SUMMARY OF THE CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT ("CARES")

(March 28th, 2020)

SMALL BUSINESS ADMINISTRATION 7(a) LOAN PROVISIONS

One of the most significant aspects of CARES to small business is the newly created Paycheck Protection Program included in Section 1102 and loan forgiveness under Section 1106 of CARES. This will have an immediate impact on most small businesses. This Memo will focus solely on these loan/forgiveness programs. There are other SBA loan opportunities available for small businesses, but they generally do not provide for any forgiveness.

The Small Business Administration ("SBA") is offering loans under Section 7(a) of the Small Business Act known as the Paycheck Protection Program ("PPP") with the following conditions:

- Maximum of $10,000,000 at 4% for a period not to exceed 10 years;
- Loan payment deferral offered between 6 – 12 months;
- Issued by banks, but guaranteed 100% by the SBA;
- Requires no personal guarantee, collateral, fees, or inability to obtain credit elsewhere.

This loan program is for small businesses, non-profits, and other organizations with no more than 500 employees (in the case of accommodation and food service businesses, limit is 500 per location). They are also available to certain sole proprietors, independent contractors, and self-employed individuals (partners). These loans are to assist small business during a covered period of February 15th to June 30th, 2020 for the following:

- ✓ Payroll Costs (for the covered period) and s defined as including the following:
  - Wages, salaries, commissions, cash tips (not exceeding $100,000 per year per employee);
  - Payment for vacation, parental, family, medical, or sick leave (not under the prior Act);
  - Health insurance premiums;
  - Retirement benefits; and
  - Payments to sole proprietors, independent contractors not to exceed $100,000 in one year.
- ✓ Continuation of health care benefits for employees during paid sick, medical, or family leave;
- ✓ Interest payments on a mortgage obligation (not principal) and/or rent;
- ✓ Utilities; and
- ✓ Interest on any debt prior to the covered period.

It is very important to understand that these costs represent the purposes to which the loan proceeds can be applied. This does NOT represent the maximum limit on the availability of loan proceeds nor does it represent the amount that may be forgiven by the SBA. The maximum amount available and the amount that can be forgiven are separate and distinct computations (and resulting amounts). Of particular importance to most small business owners is the amount that is available and, more importantly, the amount of forgiveness. The forgiveness merely relates to the applicable costs (payroll costs, rent, utilities and certain interest) reduced by specific reductions in the number of personnel and/or the reduction in compensation paid to employees for the 8-week period following the loan origination date. This will be discussed in more detail below.

The borrower must also certify to the SBA that:

- Uncertainty of current economic conditions is causing difficulty in continuing operations;
- The funds will be used to retain workers, maintain payroll, or make interest, utility or rent payments;
- There is no existing loan application pending for a Section 7(a) loan; and
- No other amounts have been received during 2020 under Section 7(a) for the same purpose.

MAXIMUM LOAN AVAILABILITY: The actual loan available is calculated as follows (assuming there are no Section 7(b)(2) SBA loans outstanding):

If the company has been in business for a one year period to the date the loan is made (or originated), the average total monthly payroll costs (defined above) during the 12 month period preceding the loan origination date, times 2.5; or

If the company has not been in business between February 15, 2019 and June 30, 2019, the average total monthly payroll costs paid between January 1, 2020 and February 29, 2020, times 2.5.

LOAN FORGIVENESS: A recipient of a PPP loan may apply for forgiveness to the extent the proceeds were used for the following *only during the 8-week period beginning on the date of the covered loan origination*:

- Payroll Costs (defined above);
- Interest on a mortgage obligation (originating prior to Feb 15, 2020);
- Payment on a rent obligation (lease agreement prior to Feb 15, 2020); and
- Utility payment (service originating prior to Feb 15, 2020).

The debt forgiven cannot be greater than the principal owed on the debt. The forgiveness is reduced by multiplying the sum of the amounts in the categories above that were incurred during the 8-week covered period after the loan was originated by a percentage (not to exceed 100%) calculated by dividing:

- ❖ Reduction in the average number of full-time equivalent employees ("FTE") per month during the 8-week covered period; by
- ❖ Either of the following chosen by the borrower: i) Average FTE employees per month between February 15, 2019 and June 30, 2019; or ii) Average FTE employees per month between January 1, 2020 and February 29, 2020.

The loan forgiveness amount can be *further* reduced by any salary reduction greater than 25% for any employee making less than $100,000 from the most recent full quarter prior to the 8-week period.

There is an exception to these reduction rules – if there is a reduction in FTE's employees between February 15th and April 27th, 2020 and the employer has eliminated the reduction (i.e., rehired FTE's) between February 15th and June 30th, 2020, then the reduction in the number of FTE employees and compensation with respect to such FTE employees shall be disregarded.

In order to permit loan forgiveness, the lender must receive the following financial information from the borrower:

- ✓ Evidence of the number of FTE employees on payroll and pay rates for the periods outlined above under the reduction scenarios (i.e. payroll tax filings);
- ✓ Payment verification on mortgage, lease, and utilities (i.e. payment receipts); and
- ✓ Certification that the above is correct and the amounts were used for the reasons outlined above.

Loss of Other Tax Benefits: Another important note, any employer that obtains a PPP loan, cannot take advantage of certain other benefits provided in the CARES Act such as the Employer Retention Tax Credit (i.e., refundable tax credit of 50% of eligible wages (not to exceed $10,000 in wages per employee and health plan expenses) in cases where the business was fully or partially suspended due to orders from a governmental authority or if the company's receipts are less than 50% compared to the same quarter the prior year. And the provision that allows company to defer employer FICA taxes incurred between March 27th and December 31st, 2020 until 2021 (for 50%) and 2022 (50%) will not be permitted.

Undoubtedly, there will be numerous rules, requirements and regulations in the coming weeks which may change or modify some of the above. Banks may also have additional procedural and administrative requirements as well.

We strongly urge each and every client that qualifies for this loan/forgiveness program to contact their banker to take advantage of the benefits afforded under the CARES Act in an effort to curb the losses they may incur as a result of the CORID-19 virus pandemic. We are available to assist you in any way possible including evaluating the maximum loan and forgiveness amounts as well as provide any available information your bank may need.