NELSON MULLINS

Memorandum

To: Clients

From: Jon Talcott, Peter Strand and Mike Bradshaw

Date: March 27, 2020

Re: CARES Act/Stimulus Package and COVID-19 Response

In light of the severe market disruption and economic impact of the COVID-19 pandemic, we are monitoring the government's response and communicating with companies any relief that may be helpful to manage their business in this crisis. Below are a few key initiatives that could be helpful to companies in the proposed stimulus package (the Coronavirus Aid, Relief, and Economic Security Act, or the CARES Act), including the Paycheck Protection Program.

1. Paycheck Protection Program under the CARES Act

Companies may be eligible for loans fully guaranteed by the Small Business Administration ("SBA") on favorable terms under the part of the CARES Act known as the Paycheck Protection Program. This section of the CARES Act provides for the SBA to guarantee a total of $349 billion in Section 7(a) loans to businesses, sole proprietorships and self-employed individuals that have less than 500 employees (or a greater number of employees if greater in such company's SBA industry classification).

Loans may be made in amounts equal to 2.5 times the average total monthly payroll costs incurred in the prior one-year period (12-week period for seasoned employers) *plus* the amount of any existing Section 7(b)(2) disaster loans eligible for refinancing, up to a maximum loan amount of $10 million. Borrowers must certify in good faith that the loan is necessary to support ongoing operations and the funds will be used to retain workers and maintain payroll, or make mortgage, lease and utility payments. Interest rates will not exceed 4% and deferred payment may be available for 6 to 12 months for borrowers adversely impacted by COVID-19.

Under the CARES Act, a portion of the loan equal to eight weeks of payroll costs, interest on mortgage obligations, rent and utility, will be eligible for forgiveness. The amount of debt forgiveness will be reduced by the percentage of any work-force reduction and any reduction in salaries and wages paid since February 15, 2020. Borrowers will need to apply with the lender for the forgiveness and be able to show employment levels and wage and salary amounts.

Any company owned or controlled by a private equity fund will need to aggregate employees of affiliates of the private equity fund for the purposes of determining the 500-employee threshold. This aggregation concept does not apply to hospitality and restaurant industries, qualified franchises and certain small businesses receiving financing through the SBIC program.

A summary of the Paycheck Protection Program is attached hereto.

2. SBA Economic Injury Disaster Loan ("EIDL") Program Expanded

The SBA has a current disaster relief fund (the Economic Injury Disaster Loan, or EIDL, Program) that has been expanded by the CARES Act to cover the COVID-19 disaster. The CARES Act also loosens application requirements and provides for emergency advances of up to $10,000 within three days. Small business owners in all U.S. states, Washington D.C., and U.S. territories are currently eligible to apply for a loan up to $2 million at 4% interest or less.

A business that is eligible for the disaster relief fund and that has applied for an EIDL may request an emergency advance of up to $10,000, which the SBA must distribute within three days. The request must certify that the business is eligible for an EIDL loan. The advance must be used for providing paid sick leave to employees, maintaining payroll, meeting increased costs to obtain materials, making rent or mortgage payments, and repaying obligations that cannot be met due to revenue losses. The advance does not need to be repaid, even if the applicant is subsequently denied an EIDL.

3. Relief for Existing SBA Business Loans

If a company currently has SBA-guaranteed loans, the proposed CARES Act provides for six months of SBA-subsidized payments on certain existing SBA-guaranteed loans.

The CARES Act provides relief for existing SBA 7(a), 504, and microloans (but Paycheck Protection Program loans are not covered). The SBA will 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. The 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.

4. Temporary Relief from TDR Disclosures

In order to allow bank lenders to take advantage of certain provisions of the CARES Act related to troubled debt restructurings ("TDRs"), companies will want to talk to their bank lenders sooner than later to talk about any required modifications to their loans to get them through the crisis.

Based on FDIC and FASB guidance and the proposed CARES Act, financial institutions that modify loans in relation to COVID-19-related difficulties in a TDR will not be required to comply with FASB accounting disclosures relating to such TDRs.

Financial institution creditors may be amenable to COVID-19-related loan modifications, but in order to rely on this relief, the borrower must not be in default. Before defaulting on any loan payments, companies should work closely with their creditors to stay current.

5. Potential Support under the Federal Reserve's Lending Facilities

For companies that don't qualify as small businesses for the purposes of the Paycheck Protection Program, the CARES Act also earmarks $454 billion for non-specified direct lending, loans, loan guarantees and investments in connection with Federal Reserve Section 13(3) lending powers. Treasury will endeavor to implement a special 13(3) facility targeted at businesses with between 500 and 10,000 employees; however, significant constraints and conditions will be attached to the loan, including maintaining workforce, no outsourcing or offshoring jobs for the term of the loan plus two years, no resistance to collective bargaining agreements for the term of the loan plus two years, no stock buybacks, loans cannot be forgiven, employees are predominantly located in the United States, and a showing that no alternative funding is available elsewhere.

Frequently Asked Questions
Proposed Paycheck Protection Program

What is the Paycheck Protection Program?

Among other provisions, the proposed CARES Act provides $349 billion for relief for small businesses, called the Paycheck Protection Program, to be administered under Section 7(a) of the Small Business Act.

The House is expected to vote on the CARES Act on Friday, March 27, 2020, and is expected to be signed into law by the President shortly thereafter.

Who is Eligible?

1. Small business concerns previously eligible for Section 7(a) loans.

2. Any other business concern, nonprofit organization, veterans organization, or tribal business concern, and any eligible self-employed individual, independent contractor or sole proprietorship, with less than 500 employees* (or such greater number of employees if provided in the SBA's industry classifications).

* In calculating the 500-employee threshold, private equity or venture capital-controlled companies will need to aggregate the number of employees of any other affiliated company controlled by such fund. This aggregation requirement does not apply to the hospitality and restaurant industry, franchises that are approved on the SBA's Franchise Directory, and small businesses that receive financing through the SBIC program.

What is the Maximum Loan Amount?

The lesser of:

1. 2.5 times the average total monthly payroll costs incurred in the prior one-year period (12-week period for seasoned employers); PLUS the amount of any outstanding Section 7(b)(2) loans eligible for refinancing; and

2. $10 million.

What Can the Loans be used for?

Permittable uses of the covered loans are:

1. Payroll costs;
2. Costs related to the continuation of health care benefits, sick leave, medical or family leave and insurance premiums;
3. Salaries, commissions or similar compensations;

4. Payment of interest on any mortgage obligations;
5. Rent;
6. Utilities; and
7. Interest on existing debt obligations.

Covered loans may also be used to refinance loans made pursuant to Section 7(b)(2) since January 31, 2020.

What are the Conditions to the Loan?

Borrowers must certify in good faith that:

1. The loan is necessary to support ongoing operations;
2. Funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments;
3. There is no duplicate Section 7(a) loan pending;
4. Loan is made under these provisions between February 15, 2020 and June 30, 2020.

Is there Loan Forgiveness?

Yes, recipients are eligible for loan forgiveness on a covered loan for eight weeks of costs incurred and payments made in connection with:

1. Payroll costs;
2. Interest payments on covered mortgage obligations (but not prepayment or principal payments);
3. Covered rent obligations; and
4. Covered utility payments.

The amount eligible for loan forgiveness will generally be reduced by the percentage of full-time employees not retained, and by the amount that any reduction in total salary and wages exceeds 25% of pre-coronavirus amounts.

Other Loan Details:

1. Interest not to exceed 4%.
2. Administration fees are waived.
3. There is no requirement that the small business concern demonstrate that it is unable to obtain credit elsewhere.
4. No personal guarantee required.

5. No prepayment penalty.

Other Relief:

1. Loan deferment for six months to one year for impacted borrowers (adverse impact by COVID-19 is presumed).

2. Zero risk weight and relief from TDR (troubled debt restructuring) disclosures for federal banking agencies and national credit unions.

3. Lenders will be reimbursed by the SBA for a portion of the costs of making these loans.

4. Permits Treasury to allow additional lenders to lend under the Paycheck Protection Program even if they are not participating SBA lenders.

For more information, please feel free to contact:

Jon Talcott (202) 689-2806 or (202) 460-2197 (jon.talcott@nelsonmullins.com);
Peter Strand at (202) 689-2983 (peter.strand@nelsonmullins.com);
Mike Bradshaw at (202) 689-2808 (mike.bradshaw@nelsonmullins.com);
Nick Garifo at (202) 689-2925 (nick.garifo@nelsonmullins.com); or
Kaylen Loflin at (202) 689-2785 (kaylen.loflin@nelsonmullins.com).
or a Nelson Mullins attorney with whom you have a relationship.