

# Client Alert

June 2020

## PPP Loan Forgiveness Application Revised

On June 16, 2020, the Small Business Administration revised the loan forgiveness application for loans issued under Paycheck Protection Program (“PPP”) and issued a new interim final rule, to reflect changes made by the Payroll Protection Program Flexibility Act of 2020. This client alert outlines important changes in the new guidance.

So what’s new?

**Form 3508 and Form 3508EZ** – The SBA issued two versions of the PPP loan forgiveness application – Form 3508 and Form 3508EZ. Form 3508EZ modestly reduces the application procedure but only for a borrower expecting full loan forgiveness (before application of any restoration or other safe harbor rule).

**Day Count for 24-Week Period** – The new forms measure the increased 24-week forgiveness spending period as the 168-day period beginning on the first loan disbursement date (or the first day of the first payroll period following the first loan disbursement date).

**Increased Caps for Payroll Costs** – If a borrower uses the 24-week period to calculate loan forgiveness, the caps on cash compensation qualifying as “payroll costs” correspondingly increase to (a) in the case of an employee, \$46,154 and (b) in the case of a self-employed individual (including LLC members and “S” corporation shareholders), \$20,833. If a borrower elects the original 8-week spending period (in lieu of the 24-week period), the cash compensation cap stays at \$15,385 for an employee or self-employed individual.

**Measuring Date for FTE Restoration** – To apply FTE Reduction Safe Harbor 2 (FTE restoration of lay-offs during February 15 – April 26, 2020), a borrower measures its FTE count as of the earlier of the form submission date and December 31, 2020.

**Mandatory Filing Documentation** – Upon filing, a borrower must submit clear documentation supporting permitted payroll and non-payroll costs and FTE counts, such as third-party payroll reports (payroll costs), payroll

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tax returns (same), loan agreements (interest), leases (rent), utility bills and employee rosters or other evidence showing FTE history.

***Supplemental Filing Documentation*** – In addition to the mandatory filing documentation, a borrower must maintain in its files for *six years* supplemental documentation supporting (a) the listing of each employee on Table 1 or Table 2 of the PPP Schedule A Worksheet (FTE count and wage/salary reduction), (b) each employee job offer and rejection used to claim FTE credit, (c) a claim that the borrower could not restore FTE count as result of any federal COVID-related health guidelines and (d) PPP Schedule A Worksheet FTE Reduction Safe Harbor 2 (FTE restoration by December 31).

Olshan lawyers from multiple practice groups are working together with clients to address COVID-19-related matters, including the CARES Act stimulus programs (i.e., the PPP and EIDL) and other corporate matters, including contractual analysis and financing, tax, restructuring, employee benefits and employment practices, insurance coverage, and litigation. Click [here](#) to access additional materials addressing issues raised by COVID-19.

Please contact the Olshan attorney with whom you regularly work or one of the attorneys listed below if you would like to discuss this client alert or have questions about its content.

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