Holsinger PC Presents PPP: The Interim Final Chapter

Agenda

- The Paycheck Protection Program Flexibility Act of 2020
- PPP Applications – 2 is better than 1
- What's Next?

PPP Flexibility Act:

- Current Statistics:
  - Over 4.5 million loans
  - $510 billion dollars in loan value
  - 2 Acts
  - 3 interim final rules
  - 49 SBA FAQ's
  - 3 forgiveness applications
- The Saga Continues…
  - The SBA, on June 3, 2020 released the latest changes to the Paycheck Protection Program ("PPP") via the PPP Flexibility Act.
    - The new Act outlines the most recent changes to and clarifications of Section 1106 of the Cares Act.
    - The information there in is specifically intended to ease the burden of achieving PPP loan forgiveness.
  - If you have been following along to date…
    - Holsinger's latest webinar, included a high-level overview of the PPP Loan Forgiveness application and related instructions.
    - Eleven lines to rule them all, eleven pages to confuse us all. The publication "clarified" the SBA's latest interpretation of loan forgiveness and instituted the first formal forgiveness procedure.
    - While the clarifications included some beneficial new interpretations regarding the metrics governing PPP loan forgiveness, the additional guidance left a lot of questions unanswered and Companies concerned.

PPP Flexibility Act:

- Fast forward to the PPP Flexibility Act:
  - All be it, somewhat unclear, the SBA is now, more than ever, making strides toward the establishment of reasonable loan forgiveness expectations and metrics.
  - The new legislation now further addresses business concern regarding loan forgiveness in a couple new ways:
    - Extension of the covered period and the related implications on the exemption clauses for the full time equivalent employee and wage reduction tests
    - Reconfiguration of the payroll vs. non-payroll cost application requirement
    - Extension of principal and interest deferral periods and loan terms
- Each of the changes, without regard to unintended consequence, represent positive changes to the formerly presented forgiveness program.
  - That being the case, as previously experienced, every change creates its own ripple effect, and,
  - interpretation remains at the forefront of forgiveness.

What Changed???
(Covered Period)

- Covered Period:
  - Covered Period as previously defined was the 8 week period, beginning when PPP loan proceeds are received (excepting the alternative covered period established in the loan application instructions).
    - The overarching concern as it relates to the former Covered Period was the ability to spend ten weeks of payroll in eight weeks.
    - Further, increased concern arose when trying to do so without tripping the $100,000, per employee, annualized gross wage limitation.
  - The PPP Flexibility Act has officially relieved this concern be redefining the covered period as “the period beginning on the date of the origination of a covered loan and ending the earlier of the date that is 24 weeks after such date of origination; or December 31, 2020”.
    - The new Covered Period provides a sigh of relief for Companies across the United Stated as “creative” spending of eligible payroll costs is no longer required.
    - In addition, while not specifically addressed, the extension of the Covered Period suggests an increase in the $100,000, per employee, annualized gross wage test. Whereby the former gross wage limitation per employee was $15,385 ($100,000 / 52 weeks x 8 weeks), the new guidance suggests a revised per employee limitation of $46,154 ($100,000 / 52 weeks x 24 weeks).
  - An election can be made for those that received PPP funds before the release of the PPP Flexibility Act (6/5/2020) to use 8 weeks rather than the new 24 week period.
    - Also, under that election the alternative covered period formerly addressed is still available

What Changed???
(Covered Period)

- What don't/didn't we know:
  - After the elation experienced as a result of the new extended time frame, the immediate question that arose was that of the implication of the new covered period on the Full Time Equivalent Employee ("FTE") and Gross Wage Reduction ("GWR") Tests???
    - Does this change mean we now must maintain employee head count and wage levels for 6 months rather than only 8 weeks?
    - Once again the math did not work considering only 2.5 months of overhead was received in the form of PPP proceeds.
    - Considering only the PPP Flexibility Act, the issue at hand may be one of substance, however, after further guidance in the form of a new Interim Final Rule (released on 6/16/2020), and the new application(s) (Forms 3508 and 3508EZ released on 6/17/2020), it appears that the answer was there all along.
      - Per the PPP Flexibility Act:
        - *EXEMPTION BASED ON EMPLOYEE AVAILABILITY:* During the period beginning on February 15, 2020, and ending on December 31, 2020, the amount of loan forgiveness under this section shall be determined without regard to a proportional reduction in the number of full-time equivalent employees if an eligible recipient, in good faith is able to document:
          - an inability to rehire individuals who were employees of the eligible recipient on February 15, 2020; and
          - an inability to hire similarly qualified employees for unfilled positions on or before December 31, 2020; or
          - is able to document an inability to return to the same level of business activity as such business was operating at before February 15, 2020, due to compliance with requirements established or guidance issued by the Secretary of Health and Human Services, the Director of 18 the Centers for Disease Control and Prevention, or the Occupational Safety and Health Administration during the period beginning on March 1, 2020, and ending December 31, 2020, related to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID-19.

What Changed???
(Covered Period)

- Still a little left to the imagination…Was this a way out of the FTE and GWR requirements? Did the noted exceptions and documentation have to exist during the entirety of the new 24 week evaluation period? How will the banks react? Quick opinions on each of these:
  - Was this a way out? *Yes, but it appears that it is specific to the FTE test not the GWR test (see further commentary below).*
  - Do I have to wait 24 weeks? *Yes, if reliance is planned to be placed on the "impacted company" exceptions then an inability to return to normalcy will have to be documented and attested to for the entirety of the 24 week covered period or 12/31/2020 (whichever is earlier).*
  - How will banks react? *Uncertain*

- The new and improved application and instructions reinforced the answer to the above questions and more:
  - These items will be addressed in more detail alter but:
    - The instructions and application suggests that once a company meets the spend, FTE and GRW tests, a Company can apply for forgiveness.
    - The instructions also suggest that since PPP loans were made based on 2.5 months of the borrower's average monthly payroll costs for 2019. Borrowers will get 24 weeks, or nearly six months, to incur forgivable payroll costs. Thus, for many borrowers, the total "forgivable" costs will far exceed the loan proceeds; as a result, even if the borrower finds itself subject to a reduction in the forgivable amount because of reduced salary or headcount, the math is such that even AFTER the reduction, the forgivable costs will exceed the principal balance of the loan (I.e. There is no cap on the accumulation of forgivable expenses).

What Changed???

(Payroll vs. Other Eligible Cost Allocation)

- Originally established by the first Interim Final Rule, the SBA instituted a requirement regarding the allocation of PPP proceeds spent on payroll costs vs. non-payroll costs (as defined in Section 1102 of the CARES Act).
- A late addition to the forgiveness provisions, the allocation was initially set at 75% to 25%, payroll vs. non-payroll costs.
    - Stated differently, proceeds spent on non-payroll costs could not exceed 25% of proceeds spent on payroll costs.
- At the outset, PPP Flexibility Act rumblings suggested that this requirement would be removed in its entirety, however, the ultimate conclusion was to adjust the ratio to 60% vs. 40%, payroll costs vs. non-payroll costs. While less of a concern considering the extension of the covered period from eight to twenty-four weeks, this is a favorable change.

What Changed???

(Extension of principal and interest deferral periods and loan term)

- Originally established by the CARES Act, the deferral period of principal and interest was set at 6 months from the date of receipt of PPP funds.
- The PPP Flexibility Act extended this to 1 year
- Further, the Act itself specifically addressed former concerns regarding what is deductible (Principal and interest, principal only…).
  - The Act by strikes CARES Act language reading ''for a period of not less than 6 months, including payment of principal, interest, and fees, and not more than 1 year.'' and inserting the following: '', including payment of principal, interest, and fees, until the date on which the amount of forgiveness determined under section 1106 of the CARES Act is remitted to the lender…"
    - The PPP Flexibility Act also stipulated that a PPP recipient has 10 months from the last day of the "new" covered period to apply for forgiveness.
- Lastly, the loan term was increased from 2 years to 5 years for new loans issued after June 5, 2020.

Summary:

- We now have more time to spend the money
- We now have more flexibility regarding the FTE test
- We now have more room to fail on the GWR test
- We now have a defined loan forgiveness application period(s)
- We now have two new and hopefully final applications
- We may now be able to navigate the forgiveness waters…
- If we fail forgiveness, at least we have 5 years (on loans issued after June 5, 2020)…

PPP Applications – 2 is better than 1:

- Long Form Vs Short Form:
  - 11 lines for final calculation
  - Schedule A with 13 lines based off of
  - 2 supporting Tables
  - Schedule A and supporting tables are "optional" for submission, but documentation must be kept in case of audit.

  - 8 lines for final calculation
  - No supporting schedules
  - Must certify that the borrower meets the eligibility requirements to file the Short Form

PPP Application – The Long Game:

- Key things to note:
  - Our prior webinar covered the calculations needing to be completed for the tables and the Schedule A in order to complete the 11 lines of the actual forgiveness calculation.
  - The steps previously covered are not structurally different in the current long form application:
    1. Total the eligible payroll costs, mortgage interest, rent or lease, and utility payments
    2. Apply the reductions as applicable for the FTE and Salary/Hourly Wage Reductions
    3. Determine final forgiveness amount based on payroll vs. non-payroll cost limitation
  - Calculation differences are mainly:
    - The choice to use of 24 weeks vs 8 weeks of costs
    - The formula for limitations of the payroll vs. non-payroll cost limitation simply uses different % as described previously.

PPP Application – The Short Game:
(Who Qualifies)

- Must meet one of three qualifications and certify on the application which one you meet.
  - Being self-employed
  - No Salary/Hourly Wage Reduction AND no FTE Reduction
  - No Salary/Hourly Wage Reduction AND operations were limited due to compliance with federal requirements or guidance issued between March 1, 2020 and December 31, 2020
- There is no dollar limitation on which form can be used – so even if $10 million was borrowed the short form can be used.
- No supporting schedules – the “gotcha”

PPP Application – The Short Game:
(Option 1 – Self-employment)

- The Borrower is a self-employed individual, independent contractor, or sole proprietor who had no employees at the time of the PPP loan application and did not include any employee salaries in the computation of average monthly payroll in the Borrower Application Form (SBA Form 2483).
- In all cases, the eligible payroll costs that qualify are capped based on 2019 compensation/earnings of the self-employed individual for both the 8 week or 24 week period.
  - Up to $15,385 or 8/52 of 2019 compensation/earnings if using 8 weeks
  - Up to $20,833 or 2.5 months of 2019 compensation/earnings if using 24 weeks
- Self-employed health insurance and retirement contributions are excluded from the calculations.
- Same non-payroll costs are allowed, but can be expanded to up to 40% of total forgiveness amount.

PPP Application – The Short Game:
(Option 2 – No Reductions)

- The Borrower did not reduce annual salary or hourly wages of any employee by more than 25 percent during the Covered Period or the Alternative Payroll Covered Period (as defined below) compared to the period between January 1, 2020 and March 31, 2020 (for purposes of this statement, “employees” means only those employees that did not receive, during any single period during 2019, wages or salary at an annualized rate of pay in an amount more than $100,000);

  AND

  The Borrower did not reduce the number of employees or the average paid hours of employees between January 1, 2020 and the end of the Covered Period. (Ignore reductions that arose from an inability to rehire individuals who were employees on February 15, 2020 if the Borrower was unable to hire similarly qualified employees for unfilled positions on or before December 31, 2020. Also ignore reductions in an employee’s hours that the Borrower offered to restore and the employee refused. See 85 FR 33004, 33007 (June 1, 2020) for more details.

PPP Application – The Short Game:

(Option 3 – No Salary/Hourly Wage Reduction +)

- The Borrower was unable to operate during the Covered Period at the same level of business activity as before February 15, 2020, due to compliance with requirements established or guidance issued between March 1, 2020 and December 31, 2020 by the Secretary of Health and Human Services, the Director of the Centers for Disease Control and Prevention, or the Occupational Safety and Health Administration, related to the maintenance of standards of sanitation, social distancing, or any other work or customer safety requirement related to COVID-19.
  - Health & Human Services Guidance: https://aspe.hhs.gov/coronavirus
  - CDC: https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/businesses-employers.html
  - OSHA: https://www.osha.gov/SLTC/covid-19/
  - State-by-state guidance: https://www.uschamber.com/article/state-by-state-business-reopening-guidance

So What’s Next?

- **IRC§ 265 - Nondeductible Expenses**

Notice 2020-32

PURPOSE

This notice provides guidance regarding the deductibility for Federal income tax purposes of certain otherwise deductible expenses incurred in a taxpayer’s trade or business when the taxpayer receives a loan (covered loan) pursuant to the Paycheck Protection Program under section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)). Specifically, this notice clarifies that no deduction is allowed under the Internal Revenue Code (Code) for an expense that is otherwise deductible if the payment of the expense results in forgiveness of a covered loan pursuant to section 1106(b) of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116-136, 134 Stat. 281, 286-93 (March 27, 2020) and the income associated with the forgiveness is excluded from gross income for purposes of the Code pursuant to section 1106(i) of the CARES Act.

https://www.irs.gov/pub/irs-drop/n-20-32.pdf

So What's Next?

U.S. SENATE COMMITTEE ON SMALL BUSINESS & ENTREPRENEURSHIP

Prioritized Paycheck Protection Program

On June 18, 2020, U.S. Senate Committee on Small Business & Entrepreneurship Ranking Member Ben Cardin (D-Md.) and Democratic Senators Chris Coons (Del.) and Jeanne Shaheen (N.H.) introduced the Prioritized Paycheck Protection Program (P4) Act. A House companion was introduced that day as well by Democratic Reps. Angie Craig (MN) and Antonio Delgado (NY).

HIGHLIGHTS

- Authorizes new lending under the PPP to small businesses with 100 employees or less, including sole proprietorships and self-employed individuals.
- Eligible businesses must have already expended an initial PPP loan or be on pace to exhaust the funding
- Must demonstrate a revenue loss of 50% or more due to COVID-19
- Would use existing PPP funding to make P4 loans
- Provide eligible small businesses with as much as 250% of monthly payroll costs worth up to $2M
- Prevent affiliated businesses with separate locations from receiving more than $2M in aggregate P4 loans
- Allow p4 recipients maximum flexibility to apply for loan forgiveness as soon as 8 weeks after the loan disbursement

EIDL – a quick review

Overview of loan terms:

- Loans up to $2M
- 30-year terms
- Interest rates of 3.75% for small businesses (2.75% for non-profits)
- First payment is 12 months from the date of the promissory note
- EIDLs smaller than $200,000 can be approved without a personal guarantee
- For loans under $25,000, the SBA does not take a security interest in any collateral
- For loans above $25,00 the SBA takes a general security interest in any and all "Collateral" as defined in the promissory note
- There are no prepayment fees

Unlike the PPP loan, EIDLs do not have a forgiveness aspect. However, any advance funds that you received will not be included in the loan. These advances are available up to $10,000.

SBA has resumed processing EIDL applications that were submitted before the portal stopped accepting new applications on April 15 and will be processing these applications on a first-come, first-served basis. **On June 15, SBA began accepting new EIDL and EIDL advance applications from qualified small businesses and U.S. agricultural businesses.**

EIDL – a quick review

U.S. Small Business Administration

WHAT CAN THE EIDL BE USED FOR?

EIDL loan funds can be used for a wider-range of business working capital “to alleviate economic injury caused by disaster occurring in the month of January 31, 2020 and continuing thereafter.”

This includes:

- Fixed debts (rents, etc.)
- Payroll
- Accounts payable
- Some bills that could have been paid had the disaster not occurred

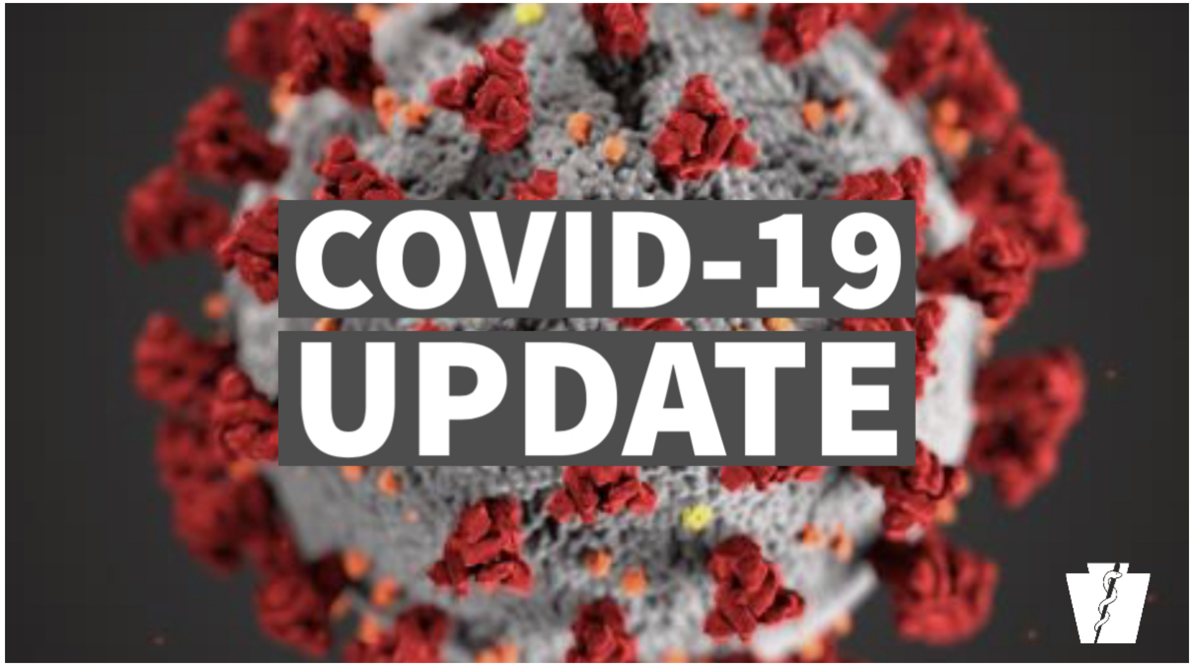
https://www.sba.gov/sites/default/files/articles/EIDL_and_P3_4.1.2020_FINAL_2pm.pdf

LOANS CANNOT BE USED FOR

- Dividends and bonuses
- Disbursements to owners, unless for performance of services
- Repayment of stockholder/principal loans (with exceptions)
- Expansion of facilities or acquisition of fixed assets
- Repair or replacement of physical damages
- Refinancing long-term debt
- Paying down (including regular installment payments) or paying off loans provided, or owned by another Federal agency (including SBA) or a Small Business Investment Company
- Payment of any part of a direct Federal debt, (including SBA loans) except IRS obligations
- Relocation (however, you can request written consent to relocate)

Additional Resources

Current and Past presentations along with other COVID-19 information can be found on our COVID-19 resource page on our website at: https://www.thinkholsinger.com/covid-19-resources/



Thank you for attending!

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Please feel free to reach out to us if you have any additional questions!

ANDY BIANCO, CPA/MT

Education and Certifications:

B.S. in Accounting, St. Vincent College with a minor in Finance

Masters of Taxation, Villanova University School of Law

Certified Public Accountant, Pennsylvania

Experience:

As a Shareholder at Holsinger, has over a decade of experience in the areas of tax, accounting, auditing, forensic accounting, mergers and acquisitions and general business consulting services. Andy has served both domestic and international clients in a broad range of industries during his career in the accounting profession. He consistently proves value through quality service, attention to detail and unique perspective.

WILLIAM L. STUNKEL, CPA

Education and Certifications:

B.S. in Accounting (with Honors), Grove City College

Certified Public Accountant, Pennsylvania

Experience

While being the Director of Holsinger's Business Solutions ("HBS") group, Wil has over fourteen years of experience in areas of accounting, tax planning, payroll and financial literacy. Wil has extensive experience with private companies in a broad range of industries including manufacturing, construction, restaurants, professional services, non-profit organizations, home healthcare, and others. He has worked extensively with clients in structuring compensation for themselves as well as for clients' employees to ensure the most efficient tax treatment. He specializes in working with small business owners to give them the attention and analysis they want while helping them increase their income.

JESSICA MOSLANDER, CPA

Education and Certifications:

B.A. in both Accounting and Business Administration (Magna Cum Laude), Thiel College

Certified Public Accountant, Pennsylvania

Experience:

Jessica, a Tax Manager at Holsinger is a CPA with over 18 years of experience in tax preparation, tax planning, research and consulting. Her main focus has been multistate and consolidated business returns which includes both domestic and foreign entities. Jessica also has extensive experience in tax research, resolving client issues with state and federal authorities and developing tax planning strategies for multistate and multinational corporations along with owners of pass through entities.