

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

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Information based on SBA guidance as of August 11, 2020



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# What do I need to know about the Paycheck Protection Program Flexibility Act?

On June 5, 2020, the President signed into law the PPP “Flexibility Act.” The law is designed to give small businesses more flexibility and time to make qualifying expenditures for loan forgiveness.

## The Flexibility Act covers:



Lengthens the forgiveness “**covered period**” from an **8-week period (56 days)** to **24-weeks (168 days)**, but no later than December 31, 2020

- ✓ Borrowers who received their PPP loan before June 5, 2020, maintain the option to use the original 8-week period or any period between the 8-week and 24-week covered period



Extends the **PPP loan payment deferral period** from 6 months, to the date on 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 as well



Revises the **75/25 payroll/non-payroll** cost minimum requirement to **60/40**



If loan obtained on or after **June 5, 2020 loan term is 5 years**. Loan term may be extended upon borrower and lender agreement, from 2 years to 5 years, if PPP loan was obtained prior to June 5, 2020.

## What do I need to know about the Paycheck Protection Program Flexibility Act? Cont.

On June 5, 2020, the President signed into law the PPP “Flexibility Act.” The law is designed to give small businesses more flexibility and time to make qualifying expenditures for loan forgiveness.

### The Flexibility Act covers:



Allows borrowers to **delay their payroll tax payments** through the end of 2020. The 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



Provides an **additional exemption from loan forgiveness reduction** based on inability to rehire (in good faith) the same Full-Time Equivalent (FTE) level or inability to return (in good faith) to the same level of business activity before February 2020



Payroll costs capped at \$100,000 of annualized pay per employee (**8 weeks = maximum of \$15,385** per individual or **24 weeks = maximum of \$46,154** per individual)

Owner employees are capped at 8 weeks = maximum of \$15,385 or 24 weeks = maximum of \$20,833

# What do I need to know about the new SBA Loan Forgiveness Applications?

On June 16, 2020, the SBA issued updated loan forgiveness applications and instructions.

Print and review the SBA Forms and Instructions. Gain an understanding of what data is needed and consult your legal and tax professional.



## Key highlight:

There are two loan forgiveness applications available. Be sure to review both to see which option will be better suited for your business:

Paycheck Protection Program  
PPP Loan Forgiveness Application Form 3508EZ  
OMB Control No. 3245-0407  
Expiration date: 10/31/2020

Business Legal Name ("Borrower")		DBA or Tradename, if applicable	
Business Address	Business TIN (EIN, SSN)	Business Phone	
	Primary Contact	( ) -	E-mail Address

SBA PPP Loan Number: \_\_\_\_\_ Lender PPP Loan Number: \_\_\_\_\_  
PPP Loan Amount: \_\_\_\_\_ PPP Loan Disbursement Date: \_\_\_\_\_  
Employees at Time of Loan Application: \_\_\_\_\_ Employees at Time of Forgiveness Application: \_\_\_\_\_  
EIDL Advance Amount: \_\_\_\_\_ EIDL Application Number: \_\_\_\_\_  
Payroll Schedule: The frequency with which payroll is paid to employees is:  
 Weekly  Biweekly (every other week)  Twice a month  Monthly  Other \_\_\_\_\_  
Covered Period: \_\_\_\_\_ to \_\_\_\_\_  
Alternative Payroll Covered Period, if applicable: \_\_\_\_\_ to \_\_\_\_\_  
If Borrower (together with affiliates, if applicable) received PPP loans in excess of \$2 million, check here:   
Forgiveness Amount Calculation:  
Payroll and Nonpayroll Costs  
Line 1. Payroll Costs: \_\_\_\_\_

## PPP Loan Forgiveness:

- [Application Form EZ](#)
- [Application](#)

## Things you should know:

- A borrower can 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
- The loan forgiveness expenses need to be collected prior to completing the loan forgiveness application via M&T's online portal
- Borrowers will still need to prepare documentation as part of the loan forgiveness application process
- Borrowers will need to retain information for 6 years

# What do I need to know about the EZ Loan Forgiveness Application?

Borrowers must meet one of three criteria options to be able to utilize the EZ application.

Option 1	Option 2 (two part criteria)	Option 3 (two part criteria)
<p>Borrower is a self-employed individual, independent contractor, or sole proprietor who had no employees at the time of the PPP loan application and did not include any employee salaries when applying for PPP funds</p>	<p>Borrower did not reduce annual salary or hourly wages of any employee by more than 25% during the Covered Period or the Alternative Payroll Covered Period compared to the period between January 1, 2020, and March 31, 2020</p>	
	<p style="text-align: center;"><b>AND</b></p> <p>Borrower did not reduce the number of employees or the average paid hours (FTE) of employees between January 1, 2020 and the end of the Covered Period</p> <p>Reduction exception includes:</p> <ul style="list-style-type: none"> <li>• Inability hire similarly qualified employees (counts as of February 15, 2020) for unfilled positions on or before December 31, 2020.</li> <li>• If an employee's hours that the Borrower offered to restore was refused by the employee</li> </ul>	<p style="text-align: center;"><b>AND</b></p> <p>Borrower was unable to operate during the Covered Period at the same level of business activity as before February 15, 2020, 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, related to the maintenance of standards of sanitation, social distancing, or any other work or customer safety requirement related to COVID-19</p>

# How do I calculate Full-Time Equivalency (FTE)?

A FTE is defined as an employee working 40 hours per week.

A simplified method that assigns a 1.0 for employees who work 40 hours or more per week and 0.5 for employees who work fewer hours may be used at the election of the Borrower.



## Key highlights:

- ✓ Borrowers must use consistent FTE calculation when applying for loan forgiveness
  - ✓ Can use actual FTE calculation (37.5 hrs. / 40 hrs. = 0.9 FTE) or simplified method (0.5 FTE)
- ✓ 1099 employees (contractors) cannot be included in your total employee counts – they were able to apply for loan forgiveness separately

## Reminders:

- 25% salary or wage reduction exception for the EZ form is based on each individual employee (not an overall employee average)
- Employee payroll costs are capped at \$100,000 of annualized pay per employee (8 weeks = maximum of \$15,385 per individual or 24 weeks = maximum of \$46,154 per individual)
- Owner employee payroll costs are capped at 8 weeks = maximum of \$15,385 or 24 weeks = maximum of \$20,833

# What do Owner Employees need to know about compensation caps?

An Owner Employee is inclusive of: Independent Contractor, Self-Employed Individual, Sole Proprietor, General Partner or Owner Employee of any other entity type.

## Key highlights:



Owner employee compensation for **8-week period** is capped at lesser of 8/52 of 2019 net profits or **\$15,385** per individual in total across all businesses



Owner employee compensation for **24-week period** is lesser of (2.5/12) months' worth of 2019 net profit up to **\$20,833** per individual in total across all businesses

- ✓ Excluding any qualified sick leave amount for which a credit is claimed under the Families First Coronavirus Response Act (Section 7002 or 7004)



If you leverage 2019 net profit or compensation then supply 2019 tax documents along with proof of payment during the covered period

# What expenses are included in Payroll and Non-Payroll Costs?

Payroll costs are defined as: payroll expenses, including 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.

## Highlights of Payroll Cost (minimum of 60%):



### Sample payroll expenses:

- ✓ Salary (up to \$100,000 per employee), wages, commissions, tips, bonuses and hazard pay
- ✓ Vacation, parental, family, medical and sick pay



### Sample health and retirement benefits:

- ✓ Health, dental and vision insurance
- ✓ Employer paid: 401K matches, profit sharing payments, pension contributions and SEP contributions for W2 Owners



### Payment of state and local taxes imposed on employee payroll (excludes employer paid FICA taxes)

- ✓ Do not list any taxes withheld from employee earnings

## Highlights of Non-Payroll Cost clarified by the SBA:



### Interest payment on business mortgage obligation on real or personal property:

- ✓ Real property is referring to the real estate, rent and leases
- ✓ Personal property is referring to business equipment only



# How do I determine the best Covered Period for my PPP loan?

A borrower should choose a covered period that will allow all eligible payroll and non-payroll expenses to be paid out prior to applying for loan forgiveness.



## Key highlights:

- ✓ The covered period chosen needs to align with payroll and non-payroll expense disbursement, payment and documentation
  - ✓ Cannot pay for expenses prior to receiving PPP funds deposited into account

## Things you should know:

A borrower can apply for loan forgiveness

- When PPP funds have been exhausted
- At any time on or before the maturity date of the loan, including prior to the end of the Covered Period



PPP funds deposited into account



PPP funds have been exhausted



8-week covered period on application



PPP funds deposited into account



PPP funds have been exhausted



24-week covered period on application

# What is the difference between the Covered Period and Alternative Payroll Covered Period?

The covered period is 8 weeks (56 days) OR 24 weeks (168 days), but no later than December 31, 2020, from date of loan disbursement. Borrowers with loans prior to June 5 can still elect to use the 8-week covered period

Alternative payroll covered period begins 8 weeks (56 days) OR 24 weeks (168 days), from the first day of the first payroll cycle in the Covered Period.

## Covered Period:

		April 2020						
		SU	MO	TU	WE	TH	FR	SA
					1	2	3	4
PPP Funds Deposited & 8-week or 24-week covered period begins		5	6	7	8	9	10	11
		12	13	14	15	16	17	18
		19	20	21	22	23	24	25
		26	27	28	29	30		

## Alternative Payroll Covered Period:

(only applies to bi-weekly and weekly payroll cycles)

		April 2020						
		SU	MO	TU	WE	TH	FR	SA
					1	2	3	4
PPP Funds Deposited		5	6	7	8	9	10	11
		12	13	14	15	16	17	18
		19	20	21	22	23	24	25
		26	27	28	29	30		

8-week or 24-week alternative payroll covered period begins

Note: this alternative period is only applicable for payroll expenses

# What documentation is needed when submitting my loan forgiveness application?

Gather and scan PDF copies of the documentation listed below. Ensure PDF documents are not password protected before uploading to the online application.

Note: Expenses included in the loan forgiveness application require supporting documentation.

## Payroll Expenses



Bank account statements or third-party payroll service provider reports documenting **cash compensation paid to employees**



Tax forms or equivalent third-party payroll service provider reports for: **payroll tax filings and state quarterly wage reporting and unemployment insurance tax filings**



Payment receipts, cancelled checks, or account statements documenting **employee health insurance and retirement plan contributions**



### **FTE Documentation:**

Any employee job offers and refusals, firings for cause, voluntary resignations, and written requests by any employee for reductions in work schedule; documentation showing average number of FTE employees

## Non Payroll Expenses



### **Business mortgage interest payments:**

- Amortization schedule and cancelled checks OR
- Bank statements from February 2020 and each month of the Covered Period, plus one additional month



### **Business rent and lease payments:**

- Copy of current lease and receipts OR
- Cancelled checks or bank statements from February 2020 and each month of the Covered Period, plus one additional month



### **Business utility payments:**

- Copy of invoices from February 2020 and those paid during each month of the Covered Period, plus one additional month AND
- Receipts, cancelled checks, or account statements

## Where do I go for information or questions regarding loan forgiveness?

Please check our website at [www.mtb.com/business-informed](http://www.mtb.com/business-informed) for updates to FAQs, tools and resources regarding loan forgiveness.

Or visit the U.S. Treasury Site at <https://home.treasury.gov/policy-issues/cares/assistance-for-small-businesses>



If you need assistance, please call:



Your Relationship Manager or  
Branch Manager



Telephone Banking Center:  
1-800-724-6070

Be on the lookout for emails from M&T regarding loan forgiveness:



Insights on loan forgiveness



When it's time to apply for loan forgiveness

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