

The background is a solid teal color. On the left side, there are several white geometric shapes: a large triangle pointing downwards, a smaller triangle pointing upwards, and a curved shape that looks like a stylized 'A' or a similar letter. The text is positioned on the right side of the slide.

AdvaMed Accel Member Webinar: COVID – 19 Small Business Assistance

**Monday, March 30, 2020
2:00 PM – 3:30 PM ET**

WELCOME AND INTRODUCTIONS

Patrick Brennan, Vice President, AdvaMed Accel

HANDOUTS

- *AdvaMed Summary of Key Medtech Provisions of The Coronavirus Aid, Relief, and Economic Security Act (CARES)*
- *Keeping Workers Paid and Employed Act:*
 - *One Pager*
 - *Section by Section*
- *A Guide to the SBA's Size Program and Affiliation Rules*

MEETING AGENDA

- | | |
|---|-----------------------|
| Welcome and Introductions
<i>Patrick Brennan, Vice President, AdvaMed Accel</i> | 2:00 p.m. – 2:10 p.m. |
| Small Business Support:
The CARES Act, Payroll Protection Program and other stimulus
<i>Renée Bender, Senior Professional Staff
for Chairman Marco Rubio, Senate Committee on Small Business & Entrepreneurship</i> | 2:10 p.m. – 2:30 p.m. |
| SBA Disaster Loans: Eligibility, Application Process and Next Steps
<i>Steve Cave, Partner, King & Spalding LLP
Lauren Horneffer, King & Spalding LLP</i> | 2:30 p.m. – 3:00 p.m. |
| Working with SBA Certified Lenders
<i>Tony Wilkinson, CEO, National Association of Government Guaranteed Lenders</i> | 3:00 p.m. – 3:15 p.m. |
| Q&A/Discussion | 3:15 p.m. – 3:30 p.m. |

SMALL BUSINESS SUPPORT: THE CARES ACT, AND THE PAYROLL PROTECTION PROGRAM

*Renée Bender, Senior Professional Staff
for Chairman Marco Rubio,
Senate Committee on Small Business &
Entrepreneurship*

SBA DISASTER LOANS: ELIGIBILITY, APPLICATION PROCESS AND NEXT STEPS

Steve Cave, Partner, King & Spalding LLP

Lauren Horneffer, King & Spalding LLP

SBA Loan Eligibility

March 2020

PREPARED FOR:

AdvaMed

PRESENTED BY:

Partner, King & Spalding
Steve Cave

Associate, King & Spalding
Lauren Horneffer

Agenda

Payroll Loans/EIDL

Affiliation Rules

How to Apply





Payroll Loans

—

Payroll Loan Overview

CARES Act makes \$350 billion in payroll loans available

Loans capped at \$10m or 2.5x average monthly payroll

Businesses, nonprofits, veterans organization or Tribal business concern with fewer than 500 employees are eligible, subject to affiliation





Loan Benefits

Deferment and forgiveness

Payment deferred for at least 6 months

Amounts utilized for permitted purposes will be forgiven

Interest rate is capped at 4%

No personal guarantees or collateral requirements under the loans.



Permitted Uses

Payroll

Health Insurance

Interest (but not principal) on pre-existing loans (prior to Feb. 15, 2020)

Rent

Utilities



Economic Injury Disaster Loan

The CARES Act also provides additional funding for SBA economic disaster loans (EIDLs) and expands the program to allow for entities with fewer than 500 employees access to loans through December 31, 2020

EIDLs require additional supporting documentation and are reviewed to verify disaster impact upon the borrower

Up to \$10,000 will be advanced within 3 days of application

This does not need to be repaid, even if the application is denied



Economic Injury Disaster Loan Cont'd

EIDLs can be used for general working capital purposes until the resumption of normal operations, subject to limitations

The interest rate is 3.75% for small businesses. The interest rate for non-profits is 2.75%

Up to \$2 million in assistance with flexible repayment timelines

SBA already has guidance and applications prepared for EIDLs, available on sba.gov



Affiliation





Affiliation Exemptions

The following companies are generally exempt:

Accommodation and food service businesses (those with an NAICS code starting with “72”) – including those with multiple locations, so long as each location has fewer than 500 employees

Any franchisee of a franchisor that has registered with the SBA – the SBA has lists of franchises which have chosen to register on its website

Any entity being financed by an SBIC



500 Employee Count

Current interpretation: Affiliation rules apply

Ambiguity about whether rules of 121.103 or 121.301 will apply

121.103 contains the affiliation rules for small business set-asides and similar assistance

These rules have more onerous minority shareholder affiliation rules

121.301 contains the rules for SBA Loans



Power to Control

Control may be affirmative or negative

Ownership interests aside, SBA will look at whether one company has the power to control the other

Affirmative control: Investor controls the board or company decisionmakers

Negative rights protect an investment (e.g., power to block day-to-day actions)

Certain extraordinary actions have been interpreted to *not* demonstrate control



Negative Control

Examples that may be evidence of affiliation

Ability to block a quorum

Control over payment of dividends

Ability to hire and fire executives, or control their compensation

Incurring debts or obligations



Negative Control

Extraordinary exceptions

Minority investors may be able to prevent certain actions that may endanger their investment, without affiliation

- Sale of all or substantially all assets

- Dissolving the company

- Issuing additional stock

- Filing for bankruptcy



Common Management

Same Board Members or CEOs?

SBA may view shared directors or officers as evidence of control

No hard rule about the number of board members required for affiliation

Common management does not require total control of a concern, just critical influence or the ability to exercise substantive control over the concern's operations



Common Ownership

Continuing chain of affiliation

Once two companies are affiliated, SBA will look to the affiliate to identify any other companies it controls

All companies controlled by the affiliate will be rolled up into the totals

Affiliation generally results in ineligibility



Takeaway for Minority Investors

The interpretations of the rules can be very fact specific

If affiliation is unclear, have your corporate documents analyzed for affiliation issues

Remember: One issue alone may not reach affiliation, but SBA also evaluates the **totality of the circumstances**



Next Steps





Self Certification

Eligibility upon submission

Risk of a false certification

If you believe your company is not affiliated, proceed with caution

Seek clarification of ambiguities



How to Apply

Payroll Loans are pending

Although SBA has published EIDL guidance, they have not yet issued guidance or rules on the CARES Act payroll loans

Loans will be available through third party lenders and backed by the SBA

We are closely monitoring the situation

Questions?



SBA Loan Eligibility

March 30, 2020

Steve Cave

Partner
Government Contracts

scave@kslaw.com
703-245-1017

Lauren Horneffer

Associate
Government Contracts

lhorneffer@kslaw.com
202-626-9630

PRESENTED TO

AdvaMed

kslaw.com

WORKING WITH SBA-CERTIFIED LENDERS

*Tony Wilkinson, CEO, National Association of
Government Guaranteed Lenders*

Q&A/DISCUSSION

*AdvaMed COVID-19 Member Resource Page:
<https://www.advamed.org/issues/global-trade/coronavirus-outbreak/advamed-covid-19-member-resource-center>
(Member Login Required)*

Send additional questions to: accel@advamed.org

THANK YOU!