BERGER SINGERMAN
FLORIDA'S BUSINESS LAW FIRM

CLIENT ALERT - COVID-19: SBA ISSUES NEW AND FINAL INTERIM RULE

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By: Dawn M. Meyers

Earlier today, the SBA issued its "Interim Final Rule on Revisions to First Interim Final Rule." While this document was expected, it contains not only clarifications to the Paycheck Protection Program Flexibility Act of 2020 (the "Flexibility Act"), but also some modifications and surprises, some of which are highlighted below:

- If the PPP loan was made before June 5, 2020, your maturity date is still 2 years unless the borrower and lender mutually agree to extend it (to as long as 5 years). For loans made on or after June 5, 2020, the maturity date is 5 years.

- If you apply for forgiveness within 10 months after the end of either the 8- or 24-week week period (it is the borrower's choice which period to use), you will not have to make any payments of principal or interest until the SBA remits the loan forgiveness amount to the lender (or notifies the lender that the forgiveness amount is allowed). If you do not apply for forgiveness within 10 months after the 8- or 24-week period, you must begin repaying the loan at the end of the 10-month period.

- Interest accrues during any deferment period.

- The SBA is interpreting the new 60% rule (which replaced the 75% rule) not as a threshold to forgiveness as it is written in the Flexibility Act, but as a "proportional limit on nonpayroll costs as a share of the borrower's loan forgiveness amount." That is consistent with how the SBA was applying the 75% rule.
- If you received and EIDL loan from January 31, 2020, through April 3, 2020, you can/could apply for a PPP loan. However, if your EIDL loan was used for payroll costs, your PPP loan must be used to refinance your EIDL loan, and proceeds from any EIDL advance will be deducted from your PPP loan forgiveness amount. For purposes of determining the percentage of use of proceeds for payroll costs, the amount of any EIDL refinanced will be included.

- The SBA has modified/strengthened the certifications by including the following: "… if the funds are knowingly used for unauthorized purposes, the Federal Government may hold me legally liable such as for charges of fraud. As explained above, not more than 40 percent of loan proceeds may be used for nonpayroll costs."

The SBA indicated in this Interim Rule that it intends to issue revisions to its interim final rules on loan forgiveness and loan review procedures. We will continue to monitor the SBA's actions in this regard.

The COVID-19 pandemic continues to create 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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