

# Consultants Update

## *COVID-19*

Rick Schweitzer

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

April 8, 2020

# Discussion Topics

- SBA Paycheck Protection Program eligibility and application process
- FBI guidance on protecting videoconferences from highjacking

# Paycheck Protection Program

- New SBA loan program to help small businesses retain their employees during the COVID-19 crisis
- Congress has allocated \$350 billion for loans through banks and other lending institutions
- Senate might vote on an additional \$250 billion in funding later this week

# SBA Loan Program

- SBA released interim final rule on Friday, April 3 on the Paycheck Protection Program:
  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, **AND YOU DON'T HAVE TO PAY IT BACK!**
  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.

# SBA Loans

5. Sole Proprietors are also eligible for this loan even if they do not have payroll.
6. No eligible borrower may receive more than one PPP loan.
7. Not eligible if company or any owner is in bankruptcy or has defaulted on SBA loan in prior 7 years
8. Interest on this loan is 1% or less depending on loan amount. It has a 2-year term. Payments are deferred for the first 6 months, but interest will accrue.
9. The loan forgiveness/grant can be for up to the full principal amount of the loan plus any accrued interest.

# Additional SBA Loan Info

- This PPP loan will be provided by local banks and backed by the SBA. Applications may be submitted through June 30, 2020 or until the funds (\$350 B) are exhausted.
- You will need to show how many employees your firm had working as of 1/31/20 and you will need to show how much your average monthly payroll was in 2019. If your business was not open for all of 2019, or if you have seasonal employees, the banks will require additional information.
- The PPP loan will be based upon your average monthly payroll times 2.5 months. For example, if your average payroll was \$10,000/month, your loan would be \$25,000.
- After the loan originates, if you qualify for it to become a grant, you will need to show that you are employing at least 75% of your employees and paying them at least 75% of what they were earning during 2019.

# Payroll and Expenses

- In addition to payroll, expenses such as rent, interest on your mortgage, and other interest that you incurred may qualify as a grant for the PPP.
- The salaries of employees to the extent they make over \$100,000/year must be excluded.
- Use average monthly payroll for calendar year 2019; for seasonal businesses, the applicant may elect to instead use average monthly payroll for the time period between February 15, 2019 and June 30, 2019.



# What are Payroll Costs?

- Payroll costs consist of compensation to employees (whose principal place of residence is the United States) in the form of salary, wages, commissions, or similar compensation;
- cash tips or the equivalent (based on employer records of past tips or, in the absence of such records, a reasonable, good-faith employer estimate of such tips);
- payment for vacation, parental, family, medical, or sick leave;
- allowance for separation or dismissal;
- payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums, and retirement;
- payment of state and local taxes assessed on compensation of employees;
- and for an independent contractor or sole proprietor, wage, commissions, income, or net earnings from self-employment or similar compensation.



# Exclusions from Payroll Costs

- Any compensation of an employee whose principal place of residence is outside of the United States;
- The compensation of an individual employee in excess of an annual salary of \$100,000, prorated as necessary;
- Federal employment taxes imposed or withheld between February 15, 2020 and June 30, 2020, including the employee's and employer's share of FICA (Federal Insurance Contributions Act) and Railroad Retirement Act taxes, and income taxes required to be withheld from employees; and
- Qualified sick and family leave wages for which a credit is allowed under sections 7001 and 7003 of the Families First Coronavirus Response Act

# What Forms to Submit for Loan

- Applicant must submit SBA Form 2483 (Paycheck Protection Program Application Form) and payroll documentation.
- The lender must submit SBA Form 2484 (Paycheck Protection Program Lender's Application for 7(a) Loan Guaranty) electronically in accordance with program requirements and maintain the forms and supporting documentation in its files.

# How Can PPP Loans be Used?

- payroll costs (as defined in the Act and in the IFR);
- 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.

# Additional Loan Terms

- The loan guarantee is 100 percent.
- No collateral or personal guarantees will be required.
- The interest rate will be 100 basis points or one percent.
- All loans will be processed by all lenders under delegated authority and lenders will be permitted to rely on certifications of the borrower in order to determine eligibility of the borrower and the use of loan proceeds.
- There will be no up-front guarantee fee payable to SBA by the Borrower or lender's annual service fee ("on-going guaranty fee") payable to SBA.

# FBI Guidance on Videoconferencing

- As large numbers of people and companies turn to video-teleconferencing (VTC) platforms to stay connected in the wake of the COVID-19 crisis, reports of VTC hijacking (also called “Zoom-bombing”) are emerging nationwide.
- FBI has received multiple reports of conferences being disrupted by pornographic and/or hate images and threatening language.

# FBI Guidance

- Do not make meetings or classrooms public. In Zoom, there are two options to make a meeting private: require a meeting password or use the waiting room feature and control the admittance of guests.
- Do not share a link to a teleconference or classroom on an unrestricted publicly available social media post. Provide the link directly to specific people.
- Manage screensharing options. In Zoom, change screensharing to “Host Only.”
- Ensure users are using the updated version of remote access/meeting applications. In January 2020, Zoom updated their software. In their security update, the teleconference software provider added passwords by default for meetings and disabled the ability to randomly scan for meetings to join.
- Lastly, ensure that your organization’s telework policy or guide addresses requirements for physical and information security.

# 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)