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GOVERNMENT CONTRACTING

Annual Government Contracting Conference
Driving Value for 25 years and counting



PPP & GovCons - Is it Really Forgivable?

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Panelists – Cost and Pricing Update

Curt Miller
DHG



Edward Spenceley
Bank of America



Cy Alba
PilieroMazza



Bill Walter
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Polling Question #1



Agenda

DHG's SBA Task Force

PPP

Section 3610



DHG's PPP Task Force

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DHG's SBA Task Force

Established in response to CARES Act and FFCRA

Developed DHG's PPP Solution

- Helped clients determine loan amounts
- Currently assisting about 700 clients with loan forgiveness

Meet every weekday morning to discuss new guidance, answer questions from clients and staff, review status of engagements, prepare DHG Knowledge Share, timely webinars, discuss what other professional firms are doing, etc.



DHG's PPP Knowledge Share



INDUSTRIAL



- 16 Alerts
- 7 Webinars
- 10 GrowthCast Episodes
- 10 Publications
- 2 DHG TV Episodes

The screenshot displays a dashboard with a grid of content cards. The cards are categorized by type: Alerts, Podcast, Publication, and DHG TV. Each card includes a title, a date, and a brief description. Navigation controls like 'PREVIOUS', 'NEXT', and page numbers (e.g., '1 / 5') are visible at the bottom of the grid.

Category	Title	Date
Alert	Simplified Forgiveness Process for PPP Loans Under \$50,000	Oct 13, 2020
Alert	SBA Issues Procedural Notice on PPP and Changes of	Oct 9, 2020
Publication	Lender Considerations During PPP Loan Forgiveness Review	On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security (CARES) Act was
Podcast	GrowthCast Episode 33: Updates on the Payroll	Denny Ard returns to discuss the latest SBA Interim Final Rule for the Payroll Protection
Alert	SBA Releases Interim Final Rule Regarding Rent and	Aug 25, 2020
Publication	Paycheck Protection Program Loans – Accounting for	The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) introduced the
DHG TV	Construction & Real Estate Building Bites July 27-31,	Mark DeVerges and Curt Griffin review frequently asked questions around PPP
Alert	SBA Forgiveness Process for Lenders	Jul 29, 2020
Webinar Recording	PPP and Other Accounting Updates for Non-profits: Wh	Guidance on the Paycheck Protection Program is constantly changing. To help non-profits
DHG TV	Construction & Real Estate Building Bites July 20-24,	Mark DeVerges and Curt Griffin review frequently asked questions around PPP
Publication	PPP Loan Forgiveness – What We Know About the PPP	Many small businesses across the U.S. have concern regarding the liquidity and the su
DHG TV	Construction & Real Estate Building Bites July 13-17,	Mark DeVerges and Curt Griffin review frequently asked questions around PPP



DHG Views Consideration Checklist



Considerations Checklist for PPP Forgiveness Calculation



As you approach the end of your covered period and are starting to perform calculations and gather documents for your application, there are a handful of considerations you may want to take into account. Our PPP Task Force team has prepared this checklist of items for you to consider prior to submission of your PPP Loan forgiveness application:

General

- If you have elected to use the alternative covered period, did you ensure your business was on a bi-weekly or more frequent payroll cycle?
- Did you exclude employees whose principal place of residence is outside of the U.S.?

Owner Specific

- Did you include owners in your FTE count?
- Did you ensure the appropriate individual caps were in place for owner compensation (\$15,285 if utilizing the 8-week covered period or \$20,833 if utilizing the 24-week covered period)?
- Did the 2019 compensation calculation consider any adjustments for owners that were not employed at the Company for the entire 2019 year?

Payroll Specific

- Have you included appropriate payroll accruals at the end of the period?
- For accruals at the end of the period, were they paid out as part of the first payroll subsequent to the covered period elected?
- For the employer portion of group health benefits at a S-corporation, did you exclude those payments of health insurance contributions made for self-employed individuals, general partner, or owner-employees?
- Were employees appropriately divided between Table 1 and Table 2 of the Forgiveness Application based on whether they received an annualized compensation rate of more than \$100,000 for any pay period in 2019?
- Were appropriate accruals included for:



PPP

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PPP – Lessons Learned and ReCap

PPP

- Loan Applications began on April 2nd - \$349B loaned by April 16th
- PPP Flexibility Act – Added \$310B on April 24th – Closed on August 8th with \$130B available funds
- 5,212,128 loans approved for \$525,012,201,124 from 5,460 lenders – Average loan size is \$100,729

Guidance is dynamic:

- + 26 Interim Final Rules Issued
- + 52 FAQs related to the program – last update on October 7
- + 3 forgiveness forms
- + 27 of FAQ related to Loan Forgiveness – last update on October 13th

Changes to PPP

Changes and clarifications since CARES Act passed on March 27th:

- Covered period – 8 weeks vs. 24 weeks
- \$100k cap applied to gross wages only and not other employer benefits
- Owner-Employees with 5% or more ownership - Capped at \$20,833
- Independent contractors – Not part of loan or forgiveness calculations because 1099 personnel can file their own PPP loans
- Salary computation – Employer share of federal taxes are excluded
- No more than 40% eligible for non-payroll expenses
- 2 years vs. 5 years repayment

Paper trail for forgiveness is substantial – anticipate some form of audit



Polling Question #2



Loan Forgiveness Forms

SBA Form 3508

- Application for most borrowers
- Comprehensive schedules – weekly compensation by employee, details of non-payroll expenses
- FTE and salary Reduction adjustments
- EIDL credit
- Requires representations and certifications

SBA Form 3508EZ

- For borrowers with no FTE reduction or salary reductions
- Requires representations and certifications

SBA Form 3508S

- Simplified for borrowers with loans under \$50,000
- Affiliated entities with PPP loans cannot exceed \$2M
- Requires representations and certifications

Other PPP elements . . .

PPP Loans over \$2M will be audited by the SBA

Safe Harbors:

- Under \$2M loan – certification of economic uncertainty made in good faith
- FTE: Headcount up on 12/31/2020 or the application date – no adjustment
- FTE Reduction Exemption: Documented attempt to rehire employee rejected – no adjustment if you report to the local unemployment agency
- FTE: If the reason you cannot operate at the same level of business activity is due to compliance with COVID requirements or guidance regain FTE count is reduced business

Forgiveness Portals are slowly opening . . .

SBA appropriated \$2.1B salaries and benefits to enforce the CARES Act



FAQ we receive from contractors . . .

Can I invoice the government and get my loan forgiven?

- No PPP specific guidance issued other than Section 3610
- Contracts subject to FAR Part 31 Cost Principles:
 - + FAR 31.201-5 (Credits), states in relevant part:
 - The applicable portion of any income, rebate, allowance, or other credit relating to any allowable cost and received by or accruing to the contractor shall be credited to the Government either as a cost reduction or by cash refund.
- Cost principles may not apply to competitively awarded T&M or Fixed Price contracts – what might the Government do here?
 - + FAR 32.601 (Contract Debts – General):
 - “Contract Debts” include amounts that “have been paid to a contractor to which the contractor is not currently entitled under the terms and conditions of the contract” and “duplicate” payments.
 - + Administrative set-off

More Questions on PPP and the GovCon

Can I get forgiveness if I made a profit this year?

Can this impact my forward pricing indirect expense rates?

Should a contractor run credits through their rates in the system?

Will PPP forgiveness impact incurred cost submission?

Will the government expect PPP credits?

Does DCAA have any guidance on PPP forgiveness?

DoD FAQ # 23 - UPDATE

Q23: Please confirm that neither the FAR Credits provision, FAR 31.201-5, the credit provision in the Allowable Cost and Payment Clause, FAR 52.216- 7(h)(2), nor any other FAR or DFARS provision imposes an obligation on a contractor to credit any amount of a Payroll Protection Program (PPP) loan that is forgiven to any flexibly priced government contract or subcontract. We consider a contractor that has received a PPP loan will use the loan proceeds as it would any other funds in its corporate treasury to pay costs of doing business.

**A23: We disagree, any PPP loan that has been forgiven necessarily can be treated as though it belongs to the company to use as it pleases. FAR 31.201-1, Composition of Total Cost, states that total cost is the sum of the direct and indirect costs allocable to the contract less any allocable credits. Accordingly, to the extent that PPP credits are allocable to costs allowed under a contract, the Government should receive a credit or a reduction in billing for any PPP loans or loan payments that are forgiven. Furthermore, any reimbursements, tax credits, etc. from whatever source that contractors receive for any COVID-19 Paid Leave costs should be treated in a similar manner and disclosed to the government.
(Updated: April 24, 2020)**

Polling Question #3



Section 3610

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CARES Act § 3610 – Federal Contractor Authority

§ 3610 provides for reimbursement for standby time due to COVID-19:

- Reimbursement is discretionary – not mandatory;
- Based on availability of funds;
- The contract, or other agreement, may be modified to provide for reimbursement;
- Reimbursement is based on “the minimum applicable contract billing rates not to exceed an average of 40 hours per week for paid leave, including sick leave”;
- Reimbursement must be to retain employees or subcontractors in a “ready state”;
- Reimbursement must be due to an employee’s inability to perform work on a site approved by the Federal Government due to facility closures or restrictions and telework is not acceptable due to the nature of the job duties;
- January 31, 2020 through September 30, 2020; and
- Maximum reimbursement SHALL be reduced by the amount of credit a contractor is allowed under division G of the FFCRA and the CARES Act, which includes the PPP.

DoD Guidance on 3610

April 8, 2020 - DFARS class deviation 2020-O0013 on implementing Section 3610 creates DFARS 231.205-79 to appropriately balance flexibilities and limitations. This clause states:

- “Costs made allowable by this section are reduced by the amount the contractor is eligible to receive under any other Federal payment, allowance, or tax or other credit allowed by law that is specifically identifiable with the public health emergency declared on January 31, 2020, for COVID–19, such as the tax credit allowed by division G of Public Law 116–127.

DoD Class Deviation – CARES Act § 3610

DoD's Class Deviation Memorandum 2020-00013 states:

- “Some contractors may receive compensation from other provisions of the CARES Act, or other COVID-19 relief scenarios, including tax credits, and contracting officers must avoid duplication of payments. For example, the Paycheck Protection Program (PPP) established pursuant to sections 1102 and 1106 of the CARES Act may provide, in some cases, a direct means for a small business to obtain relief. A small business contractor that is sheltering-in-place and unable to telework could use the PPP to pay its employees and then have the PPP loan forgiven, pursuant to the criteria established in the interim rule published by the Small Business Administration. In such a case, the small business should not seek reimbursement for the payment from DoD using the provisions of section 3610.”

DoD Guidance on 3610

Update to Class Deviation issued August 17, 2020

- Checklists:
 - + Single request under \$2M;
 - + Global request at a company or business unit level;
 - + Multipurpose request
- Requests must have specific representations
- Limited to cost incurred after March 27th
- Subcontractor requests through the prime contractor
- Costs must be segregated
- Cannot include profit or fee
- Notify within 30 days of receiving credits for the “same paid leave costs” that were reimbursed under Section 3610

Polling Question #4



Other Agency Guidance

Several agencies have provided 3610 guidance:

- Intelligence Agencies
- Department of Homeland Security
- GSA

The level of detail contained in guidance varies significantly by agency.

Most guidance requires contractor certification that the contractor has maintained adequate documentation including evidence that reimbursement requests satisfy statutory requirements

All guidance identifies credits under FFCRA and CARES Act (i.e., No Double Dipping)

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Questions?

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