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FLORIDA'S BUSINESS LAW FIRM

CLIENT ALERT - COVID-19: TREASURY DEPARTMENT ISSUES REGULATIONS REFINING PAYCHECK PROTECTION PROGRAM

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Last night, the Treasury released its eagerly anticipated regulations implementing the Paycheck Protection Program (PPP). While most of the regulations merely clarify points from the CARES Act (Act), in some instances the regulations created new restrictions and limitations.

Below is a brief summary of some of the more noteworthy provisions from the regulations:

- Lenders may rely only on the applicants' certifications and documents. Lenders do not need to conduct any independent verification.

- PPP loan amount includes Payroll Costs and the balance of any Economic Injury Disaster Loan (EIDL) made between 1/31/20 and 4/3/20 (minus any advances made pursuant to the EIDL which do not have to be repaid). Interestingly, the Treasury specifically stated that a business' PPP loan would not be affected if it does not use EIDL proceeds to pay Payroll Costs. If a business does use its EIDL for payroll, the PPP loan would be a refinance of the EIDL.

- The interest rate for the PPP loan is 1%. The Act said up to 4% and the materials released earlier this week said 0.5%.

- The PPP loan term is 2 years, not the up to 10 years the Act provided for, with a 6-month deferral period for all applicants.

- PPP funds are on a first come, first served basis.

- The forgiveness amount can be no more than 25% for non-Payroll Costs, and, importantly, the Treasury added that no more than 25% of the loan amount can be used for non-Payroll Costs.

- The Treasury confirmed that there is no "credit elsewhere" test.

- The Treasury provided clarity regarding independent contractors. Independent contractors do not count for purposes of either determining the loan amount or the forgiveness amount. The Treasury did not address whether independent contractors count as employees for the "500 or fewer" eligibility count, but prior SBA guidance indicated otherwise.

- The Treasury stated that that they intend to "promptly issue additional guidance with regard to the applicability of affiliation rules," but elsewhere indicated that the SBA's affiliation rules already apply to

businesses that are applying not on the basis of the 500 or fewer basis, but on the size standards applicable to the business under its designated industry code. According to the language of the Act, the size standard is the greater of 500 or the applicable industry standard.

We are watching for additional guidance from the Treasury and the Small Business Administration, and watching how lenders react to these newest regulations, particularly given that applications are expected to start getting filed today. We will provide additional information as it becomes available.

The COVID-19 pandemic is creating rapidly-changing issues for businesses, and government aid processes and measures designed to assist businesses may also change materially from when this Client Alert is issued. We therefore encourage you to monitor our website, review our future Client Alerts and generally remain alert for additional updates or modifications to laws and regulations.

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