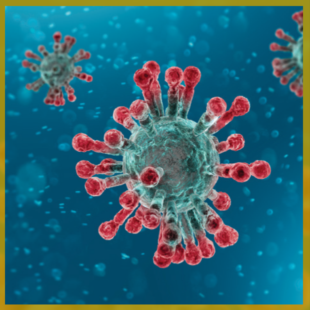

NECA Legal and Government Affairs Alert

PPP Loans, Forgiveness Guidance and Safe Harbor Extension

Updated 5.6.2020

There has been a public backlash over perceived abuses in the PPP loan process. With reports of publicly traded companies such as Ruth's Chris getting loans, the federal government has changed the tenor of its guidance. On April 28, 2020, U.S. Secretary of Treasury Steven Mnuchin announced that all Paycheck Protection Program (PPP) loans over $2 million are subject to audits. The SBA has issued new guidance on the PPP loan process, and the information related to loan forgiveness is of particular importance. It is also lacking in specificity, which is frustrating.

In particular, the latest guidance creates a safe harbor rule that provides that if an employer decides to return PPP money that it does not need or cannot use, it should return the money on or before **May 14, 2020.** NECA's government affairs department successfully pushed hard for an extension from the original date of May 7, and we continue to press for additional definitions, parameters and other guidance on the loan forgiveness process.

At this point, it is imperative for employers to take the additional time that NECA helped procure to work with their accountants, tax advisors and payroll specialists to set aside documentation showing the need for the PPP funds for which they apply. The SBA guidance makes it clear that "all borrowers must assess their economic need for a PPP loan under the standard established by the CARES Act and the PPP regulations at the time of the loan application." This analysis should be made in lockstep with your financial advisors.

The following is a non-exhaustive list of the documentation and information that should be compiled and considered when making your decisions regarding the PPP loan application and retention of funds.

- Actual business disruptions and loss of revenue due to governmental closures or restrictions;
- The cost of maintaining payroll, and in particular, those non-working (and non-revenue producing) employees on the payroll;
- Increases in the cost of raw materials due to disruptions in the supply chain;
- Delayed payments given cash flow issues from those to whom you extend credit;
- Requests for write-offs or bad debt;
- Limitations on your ability to access or qualify for a line of credit or other working capital;
- Adjusted budget forecasts resulting from layoffs or other reduced manpower;
- Loss of investment income that affects reserves

Each employer must certainly assess its own financial situation with the help of competent local financial, tax and legal counsel to adapt this general guidance to its individual business situation.

NECA will continue to lobby for the industry on this issue and we will keep you informed of all relevant developments.

This material is for informational purposes only. The material is general and is not intended to be legal advice. It should not be relied upon or used without consulting a lawyer to consider your specific circumstances, possible changes to applicable laws, applicable CBAs, prime contracts, subcontracts, rules and regulations and other legal issues. Receipt of this material does not establish an attorney-client relationship.

What is the Coronavirus?

Coronavirus Disease 2019 (COVID-19) is a respiratory disease caused by the Severe Acute Respiratory Syndrome (SARS)-CoV-2 virus. The current mutation is a new strain of the SARS virus and no individual has any immunity prior to an exposure. The CDC has reported that testing has begun on a vaccine but for now, everyone should prepare and plan for possible impacts resulting from COVID-19. It has spread from China to many other countries around the world, including the United States.

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