

# Consultants Update

## *COVID-19*

Rick Schweitzer

General Counsel and Government Affairs/HR Consultant  
Gases & Welding Distributors Association

May 6, 2020

# Discussion Topics

- Additional Certification Guidance for SBA Paycheck Protection Program
- Dept. of Labor Guidance on “Workshare” and Unemployment Benefits
- PHMSA Guidance on Electronic Signatures for Shipping Papers

# Paycheck Protection Program

- SBA loan program to help small businesses retain their employees during the COVID-19 crisis
- Congress passed an additional \$310 billion in funding recently; now available from lenders; offers forgivable loans designed to help small businesses keep workers on their payroll
- \$60 billion will be reserved for smaller banks that cater to underserved communities

# PPP Guidelines

1. The SBA will provide loans to small businesses (fewer than 500 employees and meet SBA definition of small business). Loans may be equal to 2 ½ months of your average payroll up to \$10 million. The guidelines provide a few examples of how this will be calculated.
2. If you maintain at least 75% of your employees and pay them at least 75% of what they were making before the Coronavirus, that portion of the loan will become a grant
3. No more than 25% of the loan forgiveness amount may be attributable to non payroll costs including mortgage interest, rent and utilities.
4. Form 1099 independent contractors must apply for the PPP on their own. They are not counted towards the amount you can borrow as an employer nor are they counted towards the loan forgiveness.

# How Can PPP Loans be Used?

- payroll costs (as defined in the Act and in the Interim Final Rule);
- costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums;
- mortgage interest payments (but not mortgage prepayments or principal payments);
- rent payments;
- utility payments;
- interest payments on any other debt obligations that were incurred before February 15, 2020; and/or
- refinancing an SBA Economic Injury Disaster Loan made between January 31, 2020 and April 3, 2020.

# New PPP Guidance

- CARES Act suspends the ordinary SBA requirement that borrowers must be unable to obtain credit elsewhere.
- But borrowers must certify that “[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.”
- “Borrowers must make this certification in good faith, taking into account their current business activity and their ability to access other sources of liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business.”

# PPP Guidance

- “[I]t is unlikely that a public company with substantial market value and access to capital markets will be able to make the required certification in good faith, and such a company should be prepared to demonstrate to SBA, upon request, the basis for its certification.”
- Lenders may rely on a borrower’s certification regarding the necessity of the loan request.
- Any borrower that applied for a PPP loan prior to the issuance of this guidance and repays the loan in full by May 7, 2020 will be deemed by SBA to have made the required certification in good faith.

# DOL Guidance on Worksharing

- 25 States have adopted work-share programs that let workers collect partial benefits when hours are cut
- Workers whose employers have opted into work-sharing can collect benefits in proportion to cuts
- States typically make employers cover half the costs of short-time compensation benefits, which partially offset hour reductions
- New US Dept of Labor guidance to States may "choose not to charge" employers for payments to partially employed workers that meet criteria for full federal reimbursement under the CARES Act



# PHMSA Electronic Signatures

- Shipper's certification on shipping paper may be made "manually, by typewriter, or other mechanical means."
- PHMSA guidance says shipping paper may be signed by leaving it on the table and stepping away, or sending it through email or other electronic means
- Shipper may ask driver or other person to sign on his behalf, verbally or in writing, and request may be transmitted by email or text message
- But HMR do not allow electronic shipping papers—must still have hard copy in vehicle for inspection

# Contact Info

Richard P. Schweitzer, PLLC  
1717 K Street, N.W. Suite 900  
Washington, D.C. 20006  
(202) 223-3040 office  
(703) 946-2548 mobile  
[rpschweitzer@rpslegal.com](mailto:rpschweitzer@rpslegal.com)