

New PPP Guidance Simplifies Forgiveness Application Process for Small PPP Loans of \$50,000 or Less; Clarifies Lenders' Responsibilities Regarding Review of Borrower Calculations and Documentation of Forgivable Eligible Costs for Such Small Loans

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On October 8, Treasury issued a new *Interim Final Rule Re Additional Revisions to Loan Forgiveness and Loan Review Procedures Interim Final Rules* (new IFR), along with a new Loan Forgiveness Application Form 3508S and Instructions for the new Form, addressing applications for forgiveness of PPP loans of \$50,000 or less. Links to the new IFR, the new Form 3508S, and the new Instructions for Form 3508S are set out below.

Treasury explained that the purpose of the new IFR and Form 3508S is to:

- (i) simplify further the forgiveness and loan review processes for PPP loans of \$50,000 or less, including eliminating any reduction in forgiveness amount due to reductions in number of FTE employees or reductions in salaries or wages; and
- (ii) for PPP loans of all sizes, clarify lender responsibilities with respect to the review of borrower documentation of eligible costs for forgiveness in excess of a borrower's PPP loan amount.

New Forgiveness Form for PPP Loans of \$50,000 or Less

The new, simplified Loan Forgiveness Application Form 3508S may be used for PPP loans with a total loan amount of \$50,000 or less. However, the new Application Form may not be used on loans of \$50,000 or less if the borrower and its affiliates together received PPP loans totaling \$2 million or greater.

No forgiveness reduction due to reductions in FTE employees or reductions in employee salaries or wages

A borrower that uses the new Form 3508S (or lender's equivalent form) is exempt from any reductions

in the borrower's loan forgiveness amount based on reductions in full-time equivalent (FTE) employees or reductions in employee salary or wages that would otherwise apply.

Lender's obligations when reviewing a Form 3508S forgiveness application

When a borrower submits SBA Form 3508S or lender's equivalent form, the lender shall:

- i. Confirm receipt of the borrower certifications contained in the SBA Form 3508S or lender's equivalent form.
- ii. Confirm receipt of the documentation the borrower must submit to aid in verifying payroll and nonpayroll costs, as specified in the Instructions to the SBA Form 3508S or lender's equivalent form.
- iii. Unlike the general requirement for loans above \$50,000, when a borrower submits a Form 3508S for a loan of \$50,000 or less, the lender is not required to confirm the borrower's calculations on the borrower's loan forgiveness application used to reach the requested forgiveness amount. Instead, for loans of \$50,000 or less, providing an accurate calculation of the loan forgiveness amount is the responsibility of the borrower, and the borrower attests to the accuracy of its reported information and calculations on the loan forgiveness application.
- iv. As prior guidance provided for all loans, lenders may rely on borrower representations, and a lender does not need to independently verify the borrower's reported information if the borrower submits documentation supporting its request for loan forgiveness and attests that it accurately verified the payments for eligible costs.

A Lender May Not Forgive Amounts in Excess of the PPP Loan Amount

Additionally, the IFR reiterated that regardless of loan size, or what forgiveness application form the borrower submits, the amount of loan forgiveness that a borrower may receive cannot exceed the principal amount of the PPP loan, even if the borrower submits documentation showing otherwise forgivable expenditures in excess of the loan amount.

The new Interim Final Rule can be found here:

<https://home.treasury.gov/system/files/136/PPP--IFR--Additional-Revisions-Loan-Forgiveness-Loan-Review-Procedures-Interim-Final-Rules.pdf>

Forgiveness Form 3508S can be found here:

<https://home.treasury.gov/system/files/136/PPP-Loan-Forgiveness-Application-Form-3508S.pdf>

The Instructions for Forgiveness Form 3508S can be found here:

<https://home.treasury.gov/system/files/136/PPP-Loan-Forgiveness-Application-Form-3508S-Instructions.pdf>

Buchalter's team of SBA PPP experts can help you understand these ever-changing program requirements. Any of the below Buchalter attorneys can assist you with PPP program issues.

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