



November 2, 2020

TO: NAW Direct Members

FROM: NAW Government Relations Team

RE: NAW Critical Update Number 105 – November 2 at 11:00 AM

1. Latest on the Paycheck Protection Program

As we reported last week, the SBA published in the *Federal Register* a short notice of information collection relevant to PPP loans under the CARES Act. This new information collection is yet another example of the SBA/Treasury imposing rules that are outside the clear intent and language of the CARES Act. Unfortunately, both Treasury and the SBA have been non-responsive to the input from business groups and trade associations, including NAW, objecting to the agencies continually changing the rules in the PPP.

In this instance, one of the information collections published last week was a new questionnaire for borrowers whose loans were \$2 million or more – the *Paycheck Projection Program Loan Necessity Questionnaire*.

The SBA informed us last week that the new questionnaire, Form 3509, was not public and that borrowers would receive the form from their lenders. However, on Saturday Form 3509 was released (or leaked). Although it is still not available on the SBA website, you can access it **HERE**.

<https://www.naw.org/wp-content/uploads/2020/11/SBA-Form-3509.pdf>

This is a lengthy (9-page) survey that requires the borrowers to provide significant information and supporting documents. When borrowers receive the questionnaires from their lenders, they will have 10 days to return them, and the lenders will then be required to upload the questionnaires and supporting documents to the SBA website within 5 days. Form 3509 explains:

SBA is reviewing these loans to maximize program integrity and protect taxpayer resources. The information collected will be used to inform SBA's review of your good-faith certification that economic uncertainty made your loan request necessary to support your ongoing operations. Receipt of this form does not mean that SBA is challenging that certification. After this form is submitted, SBA may request additional information, if necessary, to complete the review. SBA's determination will be based on the totality of your circumstances.

Failure to complete the form and provide the required supporting documents may result in SBA's determination that you were ineligible for either the PPP loan, the PPP loan amount, or any forgiveness amount claimed, and SBA may seek repayment of the loan or pursue other available remedies.

Within five business days after you provide a complete form with all required responses, supporting documents, and signatures and certifications, the Lender servicing your loan is required to upload the form and documents to the SBA PPP Forgiveness Platform (forgiveness.sba.gov) and separately input your responses to each question into the web form available in the platform.

You can read the *Federal Register* publication of this notice [HERE](#).

2. Latest on the SBA's Economic Injury Disaster Loan Program (EIDL)

Another SBA loan program, EIDL, has been sharply criticized by the SBA's Inspector General. In a [new report](#) released on October 28th, the IG reported that as much as \$78 billion, more than a third of all the EIDL loans, may have been fraudulent or obtained by ineligible recipients. Most significantly the IG report argues that the SBA "lowered the guardrails" on the EIDL program, resulting in, among others, \$58 billion in loans being disbursed "in multiple (between 2 and 245) COVID-19 EIDLs to applicants using the same IP addresses, email addresses, bank accounts, or businesses listed at the same addresses."

SBA Administrator Jovita Carranza rejected the IG's findings, but the IG stood by the report, and this is the second Office of the Inspector General Report highly critical of the SBA's handling of COVID-19 programs.

If you are interested, *Politico* published a detailed summary of the IG report and the SBA response, which you can read here [HERE](#).

3. Latest on the Main Street Lending Program

As we have previously reported, there has been little interest in the Main Street Lending Program. In many instances businesses (including NAW members) reported that they were able to obtain better terms from their existing bankers. The Fed reports that the program has made only 400 loans totaling just \$3.7 billion. Despite such a small amount of available funding being used, Treasury has been unresponsive to multiple recommendations that they find other uses for the unused funding.

Apparently in response to the lack of interest in the MSLP, the Fed just announced that they have revised loans terms to attract more borrowers, particularly small and mid-sized businesses.

Specifically, they have reduced the minimum loan amount to \$100,000, adjusted the fees, and clarified that PPP loans of up to \$2 million may be excluded from a maximum MSLP loan.

You can find more information on these and other changes to the MSLP [HERE](#).

You can access a new FED FAQ [HERE](#).

And you can access a document showing the changes made in the FAQ [HERE](#).

4. Latest on Economic Recovery and Re-Opening the Workplace

As the Coronavirus Pandemic continues to impact the United States economy and businesses across the nation, it can be hard to decipher how new regulations and laws may impact your business. To help you manage these issues NAW is providing information about reports, webinars and seminars that you may find useful:

Webinar from *Little Law Firm*:

The Most Challenging Workplace Issues Still Confronting Employers During the COVID-19 Pandemic

Wednesday, November 4, 2020 | 11:00 am-12:00 pm PST

Employers continue to grapple with finding their new normal in this challenging environment where the rules employers must follow are ever changing. This webinar series will address the most significant labor and employment issues currently

confronting employers, as well as anticipated future challenges. Littler attorneys will provide up-to-the-minute insights and analysis of the latest developments across West Virginia and the U.S. and will explore the future of labor and employment law to help West Virginia employers prepare for what lies ahead.

To register, click [HERE](#).

Webinar from Littler Law Firm:

COVID-19 in the Workplace: Recent Developments and Compliance Challenges -
Session Seven

Friday, November 6, 2020 | 8:30 am-9:30 am PST

In response to the many questions that business leaders, human resources professionals, and in-house counsel have about facing these new legal challenges, Littler's Sacramento office created the "First Friday" webinar series. Every month since April, on the first Friday of every month, we gather (1,100 attendees tuned in last month) to talk about what has happened in COVID-employment law in the last 30 days. We invite a special guest to do a deep dive into a topic of particular interest and do our very best to leave a full 20 minutes at the end for an "open mic" question and answer session.

To register, click [HERE](#).

Stateside Associates publishes a daily report about State and Local Government responses to the evolving situation. To read their latest report, click [HERE](#).

We are also providing a link to a spreadsheet that includes state and local COVID-19 response information provided by **MultiState Associates**. To view their spreadsheet, click [HERE](#).

Click here for links to Critical Updates sent previously.

<https://www.naw.org/wp-content/uploads/2020/09/Critical-Updates-ALL.pdf>

Many thanks—

Jade West, Chief Government Relations Officer

Blake Adami, Vice President-Government Relations

Seth Waugh, Associate Vice President-Government Relations

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NAW

1325 G Street NW #1000

Washington, DC 20005