

MSF CLIENT ALERT

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SBA ISSUES GUIDANCE ON PPP FUND LIMITS FOR OWNERS/SELF-EMPLOYED INDIVIDUALS AND HIGH EARNING INDIVIDUALS

You asked, the Small Business Administration (“SBA”) answered. Following passage of the Paycheck Protection Program Flexibility Act, the SBA issued guidance increasing the maximum amount of payroll costs that can be forgiven for business owners, self-employed individuals and employees earning more than \$100,000 when a borrower uses a 24-week covered period.

The Paycheck Protection Program Flexibility Act (“PPFA”) extended the covered period during which borrowers must use funds for those expenses to qualify for loan forgiveness to as long as 24 weeks. Previously, the Paycheck Protection Program (“PPP”) mandated an 8-week covered period for all borrowers. Borrowers whose loans were made before June 5, 2020 have an option of an 8-week or 24-week covered period. Borrowers whose loans were made after June 5, 2020 must use a 24-week covered period.

Among the payroll costs eligible for loan forgiveness is the compensation paid to employees and owners/self-employed individuals up to a pro-rated annual salary of \$100,000. This limitation previously included a compensation cap of \$15,385 per individual, which, for certain owners/self-employed individuals, included the costs of covered benefits.

Given the potential expansion of the covered period from 8 weeks to up to 24 weeks, the SBA issued an [Interim Final Rule on June 16, 2020](#) that adjusts the maximum level of compensation that can be subject to loan forgiveness if the borrower utilizes a 24-week covered period.

Where a borrower’s covered period is 24 weeks, rather than 8 weeks, the following limitations apply:

- For employee compensation replacement for individuals earning in excess of \$100,000 - \$46,154 (\$1923 per week times

24 weeks). The cost of covered benefits is in addition to this amount.

- For owner/self-employed individual compensation replacement – a maximum cap of \$20,833. To the extent 2019 net profits were less than \$100,000, the cap for an individual owner is calculated by multiplying the 2019 net profits by (2.5/12). This amount remains inclusive of covered benefits for owners/self-employed individuals.

Should a borrower whose loan was made before June 5, 2020 elect to use an 8-week covered period, the previous compensation limitations of \$15,385 (8/52 times \$100,000) for highly compensated employees and owners/self-employed individuals remain the same.

SBA continues to issue new guidance. Of specific interest to owners and self-employed individuals is the SBA’s issuance of a [Loan Forgiveness Form EZ](#) and [instructions](#). The PPP Loan Forgiveness Application Form 3508EZ is designed specifically for borrowers who are self-employed individuals, independent contractors or sole proprietors who had no employees at the time of the PPP loan application and did not include any employee salaries in the computation of average monthly payroll in the Borrower Application Form. In addition, the Loan Forgiveness Form EZ may be used by borrowers who

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(i) did not reduce salaries or have headcount reductions that impact loan forgiveness; or (ii) who meet the newly established exemption from availability set forth in the PPPFA for businesses that were unable to operate at the same level of business activity due to compliance requirements issued by the Secretary of Health and Human Services, Director of the Centers for Disease Control and Prevention, or the Occupational Safety and Health Administration, related to the maintenance of sanitation standards,

social distancing or any other work or customer safety requirement.

The SBA also has revised the [loan forgiveness application](#) and [instructions](#) for borrowers who cannot use the Loan Forgiveness Form EZ to address the new provisions of PPPFA.

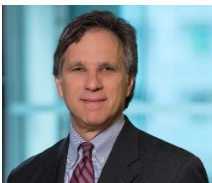
Please contact an attorney in MSF's Employment or Taxation & Estates Groups if you need assistance with respect to this information.



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