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LEGAL ALERT

Additional Funding and "Second Draw" Loans: Paycheck Protection Program December 2020 Update

Through the 2021 Consolidated Appropriations Act, which has been passed by Congress on December 21, 2020, and signed by the President on December 27, 2020, additional funding was provided for the Paycheck Protection Program (the "PPP"), in addition to providing other changes to the framework for PPP loans.

Second Draw Loans

The new bill provides an additional $284 billion for PPP loans for both first-time borrowers and certain previous borrowers. Businesses with 300 or fewer employees that have used or will use the full amount of their first PPP loan are eligible for so-called "second draw loans." These loans are capped at $2 million, and are available only to second-draw borrowers for whom revenue in the first, second, or third quarter of 2020 declined by at least 25% from the same quarter of 2019. The bill provides certain dedicated funding amounts for particularly categories of borrowers, including first- and second-time borrowers with under 10 employees, and second-time borrowers generally.

Additional PPP Changes

The bill contains other changes to the PPP loan program, including:

<u>Businesses expenses paid with PPP loan proceeds are deductible.</u> This overrules prior interpretation by the Treasury Department and the IRS.

<u>Categories of nonpayroll permitted uses have been expanded.</u> While the requirement that 60% of a PPP loan must be used for payroll costs, permitted nonpayroll uses of PPP loan proceeds now includes additional categories of covered operations expenditures, covered property damage, covered supplier costs, and covered worker protection equipment.

<u>Borrowers may expressly select the applicable covered period.</u> A source of concern and ambiguity previously, borrowers may elect to have the covered period last for more than 8 weeks but less than 24 weeks. Previously, there had been concern as to whether borrowers could elect only 8 or 24 weeks.

In addition, the bill provides a simplified forgiveness application for loans under $150,000, permits full PPP forgiveness even where a portion of an Economic Injury Disaster Loan was forgiven, and makes a number of tax-related changes, including expanding certain tax credits under the CARES Act to retain employees, among other provisions.

If you would like to better understand how these regulations might impact your business, we would be happy to schedule a call for further discussion. Please note this summary does not constitute legal or tax advice.

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