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PASSAGE OF THE PAYCHECK PROTECTION PROGRAM AND HEALTH CARE ENHANCEMENT ACT

On April 24, 2020, the President signed the Paycheck Protection Program and Health Care Enhancement Act (the "**Enhancement Act**") into law, providing, among other things, more than \$250 billion in additional unrestricted funds for the Paycheck Protection Program (the "**PPP**") and an additional \$60 billion for smaller lending institutions, with \$30 million earmarked for lenders with assets valued at less than \$10 billion, and \$30 billion for lenders with assets between \$10-50 billion.

BACKGROUND

On March 27, 2020, the President signed the Coronavirus Aid, Relief, and Economic Security Act of 2020 (the "**Cares Act**") into law. The PPP, one of the CARES Act's featured relief programs, was originally a \$349 billion loan guarantee program through which financial institutions can make forgivable loans up to \$10,000,000 to small business concerns, business concerns with less than 500 employees, and certain other eligible borrowers. The CARES Act also created a \$10 billion grant program under the previously-created \$3.5 billion Economic Injury Disaster Loan program (the "**EIDL**"), operated directly by the United States Small Business Administration (the "**SBA**").

By April 17, 2020, both the PPP and EIDL had exhausted their initial appropriations, leaving many PPP loan applications pending while Congress negotiated

additional funding for the programs and the terms of the Enhancement Act. In addition to topping off the PPP, the Enhancement Act also increased appropriations for the EIDL program itself (an additional \$50 billion) and the EIDL grant program (an additional \$10 billion).

IMPACT OF THE ENHANCEMENT ACT ON LOAN APPLICATIONS UNDER THE PPP

As a result of the Enhancement Act, the SBA will resume accepting PPP loan applications on Monday, April 27, 2020 at 10:30AM EDT from approved lenders on behalf of any eligible borrower. The SBA has advised approved lenders to resume processing loan applications that were previously submitted by eligible borrowers as well as new applications, and to resume disbursing funds.

Given the speed with which previously-appropriated funds were exhausted, we encourage prospective borrowers to work quickly with an approved lender to complete and submit their applications. Approved applications are funded on a first-come, first-served basis. Borrowers should nonetheless immediately check with their lenders on the status of their pending application and, if no application has been submitted, submit their application when the lenders' application portal reopens (which may be before Monday).

CONTINUED

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This publication is a summary of legal principles. Nothing in this article constitutes legal advice, which can only be obtained as a result of a personal consultation with an attorney. The information published here is believed accurate at the time of publication, but is subject to change and does not purport to be a complete statement of all relevant issues.

Since the PPP Loan Program initially launched, the United States Treasury (the “**Treasury**”) and the SBA have released guidance on an ongoing basis. Recently, the SBA Administrator has emphasized that borrowers must certify that “[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.” Borrowers are reminded that they must make this certification in good faith, taking into account their current business activity and ability to access other sources of capital or liquidity.

The SBA Administrator released additional guidance on April 24, 2020 for existing PPP borrowers and applicants concerning the above certification. If a borrower believes it is now unable to make this certification or otherwise comply with Treasury and SBA guidance, it may repay PPP funds to its lender on or before May 7, 2020, and the SBA will deem the borrower to have made the required certification in good faith.

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