

New Rule Offers Forgiveness Relief for PPP Loans Under \$50,000

A new rule issued by the Small Business Administration (“SBA”) and the U.S. Department of the Treasury (“Treasury”) on October 8, 2020 introduces a simplified application form for Paycheck Protection Program (“PPP”) loan forgiveness, together with new exemptions that will apply to most borrowers of loans under \$50,000.

The new form – Form 3508S – can be used for borrowers of loans with a principal amount of less than \$50,000 so long as the borrower is not an “affiliate” (under the applicable rules) of other borrowers who have collectively borrowed more than \$2 million.

In addition to a streamlined application, borrowers eligible to use the Form 3508S will be exempt from two potential limitations on forgiveness.

First, the FTE adjustment will not apply. Borrowers who have reduced full-time equivalent employees (“FTEs”) during the “covered period” for the loan and do not restore their FTE count within the defined “safe harbors” are subject to a reduction in forgiveness.

Second, the compensation adjustment will not apply. Borrowers who reduce compensation for employees earning under \$100,000 per year and do not restore such compensation within the “safe harbors” are also subject to a reduction in forgiveness.

Under the new rule, eligible small-loan borrowers will be exempt from having their forgiveness amount reduced as a result of either of the above adjustments.

- The SBA and Treasury concluded that an exemption from the requirement to document FTE and salary reduction and/or restoration for small loans would have a *de minimis* impact on the PPP program.

Small-loan borrowers will still need to document that 60 percent of the loan proceeds are used for payroll costs but will not need to submit detailed FTE and salary data.

Pursuant to the PPP Flexibility Act passed in June, borrowers have a period of 10 months following the end of the covered period to apply for PPP forgiveness before any payments would be due on non-forgiven principal. If all principal is forgiven, then no repayment obligations will arise.

Borrowers who have not applied and are eligible for the new form should plan on using the simplified process and new exemptions.

Additional assistance is available by contacting Vandenack Weaver attorneys at 402-504-1300 or info@vwattys.com.