates that you did not reduce the number of employees or the average full-time employee paid hours between January 1, 2020 and the end of the Covered Period.

There are, however, two reduction allowances that will not exclude you from this option. The first indicates that you had an inability to hire similarly qualified employees for unfilled positions on or before December 31, 2020. Again, this is based on the February 15, 2020 employee counts.

The second indicates that if you offered your employee the appropriate hours, and they refused. Well, this scenario will not exclude you from the EZ Forgiveness application process.

Moving on to Option 3, in addition to the shared salary requirement we discussed, in order to be eligible to utilize the EZ from, you also were unable to operate during the Covered Period at the same level of business activity as before February 15, 2020. This would be 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. This also could be related to the maintenance of standards of sanitation, social distancing, or any other work or customer safety requirement related to COVID-19.

An Item to note is that SBA is interpreting this statutory exemption to include both direct and indirect compliance with COVID Requirements or Guidance, because a significant amount of the reduction in business activity stemming from COVID Requirements or Guidance is the result of state and local government shutdown orders that are based in part on guidance from the three federal agencies.

So an example is, if your business was mandated to close because it was deemed non-essential, or if you had to operate with limited capacity or social distances resulted in fewer customers. Think Restaurants, they may have been required to do take out only, then outdoor seating and now limited indoor seating. This clearly is an example of a company that you would expect that the staffing model would have been reduced as a result of the guidance.
So the goal of the EZ Loan Forgiveness Application is to help borrowers. Help them make it easier to apply and receive the necessary forgiveness. Understanding these guidelines, is one of the first steps of preparing for your forgiveness request.

Now moving a bit away from the application, let’s talk more terminology. Throughout the PPP Process, I am sure, I am certain, you have heard quite a few terms and phrases that you either don’t know what they mean, or you need to understand how they impact you and your forgiveness requests. The next few slides, we will attempt to demystify some of these terms.

Let’s start with FTE’s, or Full Time Equivalency. An FTE is defined as an employee who works 40 hours or more per week. The forgiveness application requires you to identify the number of FTE’s you have. Now, SBA recognizes that many of you or course have full time employees AND non-fulltime. And they also classify full time as 40+ hours per week, anything else, anything less, is non-fulltime. So when completing the Application, you can use the actual FTE calculation, like the example on the slide down here where it’s indicated that an employee that works 37.5 hrs. actually equates to 0.9 FTE’s per that equation. However, the SBA does allow the simplification of this by assigning a 1.0 for employees who work 40 hours or more per week and 0.5 for employees who work fewer than 40 hours per week. As you can see in the example on the slide, the 0.9 FTE actually would be simplified to this, this 0.5 FTE per the SBA allowed process. Remember, you can either complete the actual calculation, or use the simplified method. But, you must be consistent on your application. Choose the actual or the simplified method and stick with it, commit to it.

Another Key Highlight is that 1099 employees, also known as contracted employees, cannot be included in your total employee counts. They can apply for forgiveness for their loan on their own. In fact, the next slide will explain this in a bit more detail. One exception to this rule is fishing boat owners that have less than 10 crew members who do not obtain a PPP loan of their own.

Finally, don’t forget to take note of the Key Reminders on the right side;

These three bullets are reinforcing some of the details we referenced previously around wage and salary reductions, employee payroll caps and owner employee payroll caps.

Now let’s talk about Owner-Employees and what do they need to know about compensation caps. Well keep in mind, and Owner-Employee is inclusive of an Independent Contractor, Self-Employed individual, Sole Proprietor, General Partner, or and Owner-Employee or any other entity type.

As for the key highlights, remember Owner-Employee compensation for the 8-week period is capped at the lesser of 8/52 of 2019 net profits or $15,385 if you are using the 8-week covered period. Owner-Employee compensation for the 24-week period is the lesser of 2.5/12 of the 2019 net profit or $20,833. For both periods, whether it’s the 8 or 24-weeks, the amounts are per individual, in total, across all businesses. Also, if you leverage 2019 net profit or compensation, then you will need to supply a 2019 tax documents, along with proof of payment during the covered period.

Moving on let’s review what expenses are included in Payroll and Non-Payroll costs. First, we really have to understand what they are defined as, what are these terms.

Payroll costs are defined as: payroll expenses, which include health and retirement benefits, and payment of state and local taxes imposed on employee payroll.
Non-payroll costs are defined as: interest on business mortgage obligations, rent/leases and utilities.

Now on the left side of the screen, we’ll reference some of the Payroll cost highlights.

This first being in the parenthesis, remember the Flexibility Act requires a minimum of 60% of the PPP funds to be utilized to pay payroll expenses. But to clarify, it is at least 60% spent on payroll. Less than 60% spent on payroll will reduce the forgiveness amount. However, 100% can be spent on payroll if that works best for you and your company.

It’s Salary, Wages, Commissions, Tips, Bonuses and Hazard pay, up to $100,000 per employee. It also includes Vacation, parental, family, medical and sick pay.

As far as health and retirement benefits; you can include Health, dental and vision insurance expenses. As well as EMPLOYER paid 401K matches, profit sharing payments, and so on as outlined here.

Finally, the payroll costs can include payment of state and local taxes imposed on employee payroll, but excluding employer paid FICA taxes.

Now looking at the highlights of the non-payroll costs, please remember that the flexibility act requires that at most, at most, 40% can be spent on nonpayroll costs of rent, mortgage interest and utilities, that like: electricity, gas, water, transportation, telephone, and internet access. But you can, if you choose, spend 0% on nonpayroll if you are utilizing all the funds to cover your payroll!

So, some of the non-payroll costs, well transportation utility costs are considered, like gasoline or fuel for business vehicles used for business purposes.

It can also include Interest payment on business mortgage obligations on real or personal property: now real property is referring to the real estate, rent and leases. Personal property is referring to business equipment only.

As it relates to that personal property, we cannot use interest paid on any obligation secured by equipment but rather obligations for purchase of personal property.

In order for a nonpayroll cost to be eligible, it must be paid during the Covered Period or at least incurred during the Covered Period and then paid on or before the next regular billing date, even if the billing date is after the Covered Period. Also, make sure that you count nonpayroll costs that were both paid and incurred only one time!

Some additional items to remember: This is just a sample of eligible expenses. Please contact your banker to review expenses in greater detail. This information is subject to change as the SBA provides additional clarification frequently.

Now we’re going to jump in to the Covered Periods a little bit more. And t’s important that you choose a covered period that will allow all eligible payroll and non-payroll expenses to be paid out prior to applying for your loan forgiveness. That means that the covered period should align with payroll and non-payroll expense disbursement, payment and documentation. So, you cannot pay for expenses prior to receiving PPP funds being deposited into account. It’s all about timing and you have a choice. If you have exhausted all your funds before the completion of the 8-week period, you may choose to utilize the 8-week covered period. We’ve got a little diagram down here. However, if you exhaust the funds
any time after 8 weeks and up to 24 weeks, you automatically fall into that coverage period outlined here.

What you should know is that you can apply for Forgiveness when you have exhausted your PPP funds, and any time before the maturity of the loan. So, when you are ready and you have compiled the documentation you can apply.

With that in mind, there are a few more details to consider around the Covered Period. As I mentioned earlier, it’s all about timing. One of the key components related to the Covered Period is the date in which you received your funding. The second factor is what you are using the funds for. In the standard covered period on the left, it shows that this borrower received the funding on April 6th. If they are utilizing their funds to pay for payroll AND other non-payroll expenses, their period ends 8 or 24 weeks from the date they received the funds.

In the example on the right side, the Alternative Payroll Covered Period that calendar shows a customer that received their funds on April 6th, just like the calendar on the left, however, this customer is ONLY using the funds for payroll. Since their first pay period following the receipt of the funds is April 17th, then their covered period begins that day, not the date they received their funding.

One item to remember is that in order for a nonpayroll cost to be eligible, it must be paid during the Covered Period or at least incurred during the Covered Period and then paid on or before the next regular billing date, even if the billing date is after the Covered Period.

Now that we have reviewed the application process and some of the common terms and questions, let’s review the documentation you have to have to apply. Remember it is important to gather this information prior to beginning the application process. That’s gonna make it easier and smoother for you. Also, as you are gathering this information, please ensure that you have it converted to a PDF and that it is not password protected!

Ok to verify payroll expenses, you will need the following:

Bank statements, tax documents and/or your payroll provider reports verifying compensation to the employees, as well as to verify payroll tax filings, state quarterly wage reporting and unemployment insurance tax filings.

You may also gather employee health insurance and retirement plan contribution documentation, things like receipts, cancelled checks or account statements

You’re gonna need documentation for your FTE. This includes any employee job offers and refusals, firings for cause, voluntary resignations, and written requests by any employee for reductions in their work schedule. You will also need documentation showing average number of employees.

All of that is highlighted on the left side of this slide.

On the right side now, let’s talk about non-payroll expense verification, and you should gather items like we’re got over there. Again it’s: bank statements, amortization schedules or cancelled checks to provide proof of payment for Business Mortgage Interest payments and Business rent and lease payments.
To provide verification of business utility payments, be sure to have copies of invoices from February of 2020 and those paid each month of the covered period. You should also gather receipts, cancelled checks or account statements to help support it.

Remember, I’ve said this multiple times, timing is everything, make sure you know dates! You cannot put in expenses prior to receiving funds. Also, be sure you gather one additional month of documentation. That way you are sure to capture the payment being reflected within your actual covered period. Basically, the non-payroll expenses should cycle once before you apply.

Finally, remember this slide is not designed to provide a full description of all the documentation necessary to apply and then receive your forgiveness. Be sure to connect with your Banker, your Tax Consultant and/or your attorney as you are working through the process. That’s going to allow you the ability to have as much up to date information as possible as you work through it.

Alright, now that we have walked through the process, how about we give you a few resources! M&T Bank is committed to providing the most up to date information as possible. We are continually updating our mtb.com/business-informed website with Frequently Asked Questions and resources to help you through the process that’s outlined right here. But we also encourage you to do research yourself. You can utilize the US Treasury site as a resource. We’ve got that site right here for you. They have a plethora of information. But also don’t forget to lean on your tax professionals and your attorney.

Of course our team is here to help. Make sure you reach out to your Relationship Manager, your Branch Managers. Also, you can connect with the Telephone Banking Center if you like. They are working to understand the process as well and will help you out however they can.

Finally, be on the lookout for emails from M&T Bank. We are sending emails with insights on the forgiveness program. This information will provide any updates on the process or changes to the program. We will also be sure to send you an email when it is time for the application process to begin.

So that’s it! We hope this presentation has helped you understand what to expect, it’s demystified some of the terms that you keep hearing, and we hope it answered some of your questions. Remember, documentation is critical. Be sure to gather all your records, maintain your documentation and research the process. When you are ready to apply, preparation and organization is what’s going to help make this process easy!

As a final note, we have based this presentation on information provided by the SBA and the Treasury to date, and we expect further guidance to be issued. So please continue to research the PPP Forgiveness program and be on the lookout for more updates and adjustments as they occur.

Thank you so much for your time today, we hope this was helpful, and have a great day!