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MEMORANDUM

To: Clients
From: Schultheis & Panettieri, LLP
Date: June 5, 2020

We are providing you this memorandum to ensure that you are aware of information contained in the recently enacted HR 7010 **Paycheck Protection Program Flexibility Act of 2020** ("PPFA") as it modifies certain provisions related to the forgiveness of loans under the Paycheck Protection Program and the deferral of employment taxes as outlined in the CARES Act.

Background

On March 27, 2020, the President signed Phase 2 of the COVID-19 legislation response, HR 748 **Coronavirus Aid, Relief, and Economic Security Act** ("CARES Act"). One of the many provisions included a Small Business Administration ("SBA") interruption loan under the Paycheck Protection Program ("PPP"). The purpose of the PPP was to provide small businesses with the financial resources to maintain their current payroll levels by keeping individuals employed. Businesses who use the loan proceeds for these purposes may be eligible for full loan forgiveness. Under the CARES Act, the SBA will forgive loans if all employees are kept on the payroll for eight weeks and the proceeds are used for payroll, rent, mortgage interest, or utilities.

Unfortunately, the eight-week loan forgiveness period doesn't offer enough flexibility for businesses affected by government closures or operating at significantly reduced capacity to slow the spread of COVID-19. In addition, many contend the original 75% rule does not accommodate businesses for which payroll is not 75% of monthly expenses or those whose employees haven't been able to work because of government-imposed business closures. As a result, the PPFA addresses some of the concerns with the administration of this program.

Highlights

The PPFA amends the following SBA Paycheck Protection Program loan provisions:

- Maturity has increased to a five-year term
- Application deadline is extended to December 31, 2020
- Potential loan forgiveness if proceeds used for payroll costs and other designated business operating expenses by the earlier of
 - ✓ 24 weeks following the date of loan origination; or
 - ✓ December 31, 2020
- Potential full loan forgiveness if the eligible recipient uses
 - ✓ at least 60% of the proceeds for payroll costs; and
 - ✓ up to 40% for any mortgage obligation payment of interest, any payment of rent obligation, or utility payment.

In addition to the modification of loan term and forgiveness conditions, the PPFA allows for the deferral of the employer portion of social security employment taxes even if the PPP loan is forgiven under the terms of the CARES Act and the PPFA, collectively.

Summary

Please refer to our previous memorandum on the CARES Act in conjunction with the information outlined above. We anticipate continuing developments in regard to COVID-19 legislation and will keep you apprised of additional guidance as it becomes available. Please visit the SBA website for Frequently Asked Questions for Lenders and Borrowers at <https://www.sba.gov/document/support--faq-lenders-borrowers> for continually updated compliance assistance to lenders and borrowers on their responsibilities and rights under the Paycheck Protection Program.