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SBA ISSUES NEW LOAN FORGIVENESS RULES AND APPLICATION FOR SMALL BORROWERS

In an effort to simplify the loan forgiveness process for small business owners, the Small Business Administration (“SBA”) has adopted de minimis exceptions to the loan forgiveness reduction rules for Paycheck Protection Act loans of \$50,000 or less.

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The SBA has adopted a new loan forgiveness application, [PPP Loan Forgiveness Application 3508S, instructions](#) and [interim final rules](#) related to PPP borrowers with loans of \$50,000 or less. The SBA has now determined that the loans for such borrowers will be fully forgiven and exempt from loan forgiveness reductions based on reductions in full-time equivalent employees or employee salary.

This SBA and Treasury have agreed to grant this de minimis exemption to the loan forgiveness reduction rules in order to provide such borrowers “much-needed financial assistance” and “provide appropriate flexibility in the current economic climate.” The Interim Final Rule posits that most borrowers impacted would not have been affected by the loan forgiveness reduction requirements because they either did not reduce headcount or salaries or would qualify for an exemption from loan forgiveness reductions. The new rule making is expected to impact approximately 3.57 million outstanding PPP loans and approximately \$62 billion of the \$525 billion in PPP loans distributed. According to the SBA, about half of such borrowers reported having zero or one employee.

Loan Forgiveness Form 3508S continues to require representations and certifications from the borrower that the

funds were used consistent with the provisions of the CARES Act. The borrower is responsible for the calculation of the loan forgiveness amount and must attest to the accuracy of its information and calculations. The instructions to the application contain information about the documentation required to be submitted to support the payroll and non-payroll costs

Loan Forgiveness Form 3508S may not be used by borrowers, who together with affiliates, received loans totaling \$2 million dollars or greater.

Other Loan Forgiveness Applications

Loan Forgiveness Form 3508S is in addition to the SBA’s previous 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

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who (i) did not reduce salaries or have headcount reductions that impact loan forgiveness; or (ii) who meet the exemption from availability set forth in the Paycheck Protection Program Flexibility Act of 2020 (“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.

Those borrowers who do not qualify for use of the PPP Loan Forgiveness Applications 3508S and 3508EZ, must

use PPP Loan Forgiveness Application 3508 which requires a full loan forgiveness reduction analysis for headcount and salary reduction.

Other SBA Clarifications

In a newly added FAQ, the SBA also clarified that promissory notes do not need to be formally modified to reflect the extension of the deferral period in PPPFA. That amendment extended the payment of any principal, interest and fees to the extent not forgiven from 6 months until 10 months after the end of the borrower’s loan forgiveness period. The change in the deferral period will automatically apply. Lenders are instructed to notify borrowers, but promissory notes do not need to be formally modified.

Please contact an attorney in MSF’s Employment Group if you need assistance with respect to this information.



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