



## **BULLETIN #3/2021** **JANUARY 8, 2021**

### **FEDERAL UPDATES**

#### **PPP: SBA MAKES NO CHANGES TO LARGE BORROWER QUESTIONNAIRE**

#### **U.S. DEPT. OF LABOR ISSUES WORKER CLASSIFICATION RULES**

#### **SBA Makes No Changes to Large Borrower Questionnaire, Seeks Additional Comments**

Paycheck Protection Program (PPP) lenders are continuing to distribute [SBA Form 3509](#) to borrowers with loans of \$2 million or more when they apply for loan forgiveness. Form 3509 focuses on the necessity certification those borrowers made when they applied for their PPP loans.

On November 25, 2020, NADA urged the U.S. Small Business Administration and the Office of Management and Budget to streamline Form 3509 to reduce the information collection burden associated with several of its questions and information requests. Since then, SBA has issued [a notice](#) asking for additional comment on the form, but has yet to modify it aside from assigning a new expiration date of December 31, 2023. Versions of Form 3509 with expiration dates of October 31, 2020, November 30, 2020, or December 31, 2020, are no longer valid; if a PPP loan borrower receives an expired Form 3509 from its lender it should request one with the December 31, 2023, expiration date in the top right corner.

A large PPP loan borrower that receives an unexpired Form 3509 from its lender must complete and return it within 10 days of receipt. A failure to accurately complete the form or to provide associated documentation may result in a determination by SBA that the borrower is ineligible for PPP loan forgiveness.

Note that PPP loan borrowers who apply for loan forgiveness by no later than 10 months after the end of their eight-week or 24-week covered period can avoid having to make payments on their loans. For example, a PPP borrower whose eight-week covered period ended in June 2020 and who applies for loan forgiveness by April 2021 can avoid having to make loan payments. NADA intends to push SBA to issue a revised Form 3509 by no later than April 2021.

Dealers with large PPP loans should review Form 3509 with their lenders and their legal and accounting advisers. See also #53 in [SBA's FAQs for Lenders and Borrowers](#).

Additional information on the PPP and loan forgiveness, including NADA's comprehensive [CARES Act FAQs](#), is available from [NADA's Coronavirus Hub](#).

#### **U.S. Department of Labor Issues Worker Classification Rules**



## U.S. Department of Labor Issues Worker Classification Rules

On January 7, the U.S. Department of Labor published a [final rule](#) that helps clarify how to distinguish an “employee” from an “independent contractor” for purposes of the Fair Labor Standards Act (FLSA).

The FLSA is the law that governs an employer’s minimum wage and overtime obligations, among other things. The rule, which takes effect on March 8 contains:

- A multifactor test for determining when workers are employees vs. independent contractors;
- a clarification that when applying the test, no one factor is conclusive and that the actual practices between workers and employers are more relevant than what is stated contractually or is theoretically possible; and
- six fact-specific examples applying the multifactor test.

The multifactor test is designed to determine whether a worker is economically dependent on a business and is its employee, or whether the worker is self-employed. The test identifies and explains two “core factors” and lists three other factors that are probative to worker classification determinations. The two core factors are:

- The nature and degree of control over the work; and
- a worker’s opportunity for profit or loss based on initiative and/or investment.

The three other probative factors are:

- The amount of skill required for the work;
- the degree of permanence of the working relationship between a worker and a business; and
- whether the work is part of an integrated unit of production.

The final rule largely reflects the comments and suggestions NADA made to DOL during the rulemaking.

Caution: the final rule applies to dealerships with respect to their federal FLSA compliance. It does not necessarily apply to other federal or state laws governing the relationship between dealerships and workers, including federal and state tax laws.

Dealers should work with their attorneys and HR professionals to carefully evaluate those relationships where it is not readily apparent whether workers are employees vs. independent contractors.

### MSADA - YOUR DEALER ANSWER PLACE

If you have any questions regarding this bulletin, please contact Robert O’Koniewski, Esq., MSADA Executive Vice President, by e-mail at [rokoniewski@msada.org](mailto:rokoniewski@msada.org), or Peter Brennan, Esq., MSADA staff attorney, by e-mail at [pbrennan@msada.org](mailto:pbrennan@msada.org), or either by phone at (617) 451-1051.