In the coming days, the U.S. House of Representatives is expected to vote on a bill (the "Proposed Bill") addressing the Paycheck Protection Program ("PPP"). The Proposed Bill would extend the PPP loan forgiveness period from 8 to 24 weeks (or December 31, 2020, if earlier); eliminate the requirement that at least 75% of the PPP loan proceeds be spent on payroll costs; extend the maturity date of a PPP loan from 2 years to at least 5 years; and address rules for restoring employee pay and headcount in order to avoid the loss of loan forgiveness. The Proposed Bill would also allow a PPP borrower to delay payment of the employer payroll tax even if the borrower receives PPP loan forgiveness. More details and brief discussions of these points are set out in our newest Alert. The Alert can be found here.

Many credit/loan agreements contain express prohibitions against borrowers incurring additional indebtedness. These agreements often also include financial covenants that could be breached by the incurrence of additional indebtedness. For participants in PPP loans with existing credit/loan agreements, this Alert advises them to immediately reach out to their lenders and seek to amend to their agreements so as to avoid, or obtain a waiver of, any breach thereunder arising out of their obtaining a PPP Loan. The Alert can be found here.

Yesterday we distributed the just-released Loan Forgiveness Application for the Paycheck Protection Program ("PPP"). Today's Alert is an analysis of that Application, including topics such as the calculation of forgiveness amounts, description of expenses qualifying for forgiveness, and certifications that the borrower must make in connection with forgiveness. Our analysis also identifies new questions raised, and existing questions not fully addressed, by the Application. The Alert can be found here.

The Paycheck Protection Program (PPP) is an unprecedented and fascinating example of colossal and continuously-changing fiscal policy. Until now the details of the central forgiveness mechanism have been few and sometimes conflicting. Late yesterday, the SBA released its PPP Loan Forgiveness Application. The application can be found here. Some initial, limited commentary from the US Treasury can be found here. These documents answer some outstanding forgiveness questions, are silent on others, and raise new questions for borrowers to consider. We will circulate an Alert with our own analysis shortly.

The "good guy guaranty," is a unique New York agreement designed to address the delays that landlords experience in attempting to recover possession of leased premises from non-paying tenants, while providing tenants with an option to reduce the amount of security they must pledge to secure a lease and avoiding the need to guaranty performance by the tenant of a lease for its full term. Good guy guaranties are particularly relevant in the COVID-19 environment, whether a party is looking to exit a lease or enter into a lease; but, whether looking at a lease in the COVID or post COVID markets, landlords and tenants need to understand the complexities, the pitfalls and the benefits of the good guy guaranty. Moreover, legislation just enacted by the New York City Council may be have some impact on the enforcement of a good guy guaranty. This alert, which discusses nuances, pitfalls and legislation pertaining to the good guy guaranty can be found here.

On May 13, 2020, the Small Business Administration (SBA) updated the Paycheck Protection Program (PPP) Loans Frequently Asked Questions (FAQs) to provide further guidance regarding PPP loan borrowers' obligation, in their loan applications, to certify in good faith that their PPP loan request is necessary. New FAQ 46 poses the question, "How will SBA review borrowers' required good-faith certification concerning the necessity of their loan request?" This Alert discusses the SBA's response, as well as other relevant FAQ's. The Alert can be found here.

On April 30, 2020, the Federal Reserve Board announced that it is expanding the scope of its new lending program geared towards small to mid-size companies, entitled the Main Street Lending Program. In addition to updating the previously announced Main Street New Loan Facility and Main Street Expanded Loan Facility, the Board created a third option, the Main Street Priority Loan Facility. The details of each facility are published in the form of three term sheets and are described in this Alert. The Alert can be found here.

On April 30, 2020, the U.S. Treasury released a new Interim Final Rule for the Paycheck Protection Program ("PPP"), establishing a $20 million aggregate maximum for PPP loans issued to businesses that are part of a "single corporate group" (defined below). The rule can be found here. The Treasury justifies the rule as a measure to "preserve finite appropriations for PPP loans," believing that "limiting the amount of PPP loans that any single corporate group may receive will promote the availability of PPP loans to the largest possible number of borrowers."

The new rule, in part, establishes a $20 million aggregate maximum for PPP loans issued to businesses that are part of a "single corporate group." The rule states that "businesses are part of a single corporate group if they are majority owned, directly or indirectly, by a common parent." The $20 million limitation applies even to those businesses not considered affiliates under the SBA's affiliation rules.

The $20 million limitation is effective with respect to any loan that has not been fully disbursed as of April 30, 2020. Thus, the limit applies to loans disbursed after April 30, and also applies where partial loan disbursement occurred on or before April 30 and any additional disbursement after April 30 would cause a single corporate group to exceed $20 million.

As with other of its rules and guidance, the Treasury cautions that the loan applicant – and not the applicant's lender – is responsible for complying with this rule. Any applicant that applied or receives PPP loans in a manner that violates this rule must "withdraw or request cancellation of any pending PPP loan application or approved PPP loan not in compliance" with the rule's limitation. Failure to do so will be deemed an unauthorized use of PPP funds, and the loan will not be eligible for forgiveness.

Any applicant that has not yet received a PPP loan in full should consider its ownership structure in light of this rule, including by determining whether it is part of a "single corporate group" and whether other businesses within that group have received or are applying for PPP loans.

GEABP lawyers have routinely advised our clients to pay special attention to the loan certification requirements of the SBA's Paycheck Protection Program. As more information regarding the disbursement of PPP loans becomes public, news accounts reflect advanced scrutiny of the loan process, and even class action suits.

The PPP is increasingly criticized as benefiting borrowers that do not fit the public perception of "small businesses," and borrowers that are seen as not actually needing the PPP funds. Today, the U.S. Treasury updated its FAQs to include guidance in reaction to that criticism. The guidance stresses that PPP loan applicants must certify that "[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant," and states that this certification must take into account other available liquidity sources rendering a PPP loan unnecessary to support the applicant's operations. As an example, the guidance states that "it is unlikely that a public company with substantial market value and access to capital markets will be able to make the required certification in good faith, and such a company should be prepared to demonstrate to SBA, upon request, the basis for its certification." This new guidance and recent remarks by the Treasury Secretary indicate that all PPP loan applicants may face closer scrutiny by the SBA going forward.

The guidance does provide a way for loan recipients concerned about this issue to avoid liability, stating that "[a]ny borrower that applied for a PPP loan prior to the issuance of this guidance *and repays the loan in full by May 7, 2020* will be deemed by SBA to have made the required certification in good faith" (emphasis added).

The full text of the Treasury's FAQs is available here. We continue to advise our clients to consider the "necessity" certification carefully, especially in light of this new guidance and the public criticism recently aimed at some PPP borrowers.

On March 18, 2020, the Families First Coronavirus Response Act (the "FFCRA") was signed into law. On April 1, 2020, the Department of Labor promulgated a temporary rule with further regulations. The FFCRA encompasses both the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act, each of which creates new paid leave requirements for certain employers, paid by employers first but subject to offset through payroll tax credits. This Alert provides certain details on all three acts. The Alert can be found here.