



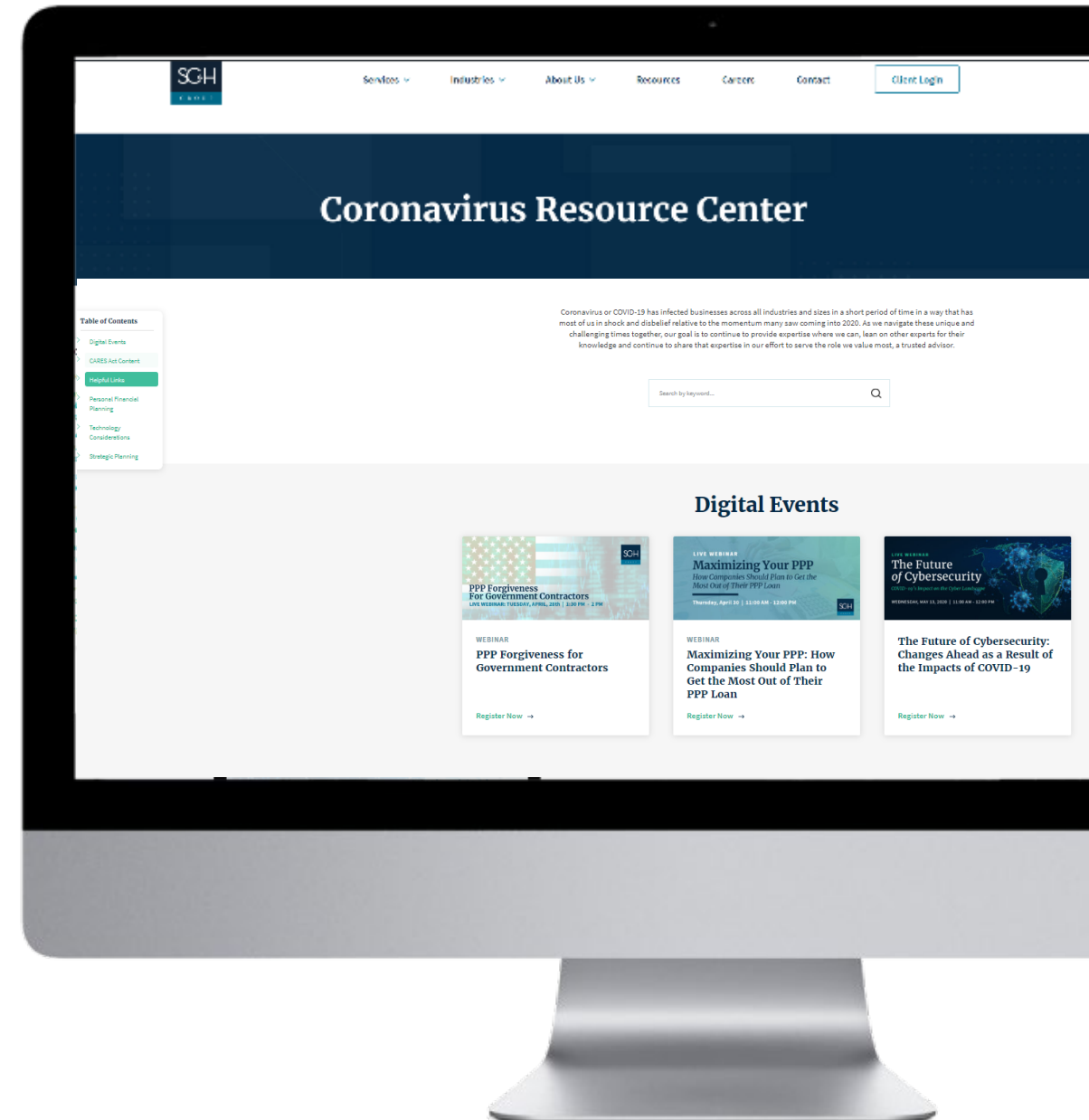
Government Contractors and the Paycheck Protection Program

Presented To NMTC Virtual Water Cooler, Thursday, May 14, 2020

COVID-19 Resource Center

- Resources for both individuals and businesses
- Relevant content from across the firm
- Continually being updated with resources and digital events

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Our Speakers



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Learning Objectives

TODAY WE WILL COVER TERMS RELATED TO PPP FORGIVENESS FOR GOVERNMENT CONTRACTORS

1. How are these terms defined?
2. How do I apply the law to my situation?
3. FAQ's on SBA Guidance – more questions than answers
4. Loan forgiveness
5. Understanding the terms and definitions dictates the reporting and the ultimate criteria for forgiveness
6. Address questions submitted by attendees

The CARES Act

An Important Note on the CARES Act Section 3610

- The CARES Act includes two sentences that segregate government contractors from all other businesses
- The objectives of Section 3610 of the CARES Act are clear – the law sets up a barrier to not allow for costs that are funded by the Payment Protection Program (PPP) to be reimbursed and funded by the terms of the government contract
 - Verbiage is nebulous
 - Additional guidance is anticipated in the near future

“Covered Period”

What is the timeframe to spend PPP funds?

- 8 Weeks from the date funds are transferred into your bank account by the bank:
 - **NOT** 2 months
 - **NOT** 60 days
- Coordination with payroll periods and expenses
 - ... “costs incurred and payments made”... per CARES 1106(b)
 - What if our payroll is on a semi-monthly period?
 - Potential issues with rent, utilities, etc.

What Can I Spend My PPP Funding On?

- In order for the loan to be forgiven, funds must be used as follows:
 - Payroll Costs – at least 75%
 - Other Costs – not more than 25%
- A portion of the loan is still eligible for forgiveness for those amounts spent on payroll costs, even if the 75% threshold is not met

“Payroll Costs” – At least 75%

- Gross salaries, wages, commissions, cash tips or equivalents, and similar compensation paid to employees
- Payments for vacation, parental, family, medical, or sick leave
- Costs related to continuation of group health care benefits, including insurance premiums
- Retirement benefit costs
- Severance payments (for dismissal or separation)
- Payment of State or local tax assessed on employee compensation
- (Sections 1102(a)(2)(A) and 1102(a)(2)(F) of CARES Act)

What Payroll Costs Are Not Included?

- Total salary/wages paid to any employee(s) in excess of \$100,000 – salary is to be prorated for the covered period
 - **NOTE¹: The exclusion of compensation in excess of \$100,000 annually applies only to cash compensation, not to non-cash benefits including, but not limited to:**
 - Retirement plan contributions
 - Health insurance benefits
 - State and local taxes assessed on employee compensation
- Salary/wages for any employee whose principal place of residence is outside the U.S.
- Federal employment taxes imposed or withheld between 2/15/2020 and 6/30/2020
- Qualified sick or family leave for which a credit is allowed under The Families First Coronavirus Response Act (FFCRA)
- Payments to independent contractors

1 - PPP FAQ #7 – April 23, 2020

Allowable “Other Cost” – Not more than 25%

- Rent expenses under lease agreements in existence before 2/15/2020
- Utilities (electric, gas, water, transportation, telephone and internet) under service agreements dated before 2/15/2020
- Interest on covered mortgages (on real or personal property) incurred before 2/15/2020

Record Keeping

- Anticipated reports
- Should we setup a separate bank account for PPP funds?
- Relationships to contract invoices

IRC 265 and Deductibility of Expenses

- The cancellation of your PPP loan will not result in taxable income
- IRS Notice 2020-32 released on April 29, 2020
 - Internal Revenue Code Section 265 states that expenses that are allocable to tax-exempt income are not deductible.
 - IRS confirmed that no deduction is allowed for an expense that is otherwise deductible if payment of the expense results in forgiveness of a covered loan under the CARES Act
- Senate Finance Committee is seeking to reverse course, notice 2020-32 does not convey the original intent of Congress.

Other PPP Considerations

- Coordination with Unemployment Benefits
- Forgiveness is reduced based on Full Time Employees (FTE)
 - Numerator is the average FTE per month during the covered period
 - Denominator is based on the average FTE per month over one of two periods
 - The period from 2/15/19 through 6/30/19, or
 - The period from 1/1/20 to 2/29/20
- Employee Retention Credit
 - Not available to those that have received PPP loans

Conclusion

- Finite guidance is murky
- Rules seem to change on a daily basis
- Record keeping and ability to trace uses of funds over specific time periods will likely be important
- Importance of managing for known/unknowns
 - “75% Rule” for payroll expenditures
 - IRC 265 likely to remain an area of debate
 - Interplay of Section 3610

Questions? Contact Us!



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