

Paycheck Protection Program (“PPP”) Flexibility Act Summary

The Paycheck Protection Program was created by the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act to provide forgivable loans guaranteed by the Small Business Administration (SBA) to qualifying business owners. The CARES Act included other business relief, some of which were limited or not available if a PPP loan was obtained or forgiven. A subsequent bill provided additional funds for PPP loans.

Since the CARES Act was passed, the SBA has issued guidance on the PPP and how to apply for forgiveness of PPP loans.

Significant changes to the original PPP have been made by the Paycheck Protection Program Flexibility Act, signed into law on June 5, 2020. On June 8, 2020, the SBA announced it would promptly issue rules and guidance, a modified borrower application form, and a modified loan forgiveness application implementing the Act’s changes.

This summary focuses on the aspects of the Paycheck Protection Flexibility Act as they impact businesses that received PPP loans. It is not intended to cover all potential impacts of the Act.

The information provided is not written or intended as specific tax or legal advice. MassMutual, its subsidiaries, employees, and representatives are not authorized to give tax or legal advice. Individuals are encouraged to seek advice from their own tax or legal counsel. Individuals who applied for or received PPP loans should work with their own accounting and legal advisors .

Summary as of: 06/8/2020

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CHANGES TO PPP LOAN FORGIVENESS

What is the effective date of these changes?

These changes are effective as if they were included in the CARES Act and apply to all PPP loans.

PPP Flexibility Act Provision	Explanation
<p>Extends the length of the time to use PPP loan proceeds from eight weeks to 24 weeks or December 31, 2020, whichever is earlier. You can elect to use the original eight-week period instead if you received a PPP loan before June 5, 2020.</p>	<p>The period begins on the date you receive the loan proceeds.</p>

What impact does this extension have?

The additional time to use PPP loan proceeds may make it easier for you to use the loan proceeds for allowable expenses. This means that you may qualify for a larger loan forgiveness amount than with an eight-week period.

You can use the 24-week period to return your full-time equivalent employee count to its level at the beginning of the covered period. You can also use it to restore an employee's salary or wages to at least 75% of what it was at the beginning of the period.

What considerations may affect whether to use an eight-week or 24-week period?

If you are eligible to elect an eight-week period and qualify for full forgiveness based on an eight-week covered period, electing the eight-week period allows you to apply for loan forgiveness promptly after the end of the eight-week period. Once the loan is forgiven, it is no longer on your balance sheet and may make it easier for you to obtain other financing, if necessary. Any subsequent changes to the PPP rules would not apply to you.

How does this affect the maximum forgivable cash compensation that can be paid to any employee?

It appears to result in an increase in the maximum forgivable cash compensation amount for an employee. The maximum salary and wages for any one employee used in determining the PPP loan amount and the maximum forgivable amount is based on an annualized salary of \$100,000. This produces a maximum PPP loan amount for any employee of \$20,833 ($(\$100,000/12) * 2.5$).

The maximum that can be paid over an eight-week period is \$15,384.62. This meant that not all of the loan could be spent for salary and wages. As a result, some of the loan would not qualify for forgiveness.

The longer period allows the full \$20,833 salary and wages to qualify for forgiveness. For an employee whose salary is at least \$100,000, a 24-week covered period allows payment of \$46,153.84.

PPP Flexibility Act Provision	Explanation
<p>Covered period now ends on December 31, 2020.</p>	<p>This extends the date to qualify for the reduction in full-time equivalent employees safe harbor and the reduction in salary or hourly wages safe harbor to avoid a reduction in the loan forgiveness.</p>

What is the impact of this change?

Your PPP loan forgiveness is reduced if your full-time equivalent (FTE) employees were reduced during the eight or 24-week period from a prior reference period. Originally, a safe harbor allowed employers who reduced FTE employees between February 15, 2020 and April 26, 2020 to avoid the loan reduction forgiveness by restoring the number of FTE employees to the previous level by June 30, 2020. This change gives you six more months to restore the number of FTE employees to the previous level.

The PPP provides a separate loan forgiveness reduction if an employee's salary or hourly wage was reduced during the eight or 24-week period. Originally, a safe harbor allowed employers who reduced an employee's salary or hourly wage between February 15, 2020 and April 26, 2020 to avoid this loan reduction forgiveness by restoring the number of an employee's salary or wage to the previous level by June 30, 2020. This change gives you six more months to restore an employee's salary or wages to the previous level.

PPP Flexibility Act Provision

Provides exemption to the loan forgiveness reduction for FTE employee decrease due to employer's inability to rehire or hire employees.

Explanation

The reduced loan forgiveness due to a reduction in FTE employees will not apply to the extent an employer documents an inability to rehire persons who were employees on February 15, 2020 and an inability to hire similarly qualified employees for unfilled positions on or before December 31, 2020.

What are the requirements to qualify for this exemption?

The employer must be able to document, in good faith, that it was not able to rehire individuals who were employees on February 15, 2020 and an inability to hire similarly qualified employees for unfilled positions on or before December 31, 2020.

PPP Flexibility Act Provision

Provides exemption to the loan forgiveness reduction for FTE employee decrease due to inability to return to same level of business activity that existed before February 15, 2020.

Explanation

You must be able to document an inability to return to the same level of business activity the business was operating at on February 15, 2020 due to compliance with federal government regulations related to worker or customer safety requirements related to COVID-19.

Does guidance from any federal agency qualify?

No. The guidance must have been issued by the Department of Health and Human Services, the Centers for Disease Control and Prevention, or the Occupational Safety and Health Administration between March 1 and December 31, 2020. It must relate to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID-19.

Does compliance with state or local government guidance qualify for this exemption?

No, the Act does not provide an exemption for compliance with state or local government guidance.

PPP Flexibility Act Provision	Explanation
Requires at least 60% of the loan proceeds to be used for payroll costs to qualify for loan forgiveness.	<p>Failure to use at least 60% of the loan proceeds for payroll costs results in none of the loan qualifying for forgiveness.</p> <p>However, in a June 8, 2020 announcement, the SBA said that “[i]f a borrower uses less than 60 percent of the loan amount for payroll costs during the forgiveness covered period, the borrower will continue to be eligible for partial loan forgiveness, subject to at least 60 percent of the loan forgiveness amount having been used for payroll costs.</p>

How does this requirement work?

As enacted, this rule requires at least 60% of the loan proceeds to be used for payroll costs. For example, if the loan was \$100,000 and \$30,000 was used for payroll costs, none of the loan would qualify for forgiveness. To qualify for any forgiveness, \$60,000 would have had to be used for payroll costs. The SBA's announcement indicates that it will apply the rule as a reduction of its requirement that at least 75% of the loan be spent on payroll costs to 60%.

How does this differ from the Small Business Administration (SBA) 75% rule?

The SBA 75% rule provided that if less than 75% of the loan proceeds were used for payroll costs, the amount of forgiveness would be reduced so that the payroll costs were 75% of the amount forgiven. For example, if the loan was \$100,000 and \$30,000 was used for payroll costs, \$40,000 ($30,000 / .75$) would qualify for forgiveness. To qualify for full forgiveness under the 75% rule, \$75,000 would have had to be used for payroll costs.

In the above example, under the SBA's June 8, 2020 announcement, \$50,000 ($30,000 / .6$) would qualify for loan forgiveness.

Did the Act change what expenses are included in payroll costs?

No. Payroll costs still include the following items:

- Cash compensation paid during the Covered Period or Alternative Payroll Covered Period. Cash compensation is limited to an annualized \$100,000. Payroll costs are considered incurred on the day that the employee's pay is earned.
- Employer contributions for employee health insurance
- Employer contributions to employee retirement plans
- Employer state and local taxes assessed on employee compensation (such as state unemployment taxes)
- Compensation paid to owners

Did the Act change the ability to use the Alternative Payroll Covered Period for payroll costs?

No, the Act did not change the ability to use the Alternative Payroll Covered Period. The SBA guidance permitting the use of the Alternative Payroll Covered Period refers to an eight-week period. Since the Act allows you to use a 24-week period, the SBA guidance will need to be modified to reflect the Act change.

Are there limitations on the use of other 40% of the loan proceeds?

Yes. The Act did not change the nonpayroll costs that qualify for loan forgiveness. They are business mortgage interest, business rent or lease payments, and business utility payments that are paid or incurred during the eight or 24-week period.

PPP Flexibility Act Provision	Explanation
Changes loan payment deferral period.	Loan payments are deferred until the date that the SBA pays the amount of the loan that is forgiven to the lender. This replaces the original minimum six-month deferral.

How would this work?

Once an application for loan forgiveness is submitted, the lender has 60 days to review it and submit a recommendation to the SBA on the amount that qualifies for forgiveness. The SBA then has 90 days to remit the forgiveness amount to the lender, subject to any SBA review of the loan application or the loan forgiveness application.

PPP Flexibility Act Provision	Explanation
Loan forgiveness must be requested within 10 months of the end of the covered period.	The loan forgiveness application must be filed with the lender by 10 months after the end of the 24-week period or December 31, 2020, whichever occurs first.

What happens if I don't apply for loan forgiveness during the 10-month period?

Payments of principal, interest, and fees on the loan will start after the end of the 10-month period.

MINIMUM PPP LOAN MATURITY

PPP Flexibility Act Provision	Explanation
Minimum maturity of 5 years.	CARES Act did not have a minimum loan term, just a maximum term of 10 years. The SBA provided for a two-year term. This provision establishes a minimum loan term of five years.

What is the effective date of this change?

The Act provides that it applies to any loans made after the Act's effective date of June 5, 2020. It allows lenders and borrowers to mutually agree to modify the maturity of a PPP loan to have a maturity of five-years or longer.

Is it possible to have a loan term of between five and 10 years?

The Act allows for a term that is longer than five years but less than 10 years. This will be determined by the SBA and the lender.

Did the Act change the 10-year maximum term?

The Act allows for a term that is longer than five years but less than 10 years. This will be determined by the SBA and the lender.

Did the interest rate change?

The Act makes no change to the 1% interest rate established by the SBA.

DEDUCTION FOR EXPENSES PAID WITH PPP LOAN PROCEEDS

PPP Flexibility Act Provision	Explanation
None	The IRS has stated that expenses paid with PPP loan proceeds are not deductible. Legislation to clarify the treatment may be required.

PAYROLL TAX DEFERRAL

PPP Flexibility Act Provision	Explanation
Eliminates restriction on payroll tax deferral if PPP loan forgiven.	Allows deferral even if you received loan forgiveness of a PPP loan. Employers can defer their portion of Social Security taxes due from March 27, 2020 through December 31, 2020.

How does this change the original deferral allowed under the CARES Act?

The CARES Act and SBA guidance provided that a business that a PPP loan forgiven could not defer the employer's portion of Social Security taxes due after the loan was forgiven.

Does the Act change when deferred payments must be made?

No. The deferred amounts still must be paid over the next two years, with 50% paid by the end of 2021 and 50% paid by the end of 2022.

What is the effective date?

It is retroactive, to March 27, 2020, the date the CARES Act was enacted.

ADDITIONAL RESOURCES

What other resources does MassMutual have available on the PPP, other CARES Act provisions, and other coronavirus relief provisions?

The following materials are available:

- [Families First Coronavirus Response Act and Extension of Time to Pay Federal Taxes Summary](#), enacted March 18, 2020 (PDF)
- [Coronavirus Aid, Relief, and Economic Security Act \(CARES\) Summary of Business Provisions](#), enacted March 27, 2020 (PDF)
- [Coronavirus Aid, Relief, and Economic Security Act \(CARES\) Summary of Individual Provisions](#), enacted March 27, 2020 (PDF)
- [Families First Act and CARES Act—Individual Provisions](#) (PPT)
- [CARES Act Summary—Payroll Protection Program Information](#) (PDF)
- [CARES Act—Business Provisions](#) (PPT)
- [CARES Act—Decision Tree for Small Businesses](#) (PDF)
- [CARES Act Enhancement Summary, enacted April 24, 2020](#) (PDF)
- [Flowcharts on applying for Paycheck Protection Program and Economic Injury Disaster Loan Grants](#) (from the House Committee on Small Business) (PDF)
- [CARES Act Summary—Applying for Paycheck Protection Program Loan Forgiveness](#) (PDF)

We update these materials regularly as new information becomes available.