Corporate/Tax Practice Group
GOODSILL ALERT

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"PAYCHECK PROTECTION LOANS" UNDER THE CARES ACT

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The recently passed Federal Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act") provides for expanded access to business loans under the Small Business Administration 7(a) Loan program. Businesses affected by the COVID-19 outbreak may be able to take advantage of the loans – all or part of which may be forgiven – to maintain employees and contractors and pay other qualified costs though the economic downturn caused by the outbreak.

Section 1102 of the CARES Act establishes the "Paycheck Protection Program." The U.S. Small Business Administration (the "SBA") is authorized to make $349 billion in loans to certain businesses through June 30, 2020. In addition to businesses that would otherwise be eligible for SBA Section 7(a) loans, the following may qualify for loans under the Paycheck Protection Program:

- any business, nonprofit organization, veterans organization, or Tribal business with not more than 500 employees (or a smaller number in certain industries as established by the SBA)
- sole proprietors, independent contractors, and eligible self-employed individuals
- hotels and food service providers (including restaurants) with not more than 500 employees per physical location

Loans can be made in an amount up to 2.5 times the business' average monthly payroll for the preceding year, or $10 million, whichever is less. The CARES Act establishes a maximum interest rate (4% per year) and loan term (10 years). The SBA originally announced that all Paycheck Protection loans will bear interest at 0.5% and be for a term of two years, but the Treasury Department later revised the interest rate to 1%. There may be further revisions to the program in the upcoming weeks. Loan proceeds can be used for payroll (subject to a $100,000/year cap on the compensation of any individual), continuation of health care benefits, rent, utilities, and other purposes. Repayment of the loans will be deferred for at least six months. The loans would be nonrecourse to any individual shareholder, member, or partner of a loan recipient. The borrower must certify to the SBA that the uncertainty of current economic events makes the loan necessary to support ongoing operations, and that it will use the funds provided for acceptable purposes, including retaining workers and maintaining payroll, paying rent, or making mortgage or utility payments. Certain fees are waived, and no personal guarantees or collateral will be required.

Furthermore, borrowers under the Paycheck Protection Program can apply for partial or total forgiveness of any loan made under the Program. The amount forgiven is limited to payroll costs, mortgage interest and rent, and utility payments made during the eight-week period starting with the origination of the loan. The amount available for forgiveness is reduced to the extent that the number of employees of the business, or salary and wages paid, is reduced by the business. For income tax purposes, the loan forgiveness will not be included in the borrower's gross income.

The Paycheck Protection Program is an unprecedented expansion of credit to American businesses. It remains to be seen how effectively the SBA is able to administer the program in these difficult times, including the speed with which the SBA is able to implement rules and provide guidance to lenders.

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