Contact Information

W. David Mannheim  
Partner  
*Raleigh, NC*  
(919) 329-3804  
david.mannheim@nelsonmullins.com

E. Peter Strand  
Partner  
*Washington, D.C.*  
(202) 689-2983  
peter.strand@nelsonmullins.com

Michael K. Bradshaw, Jr.  
Associate  
*Washington, D.C.*  
(202) 689-2808  
mike.bradshaw@nelsonmullins.com
I. Summary of SBA Relief Programs
II. Paycheck Protection Program
III. Emergency Economic Injury Disaster Loans
IV. Q&A
I. Summary of SBA Relief Programs in the Stimulus Package
Three SBA Relief Programs in the Stimulus Package:

1. **Paycheck Protection Program**—
   - $349 billion for eligible businesses (generally under 500 employees) to be provided under SBA’s 7(a) loan program. Loans are 100% government guaranteed, up to $10 million based on businesses’ payroll, 2 year term at 1%. Loan forgiveness available.

2. **Emergency Economic Injury Disaster Loans (EIDLs)**—
   - $10 billion additional funding for EIDLs under the SBA’s Section 7(b)(2) emergency lending program. CARES Act also waives certain EIDL requirements, such as personal guarantee and collateral requirements, and relaxes and fast-tracks the application process.

3. **Relief for certain existing SBA loans**—
   - The CARES Act permits the SBA to pay the principal, interest and fees on these loans for six months beginning with the next payment due date. Loans already on deferment will receive six months of payment after the deferral period. SBA will also encourage lenders to provide deferments and will allow lenders, for up to one year, to extend the maturity of SBA loans in deferment beyond current limits.
II. Paycheck Protection Program
Paycheck Protection Program

• $349 billion

• Generally available to companies with 500 or fewer employees
  
  o Important to consider affiliation rules

• Loans approximately equal to lesser of 10 weeks’ payroll or $10 million

• Loan forgiveness available for up to entire principal amount, subject to reduction for workforce and wage/salary reductions
PPP – Considerations

• Who is eligible?
• How much can you borrow?
• How much loan forgiveness is available?
• What are the permitted uses?
• Other details
• How do you apply?
PPP – Who is eligible?

• Are you a business located in the U.S. and which operates primarily within the U.S. or makes a significant contribution to the U.S. economy through payment of taxes or use of American products, material or labor that was in operation since February 15, 2020?

• Are you below the size thresholds for eligibility?
  - 500 or fewer employees (or such larger amount of employees if set forth in the SBA size standards)
    - You must include affiliated companies’ employees in this calculation
      - Hotel and restaurant industry, franchises listed in the SBA directory, and companies receiving financial assistance from an SBIC are exempt from affiliation rules.
      - For hotels and restaurants, it is 500 or fewer employees per physical location.
    - Also available for traditional “small businesses” under the existing SBA size standards.

• Can you certify that “current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant”? 
PPP – Who is eligible?

Ineligible persons and businesses:

- Household employer
- Financial business in the business of lending (such as banks)
- Certain passive businesses owned by developers and landlords that do not actively use or occupy the assets
- Life insurance companies
- Businesses located in a foreign country
- Pyramid sales distribution plans
- Businesses primarily engaged in political or lobbying activities
- Businesses that have defaulted on SBA or federal loans and caused a loss to the government in the last 7 years
- Certain casinos or gambling businesses
- Private clubs or businesses that limit the number of memberships for reasons other than capacity
- Government owned entities
- Businesses principally engaged in teaching, instructing, counseling or indoctrinating religion or religious beliefs
- Loan packagers deriving more than 1/3 of revenue from SBA loans
- Businesses engaged in illegal activity
- A business whose owner is incarcerated, on probation or parole, subject to an indictment, criminal information, arraignment or has been convicted of a felony in the last 5 years
- Debarred or declared ineligible from the PPP
- Presently involved in a bankruptcy
- Business that present live performances of a prurient sexual nature
- Speculative businesses (such as oil wildcatting)
PPP – Affiliate Issues

• Calculation of number of employees should include all affiliates (companies controlled by any person or entity controlling the recipient)
  o Definition of “Affiliate” and “Control” is a ‘totality of the circumstances’ test, and the SBA generally takes an expansive view of what constitutes control.
  o Hotels and restaurants, certain franchises designated by the SBA, and companies that receive SBIC funding are exempt from affiliation rules and do not need to aggregate employees.
  o Private Equity or Venture Capital often problematic
• Affiliate determination is done on an entity by entity (or investor by investor) basis.
  o Affiliation determined by control (i.e., when one entity controls another, or two or more entities are controlled by a third party).
  o Most common control factors: 50% or more of voting stock or negative controls, such as veto rights that affect normal operation of the business.
    ▪ Minority shareholders with control factors may waive or disclaim the control and avoid affiliate issues.
PPP – How much can you borrow?

- Lesser of $10 million or 2.5x average total monthly payments of payroll costs during 1-year period prior to date loan is made*
  - You can use rolling 12 months or calendar year 2019

- You can also borrow the amount of any 7(b)(2) disaster loans borrowed between January 31, 2020 and April 3, 2020 (subject to $10 million maximum)
  - If the EIDL was used towards payroll costs, you MUST refinance under this provision.

“Payroll Costs”:
- Gross salary, wage, commission or similar compensation;
- Payment of cash tips or equivalent;
- Payment of vacation, parental, family, medical or sick leave;
- Allowance for dismissal or separation;
- Payment required for the provision of group health care benefits, including insurance premiums;
- Payment of retirement benefits; and
- Payment of state and local tax assessed on the compensation of employees.

Special Rules:
- Only count salary up to $100,000 (but other costs and benefits over $100,000 may be counted).
- Do not count any compensation of an employee whose principal place of residence is outside of the U.S.
- Exclude qualified sick or FMLA leave wages for which a credit is allowed under Families First Coronavirus Response Act.

* 12-week period ending June 30, 2019 for seasonal employers
PPP – Loan Forgiveness

• Loan forgiveness is available for up to entire principal amount, subject to reduction based on workforce and wage/salary reductions
  
  o At least 75% of loan funds must be used towards payroll costs, although this requirement is not in the CARES Act.

• Loan forgiveness amount:
  
  o Amounts incurred or paid during first 8 weeks of loan for:
    ▪ Payroll costs
    ▪ Interest on mortgage obligations (but not principal or prepayment amounts)
    ▪ Rent
    ▪ Utilities (electricity, gas, water, transportation, telephone or internet access)
  
  o Will be reduced proportionately to any reduction in workforce, plus reduced by any decrease in salary/wages in excess of 25% for any employees earning less than $100,000
• **Reduce the amount of forgiveness by both:**
  
  o **Reduction in workforce:**
    
    ▪ _Divide_: The average number of full-time equivalent employees per month employed during the covered period;
    
    ▪ _By_, at your election:
      
      o The average number of full time equivalent employees per month employed from February 15, 2019 to June 30, 2019; or
      
      o The average number of full time equivalent employees per month employed from January 1, 2020 to February 29, 2020.
    
    • “Full-time equivalent” employee definition is unclear, but in the past the SBA has defined it as:
      
      ▪ Each employee who averages 30 hours per week counts as 1 FTE; plus
      
      ▪ All other employees’ hours are combined (up to 120 each), then divided by 120

  o **Reduction in salary/wages:**
    
    ▪ The amount that total salary or wages for any employee that has decreased in excess of 25% during the covered period as compared to the most recent full quarter during which the employee was employed before the covered period.
      
      o Do not count any reduction of any employee that in any pay period in 2019 received wages or salary at an annualized rate of pay more than $100,000.

  • Cure provision available (see next page)
PPP – Loan Forgiveness – Cure Provision

• **Cure Provision:**
  - For all reduction in workforce or compensation between February 15, 2020 and April 26, 2020, you do not count such reduction against the loan forgiveness if by June 30, 2020 such reduction has been reversed.

• **Example:**
  - Company has $6 million payroll in 2019
    - $500,000 average payroll per month
    - Able to borrow $1.25 million
    - Assume payroll stays constant over next 8 weeks, that’s $1 million in forgiveness amount
      - Plus any additional amounts paid or incurred in rent, mortgage interest or utilities
    - Subject to reduction based on workforce reductions or salary/wage reductions
PPP – Permitted Uses

• Permitted uses of loan funds:
  o Payroll costs;
  o Costs related to the continuation of group health care benefits during period of paid sick, medical or family leave, including insurance premiums;
  o Salaries, commissions or similar compensations;
  o Payment of interest on any existing mortgage obligations;
  o Existing rent obligations;
  o Utilities;
  o Interest on existing debt obligations; and
  o Refinancing amounts under an eligible SBA Section 7(b)(2) Disaster Loan made between January 31, 2020 and April 3, 2020.
PPP – Other Details

- Interest equals 1%
- Two year term, with no prepayment penalty
- Administration fees are waived
- No need to demonstrate you cannot obtain credit elsewhere
- No collateral or personal guarantee required
- Deferment available for 6 months
- Loans are nonrecourse as long as used for permitted purposes
- Debt forgiveness does not count as income for tax purposes
PPP – Next Steps

• Eligible lenders started accepting applications for small businesses and sole proprietorships on April 3, 2020 and will begin accepting applications for independent contractors and self-employed individuals April 10, 2020

• Program is “first come, first served”
  o Push to increase funds in next stimulus package by up to $250 billion

• Apply with current lender if possible
  o Many banks are only accepting applications from existing customers
  o Wells Fargo has stopped processing applications (until they receive regulatory relief, if at all)

• Identify other eligible lenders:
  o All current 7(a) lenders
  o All insured depository institutions
  o Other lenders to be determined by Treasury
  o SBA website has link to find eligible lenders.

• In the meantime, consider whether a Section 7(b)(2) emergency EIDL is appropriate.
III. Emergency Economic Injury Disaster Loans (EIDLS)
Emergency Economic Injury Disaster Loans

• SBA Section 7(b)(2) Emergency Economic Injury Disaster Loans (EIDLs)
• CARES Act set aside an additional $10 billion for EIDLs
• 30 year loans up to $2 million; interest rates not to exceed 4%
• Now available to small business concerns, private nonprofit organizations, small agricultural cooperatives, and businesses with not more than 500 employees, and sole proprietors or independent contractors
• Have you suffered, or are likely to suffer, substantial economic injury as a result of COVID-19?
EIDLs (cont.)

- $10,000 advance available; must be paid within 3 days after SBA receives application
  - Must be used for allowable purpose, including payroll, paid sick leave, cost of materials, rent or mortgage, or other obligations that cannot be met.
  - Applicant must certify they are an eligible entity
  - Need not be paid back, even if subsequently denied an EIDL
- Automatic deferment through 2020
- Relaxed application and requirements
  - Need not be in business for 1 year (only operational as of January 31, 2020)
  - No personal guarantees for loans less than $200,000
  - May grant loan based on credit score alone; no tax returns necessary
  - According to SBA officials, for loans of less than $500,000, SBA will rely on certification that applicant is a small business concern
EIDLS (cont.)

• Applications made directly with the SBA at this link.

• A company that gets an EIDL between January 31, 2020 and April 3, 2020 may be eligible to borrow additional funds under the Paycheck Protection Program to refinance the EIDL (subject to the $10 million cap). If EIDL used to cover payroll, must be refinanced with PPP loan. Check with your lender.

• 7(a) loans and 7(b)(2) loans may not be used for duplicative purposes.
SBA Relief for Existing Loans

- Existing 7(a) loan (but not PPP loan), Section 504 loan or microloan
  - SBA may pay the principal, interest and fees on these loans for six months beginning with next payment date.
  - Loans already on deferment will receive six months of payment after the deferral period
  - SBA will encourage lenders to provide deferments and will allow lenders, for up to one year, to extend the maturity of SBA loans in deferment beyond current limits.
IV. Questions

Please submit any questions for the panelists through the Zoom interface.
Thank you for attending.

Visit www.nelsonmullins.com/coronavirus-resources for updates and additional resources.