

MARR JONES & WANG

A LIMITED LIABILITY LAW PARTNERSHIP

Labor and Employment Law

CARES ACT UPDATE

SBA Revises Forgiveness Application For Loans of \$50,000 or less

October 9, 2020 at 12:00 p.m.

- While discussions continue (or not) for another Stimulus Package, the SBA just made it very simple to obtain forgiveness for loans of \$50,000 or less.
- The SBA issued a new shorter Form 3508S which can be used for any loan of \$50,000 or less.
- There is one box that you need to check that certifies:

The dollar amount for which forgiveness is requested does not exceed the principal amount of the PPP loan and:

- was used to pay costs that are eligible for forgiveness (payroll costs to retain employees; business mortgage interest payments; business rent or lease payments; or business utility payments);
- includes payroll costs equal to at least 60% of the forgiveness amount;
- if a 24-week Covered Period applies, does not exceed 2.5 months' worth of 2019 compensation for any owner-employee or self-employed individual/general partner, capped at \$20,833 per individual; and
- if the Borrower has elected an 8-week Covered Period, does not exceed 8 weeks' worth of 2019 compensation for any owner-employee or self-employed individual/general partner, capped at \$15,385 per individual.

The other boxes are certifying that you have submitted the correct documents and they are accurate, and that you not lying.

Easy.

No calculations required other than making sure you used at least 60% for payroll costs. For such loans you *do not need to calculate whether you maintained the equivalent number of FTEs during your covered period!!!!*

- For the rest of us, the wait continues for additional guidance from the SBA on large loans (\$2 mil. and above) and other loans. Some of the legislation that has been floated would streamline the forgiveness process for almost all loans.

- Should I apply for forgiveness now? There is no rush. On October 7, 2020, the SBA reiterated that the deferral period on all loans is extended to 10 months after your covered period ends (see below Q&A). Considering that there is a chance that Congress may yet again address forgiveness patience may be a virtue when it comes to forgiveness.

52. **Question:** The Paycheck Protection Program Flexibility Act of 2020 (Flexibility Act) extended the deferral period for borrower payments of principal, interest, and fees on all PPP loans to the date that SBA remits the borrower's loan forgiveness amount to the lender (or, if the borrower does not apply for loan forgiveness, 10 months after the end of the borrower's loan forgiveness covered period). Previously, the deferral period could end after 6 months. Are lenders and borrowers required to modify promissory notes used for PPP loans to reflect the extended deferral period?

Answer: The extension of the deferral period under the Flexibility Act automatically applies to all PPP loans. Lenders are required to give immediate effect to the statutory extension and should notify borrowers of the change to the deferral period. SBA does not require a formal modification to the promissory note. A modification of a promissory note to reflect the required statutory deferral period under the Flexibility Act will have no effect on the SBA's guarantee of a PPP loan.