

THE CARES ACT UPDATE PAGE

The CARES Act is a comprehensive law which addresses small business interruption loans; relief for individuals, families and businesses; assistance to severely distressed sectors of the economy and a health care response which covers the strategic national stockpile, mitigating emergency drug shortages, preventing essential medical device shortages, the emergency use of laboratory developed tests as well as access to health care for COVID-19 patients. Readers may click [here](#) to view the text of the CARES Act in its entirety.

Hodgson Russ attorneys vigilantly access and gather the most current and up-to-date information which will help our clients navigate this most challenging period of time in the United States. Please continue also to visit our **Coronavirus Resource Page** for alerts focusing on the pandemic and the developments relating to that area.

Webinars

Upcoming Webinars

No upcoming webinars at this time.

Past Webinars

The Hodgson Russ CARES Act Webinar Series – A Primer for Businesses April 6 & 13, 2020

Join us for a series of webinars presented by various Hodgson Russ attorneys as they discuss what you need to know now regarding the CARES Act and how it impacts your business ([click here](#) to access a recording of the webinar).

Planning with IRAs After the SECURE and CARES Acts July 22, 2020

This presentation covered the most significant changes that impact plan sponsors, plan participants, and beneficiaries, with a focus on dissecting the new stretch IRA rules applicable to post-SECURE Act beneficiaries ([click here](#) to access a copy of the presentation).

CLE: Borrower Beware: Defending PPP Loans from After-the-Fact Government Scrutiny July 29, 2020

The PPP program was a lifeline to many companies faced with the existential threat of an unknown pandemic. But the prospect of “free money” by loan forgiveness comes with strings – the possibility of an audit and scrutiny by federal agencies with the jurisdiction and political will to investigate the use of funds. Prepare now to protect yourself, your company, or your client against the inevitable scrutiny to come. ([click here](#) to learn more).

CLE: Borrower Beware: Defending PPP Loans from After-the-Fact Government Scrutiny August 7, 2020

The PPP program was a lifeline to many companies faced with the existential threat of an unknown pandemic. But the prospect of “free money” by loan forgiveness comes with strings – the possibility of an audit and scrutiny by federal agencies with the jurisdiction and political will to investigate the use of funds. Prepare now to protect yourself, your company, or your client against the inevitable scrutiny to come. ([click here](#) to learn more).

You can either click on the All Alerts button below to access the full list of alerts we have drafted on the CARES Act organized by publication date, or view them organized by practice area.

alerts

All Alerts

- **SBA Issues Interim Final Rule to Implement the American Rescue Plan Act’s Modifications to the Paycheck Protection Program** March 25, 2021 On March 11, 2021, President Biden signed the \$1.9 trillion American Rescue Plan Act of 2021 (“ARPA”) into law. Among other things, the legislation infused another \$7.25 billion into the Paycheck Protection Program (“PPP”) and expanded the program to additional 501(c) non-profit entities, digital news publishers, and shuttered venue operators. It also earmarked \$28.6 billion for relief to the restaurant industry through a new grant program. The SBA published a new Interim Final Rule (“IFR”) on March 18, 2021 to begin implementing the statutory changes and conform previously issued rules to the new legislation. *Click the title to read the full alert.*
- **SBA Issues Updated PPP FAQ and Clarifies Interplay Between the Necessity Certification and 25% Revenue Reduction Test for Second Draw Loans** March 11, 2021

Borrowers seeking to apply for First Draw Paycheck Protection Program (PPP) loans or Second Draw (PPP2) loans are required to certify on loan applications that “current economic uncertainty makes this loan request necessary to support the ongoing operations” of the borrower or applicant. That “necessity certification,” as it has come to be known, is riddled with amorphous language that has proven to be a source of confusion and ambiguity for borrowers from its inception. *Click the title to read the full alert.*

- **SBA Provides Relief to Self-Employed Schedule C Filers and Relaxes PPP Eligibility Restrictions Stemming from Certain Convictions and Student Loan Defaults** March 10, 2021

In a March 3, 2021 Interim Final Rule (“IFR”), the U.S. Small Business Association (“SBA”) recognized that the definition of “payroll costs” used to determine Paycheck Protection Program (“PPP”) loan amounts had the effect of restricting loan eligibility to many sole proprietors, independent contractors, and self-employed individuals by including a “net profit” component as part of the calculation. *Click the title to read the full alert.*

- **Borrower Beware V: Prepare Your PPP Loan Forgiveness Questionnaire Before the SBA Asks For It, and Thoughtfully Identify the “Totality of Circumstances” Supporting Your Necessity Certification** February 8, 2021 On October 26, 2020, the SBA published a notice seeking comments relating to the approval and use of various forms for review of Paycheck Protection Program (PPP) loans, including two Loan Questionnaire Forms—Form 3509 (for-profit borrowers) and Form 3510 (nonprofit borrowers). By December, and at SBA’s direction, lenders started rolling out these forms to borrowers who received PPP loans in excess of \$2 million. *Click the title to read the full alert.*
- **SBA Releases Trio of New Interim Final Rules Addressing Eligibility, Forgiveness, and SBA Review of First Draw and Second Draw PPP Loans** January 29, 2021

The Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (“Economic Aid Act”) was adopted on December 27, 2020, extending the availability of the original First Draw Paycheck Protection Program (“PPP”) Loans through March 31, 2021. It also created a new Second Draw PPP Loan program (“PPP2”) allowing prior PPP borrowers to seek a second loan. The Economic Aid Act required the SBA to issue initial regulations within ten days of enactment to

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carry out the provisions of the Act and amendments to the PPP and, on January 6, 2021, the SBA posted two new Interim Final Rules (“IFRs”) to its website. *Click the title to read the full alert.*

- **Borrower Beware: False Claims Act Liability in Connection With the PPP is a Trap for the Unwary and the Arrogant** January 21, 2021 On January 12, 2021, the Eastern District of California settled the first False Claims Act (“FCA”) case based on Paycheck Protection Program (“PPP”)-related fraud. SlideBelts Inc. – a debtor in bankruptcy – and its president and CEO agreed to pay \$100,000 in damages and penalties and to repay PPP funds to resolve claims under the FCA and the Financial Institutions Reform, Recovery, and Enforcement Act. In connection with the settlement, SlideBelts and its president admitted that they falsely stated that SlideBelts was not in bankruptcy in order to obtain PPP funds in the amount of \$350,000. Because SlideBelts is currently in bankruptcy, the settlement must be approved by the bankruptcy court. *Click the title to read the full alert.*
- **Congress and the President Approve \$284 Billion Second Round of Paycheck Protection Program Loans In Support of Struggling Small Businesses** December 30, 2020

In the waning evening hours of December 21, 2020, Congress passed the “Consolidated Appropriations Act, 2021,” a new, comprehensive COVID-19 relief bill. The bill passed by a wide margin with bi-partisan support, with votes of 92-6 in the Senate, and 359-53 in the House. While President Trump initially expressed his displeasure with the bill, he ultimately signed it into law on December 27, albeit with demands for changes that are unlikely to be met. *Click on the title to read the full alert.*

- **Consolidated Appropriations Act Expands Employee Retention Credit** December 28, 2020

On December 27, 2020, President Trump signed the Consolidated Appropriations Act, 2021 (the “CAA”) which included provisions extending, increasing, and clarifying the employee retention tax credit (“ERC”) originally provided under the CARES Act. While important qualification requirements remain, the changes made to the ERC expand the availability and usefulness of the credit beyond what was previously provided under the CARES Act such that employers who have suffered shutdowns or other economic decline should reevaluate their ability to utilize the ERC under the enhanced rules provided by the CAA. *Click on the title to read the full alert.*

- **Congress Authorizes Deductions for Qualifying Expenses Paid with PPP Forgivable Loan Proceeds** December 28, 2020

On December 27, President Trump signed the Consolidated Appropriations Act, 2021 (the “Act”) into law. Despite opposition from the IRS, the Act provides that qualifying expenses paid with proceeds from a forgivable Paycheck Protection Program (“PPP”) loan are deductible for federal income tax purposes, notwithstanding the fact that the PPP loan may be ultimately forgiven and exempt from income tax. *Click on the title to read the full alert.*

- **IRS Clarifies Delayed PPP Forgiveness Filing Will Not Enhance Deduction Availability Position** November 19, 2020 While under the CARES Act, forgiveness of any portion of a Paycheck Protection Program (“PPP”) loan is expressly excluded from federal income inclusion, in Notice 2020-32, released on April 30, 2020, the U.S. Treasury and the IRS made it clear that their view was that expenses paid with such forgiven loan proceeds would not be deductible. Newly issued guidance clarifies that delaying PPP forgiveness certification into 2021 will not enhance a 2020 deduction

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availability position. *Click on the title to read the full alert.*

- **IRS Clarifies Interaction Between Paycheck Protection Program and Employee Retention Tax Credit in M&A Deals** November 19, 2020 Under the CARES Act, an employer otherwise eligible for employee retention credits (“ERC”) is denied such credits if it participates in a Paycheck Protection Program (“PPP”) loan. *Click on the title to read the full alert.*
- **Borrower Beware IV: Collect and Preserve Your “Necessity Certification” Evidence Before Submitting a Forgiveness Application** November 4, 2020 A Paycheck Protection Program (PPP) borrower’s forgiveness application must be submitted to the servicing lender in the first instance, and it must include all the documentation specified in 15 U.S.C. § 9005(e). The content of the submission must include documentation verifying full-time equivalent employees and pay rates, documentary proof of the existence and payment of forgivable expenses in the covered period, and borrower certifications affirming that the forgiveness amount requested was used to retain employees or to satisfy a covered mortgage obligation, rent obligation, or utility payment. *Click on the title to read the full alert.*
- **Borrower Beware III: The SBA’s New Paycheck Protection Program (PPP) Appeal Process Stacks the Deck against Borrowers Who Challenge Forgiveness Denials** October 12, 2020
Over a period of about four months, anxious and worried business owners applied for and took out more than 5.2 million Paycheck Protection Program (PPP) loans—a total of \$525 billion dollars—without knowing the full extent of the terms, conditions and fine print that would ultimately apply to their loans. For many facing COVID-19-pandemic-driven uncertainties, it was a risk they felt compelled to take to protect themselves, their employees, and their businesses. Little did they know the extent to which the PPP rules would continue to be written after the fact, and in some cases, retroactively. Not only did Congress amend the program on June 5, 2020 with the Paycheck Protection Program Flexibility Act, but between April 2 and August 24 the SBA issued 24 Interim Final Rules (IFRs), an eighteen-page FAQ, and a separate eleven-page forgiveness FAQ outlining various clarifications, interpretations, enforcement guidance, and changes to the PPP program. The result is a complicated, mind-spinning assemblage of rules and calculations that may be overwhelming for many borrowers to comprehend and apply. And a borrower’s ability to have its loan forgiven remains subject to SBA oversight and hindsight discretionary review for compliance with those PPP eligibility and forgiveness requirements, and perhaps for a much longer period of time than many borrowers realize. *Click on the title to read the full alert.*
- **Borrower Beware II: Whistleblower Workers Put PPP Borrowers in the Government’s Crosshairs for False Claims Act and Criminal Investigations** September 10, 2020

The Paycheck Protection Program (“PPP”), created by the CARES Act to help small businesses keep workers on the payroll during the COVID-19 pandemic, has closed its doors to new borrowers. While operational, the PPP resulted in more than 5.2 million loans for \$525 billion in funding. But what do those numbers mean? Did the program really help small businesses weather the most significant public health crisis in our lifetime? *Click on the title to read the full alert.*

- **Update on CARES Act Emergency Financial Aid Grants to Higher Education Students** July 31, 2020 COVID-19 higher education grants under the CARES Act Various provisions of the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act permit higher education institutions to use certain funds allocated by the Department of Education to support students with expenses and financial needs related to the Coronavirus (COVID-19) pandemic. This includes a Higher Education Emergency Relief Fund (“HEERF”) that provides more than \$14 billion in emergency funding to

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higher education. *Click on the title to read the full alert.*

- **FAQs Provide Additional Coronavirus Guidance for Health Plans** July 20, 2020

The departments of Labor, Health and Human Services, and Treasury jointly prepared a new set of frequently asked questions (“FAQs”) regarding implementation of the Families First Coronavirus Response Act (“FFCRA”), the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), and other related health coverage issues. *Click on the title to read the full alert.*

- **CARES Act: IRS Issues New Retirement Plan Guidance for the 2020 Waiver of Minimum Required Distributions** July 16, 2020

On March 27, 2020, the President signed into law the Coronavirus, Aid, Relief and Economic Security (CARES) Act. We previously reported on the CARES Act provisions relevant to employer-sponsored retirement plans that delivered certain relief in connection with the Coronavirus pandemic (see our March 30, 2020 Hodgson Russ Employee Benefits Alert [here.](#)) *Click on the title to read the full alert.*

- **CARES Act: IRS Issues New Retirement Plan Guidance for Coronavirus-Related Distributions and Plan Loan Relief** July 9, 2020

On March 27, 2020, the President signed into law the Coronavirus, Aid, Relief and Economic Security (CARES) Act. We previously reported on the CARES Act provisions relevant to employer-sponsored retirement plans that delivered certain relief in connection with the Coronavirus pandemic (see our March 30, 2020 Hodgson Russ Employee Benefits Alert [here.](#)) Recently released IRS Notice 2020-50, which focuses on the relief under CARES Act Section 2202, addresses coronavirus-related distributions (CRDs), the temporary increase to the allowable plan loan amount, and the delayed due date of plan loan repayments payable during the period beginning on March 27, 2020 and ending on December 31, 2020. *Click on the title to read the full alert.*

- **Relief from Some PPP Restrictions** June 4, 2020

As small businesses received Paycheck Protection Program (“PPP”) loans and began to consider the best way to maximize loan forgiveness, many argued the initial scope of forgiveness was too narrow to address the challenges they faced in these difficult times. Congress appears to have heard many of these borrowers’ concerns, and on June 3 passed the Paycheck Protection Program Flexibility Act of 2020 (the “Act”) to alleviate some of these issues. The President is expected to sign the Act into law in the coming days. *Click on the title to read the full alert.*

- **Paycheck Protection Program: SBA Releases Forgiveness Application – Some Questions Answered, Others Remain** May 18, 2020

The concept of a forgivable loan has been the most attractive feature of the Paycheck Protection Program (“PPP”) since the first rumors of the program began emanating from Washington. Millions of companies applied for and received PPP loans with the hope (and in many cases, expectation) that the loan would be fully forgiven. However, borrowers and professional advisors attempting to calculate potential forgiveness on issued PPP loans have been stymied by the forgiveness provisions in Section 1106 of the CARES Act. *Click on the title to read the full alert.*

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- **PPP Update: SBA Provides Guidance on Application of Necessity Certification** May 13, 2020
On May 13, 2020, the Small Business Administration (“SBA”) issued additional guidance on the interpretation of the certification necessary to obtain a loan under the Paycheck Protection Program (“PPP”), in the form of FAQ 46. *Click on the title to read the full alert.*
- **New COVID-19 Pilot Program and Extensions for Patents and Trademarks** May 8, 2020
Many government agencies are implementing policies to reduce the need for in-person interaction and accommodate those affected by the COVID-19 outbreak. The United States Patent and Trademark Office is no exception. *Click on the title to read the full alert.*
- **IRS Issues Additional Guidance on Employee Retention Tax Credit; Consistency with Congressional Intent Again Questioned** May 5, 2020
This is an update to our April 14, 2020 alert which discussed, in part, the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) employee retention credit (“ERC”) for certain employers subject to closure due to COVID-19. On April 29, 2020, the Internal Revenue Service (“IRS”) released additional Frequently Asked Questions (“FAQs”) on the ERC. The ERC is not available to businesses that took advantage of the Paycheck Protection Program (“PPP”). Recent frustration and open questions surrounding the availability of and qualifications for the PPP loan has given way to renewed interest in the ERC for some businesses. *Click on the title to read the full alert.*
- **IRS Denies Deductions for Expenses Paid with Forgiven PPP Loans** May 1, 2020
On April 30, 2020, the IRS issued Notice 2020-32 which provides that expenses paid with proceeds from a Paycheck Protection Program (“PPP”) loan are nondeductible for federal income tax purposes to the extent the payment of those expenses results in the forgiveness of the PPP loan. *Click on the title to read the full alert.*
- **More Funds for Paycheck Protection Program, More Uncertainty for Businesses** April 24, 2020
President Trump is expected on April 24 to sign into law new legislation that will provide an additional \$310 billion in funding for the Paycheck Protection Program (PPP). Once effective, banks should again begin accepting applications for the program. While the additional funding may bring hope to some businesses who were left out of the first tranche of PPP funds, guidance released by the Small Business Administration (SBA) and Department of Treasury (Treasury) on April 23 is causing some borrowers to second guess their involvement in the massive program. *Click on the title to read the full alert.*
- **Should My Business Apply for an Economic Injury Disaster Loan (EIDL)?** April 24, 2020
In addition to establishing the Paycheck Protection Program (“PPP”) and Main Street lending program, which we have covered in prior alerts, the Coronavirus Aid, Relief, and Economic Security (“CARES Act”) expanded an already-existing program: the Small Business Administration’s Economic Injury Disaster Loan (“EIDL”) Program. EIDL Loans are authorized under Section 7(b) of the Small Business Act, and differ from PPP Loans in several important respects. The information below summarizes the EIDL Program as it has been expanded by the CARES Act. *Click on the title to read the full alert.*
- **Coronavirus Legislation and Programs - What Agricultural Producers Should Know** April 20, 2020
For weeks, farmers, ranchers, and other agricultural producers across the country have been working to address COVID-19 and the wide-ranging negative effects experienced across their industry. The federal government passed

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several major pieces of legislation in response to the Coronavirus pandemic and COVID-19, including the Families First Coronavirus Response Act (FFCRA) and the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). FFCRA requires certain employers to provide paid sick and other leave to address COVID-19 issues, while the CARES Act provides emergency economic relief to individuals and businesses. There are provisions in both Acts that apply to agricultural producers. Additionally, programs created under the Acts provide for economic relief specifically directed to farmers and other agricultural producers. *Click on the title to read the full alert.*

- **CARES Act Update: IRS Issues Guidance on Federal Tax Changes April 14, 2020**

This is an update to our March 27, 2020 alert summarizing the various federal tax law changes enacted as part of the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”). Since, the IRS has been working furiously to issue guidance addressing those federal tax law changes, and we expect further guidance will be issued. Notable recent IRS guidance impacting the business federal tax law changes is addressed below. *Click on the title to read the full alert.*

- **\$500 Billion in Direct Federal Loans Available for Local Governments April 13, 2020**

This alert describes a newly-announced Federal Reserve program to support the municipal bond market and the flow of credit and liquidity to state and local governments. Up to \$500 billion in direct federal short-term lending will be made available to help these governments manage cash flow disruptions arising out of the pandemic. These loans can be directly accessed by the largest state, county and city borrowers, and indirectly accessed by smaller governmental issuers (including smaller counties and cities, as well as towns, villages and school districts), once the program is fully in place. *Click on the title to read the full alert.*

- **Updates to the Paycheck Protection Program April 8, 2020**

On March 30, 2020, Hodgson Russ issued an alert summarizing the basics of the Paycheck Protection Program (“PPP”). Since that release, the Treasury Department issued additional guidance regarding the PPP, found here. Below are a number of updates relevant to any business’s determination of whether and how to apply for a PPP loan. *Click on the title to read the full alert.*

- **CARES Act Impact on Bankruptcy Law April 8, 2020**

Business owners and individuals facing the impacts of COVID-19 should be aware of some important changes the Coronavirus Aid, Relief, and Economic Security (CARES) Act makes to the United States Bankruptcy Code. *Click on the title to read the full alert.*

- **Non-Profit Organizations and the CARES Act: Can Non-Profits Take Advantage of the Financial Assistance Programs? April 3, 2020**

Like for-profit businesses, non-profit organizations are struggling with many of the same financial difficulties during this uncertain time. Some non-profits have several employees and largely depend on grants or donations to stay afloat. Some have hundreds of employees and provide programs or other services, many of which may or may not be considered essential services under the various state-mandated Coronavirus lockdown directives. *Click on the title to read the full alert.*

- **The CARES Act and Public Finance April 1, 2020**

The Coronavirus Aid, Relief, and Economic Security, or “CARES Act” was signed into law on Friday, March 27, 2020. The CARES Act was enacted to provide approximately \$2.2 trillion of relief to Americans and the U.S. economy in connection with the COVID-19 pandemic. *Click on the title to read the full alert.*

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- **The Top Five Things to Know about Medicare Telehealth under the CARES Act** March 31, 2020

It took a worldwide pandemic to bring telehealth into the 21st century. Today, the novel Coronavirus COVID-19 is disrupting the traditional model of delivering healthcare to the point where face-to-face visits are no longer tenable, or in many settings not even available. The CARES (Coronavirus Aid, Relief, and Economic Security) Act, enacted March 27, 2020, in large part to stimulate the U.S. economy, is banking on telehealth as a solution.

Envisioned initially as a rural healthcare strategy, telehealth is an effective means to care for patients efficiently and effectively, while reducing exposure to infectious disease. To facilitate access to telehealth, the CARES Act makes a number of important changes to Medicare and other policies surrounding its use. *Click on the title to read the full alert.*

- **The CARES Act: Financial Assistance Highlights for the Real Estate Industry** March 31, 2020

On March 27, 2020, President Trump signed into law H.R. 748, titled the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”), a \$2 trillion economic stimulus package that includes public health spending, immediate cash relief for individuals, and loans for businesses. Notably for the real estate industry, the CARES Act provides assistance to commercial property owners, residential homeowners, landlords and tenants impacted by the pandemic.

SBA Loan Guaranty Program

The “Paycheck Protection Program”, a \$349 billion boost to the Small Business Administration’s (SBA) loan guaranty program, allows eligible borrowers to use loan proceeds for, among other things, payments of interest on any mortgage obligations (but not prepayment or principal payments), rent payments and utilities. *Click on the title to read the full alert.*

- **Is Your Business Eligible for Distressed Industry Relief Under the CARES Act** March 30, 2020

On March 27, 2020, President Trump signed into law H.R. 748, titled the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”), a \$2 trillion economic stimulus package that includes public health spending, immediate cash relief for individuals, and loans for businesses.

Title IV of the CARES Act, the “Coronavirus Economic Stabilization Act of 2020” (“Title IV”), provides up to \$500 billion in relief for states, municipalities, and severely distressed industries. Specifically, Title IV provides loans, loan guarantees and other investments in support of “eligible businesses,” which include air carriers and other United States businesses that have not otherwise received adequate economic relief in the form of loans or loan guarantees provided under the CARES Act. *Click on the title to read the full alert.*

- **COVID-19 Stimulus Legislation: Benefit Plans Highlights** March 30, 2020

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On March 27, 2020, the President signed into law the Coronavirus, Aid, Relief and Economic Security (CARES) Act (the “Act”). There are number of provisions relevant to employer-sponsored retirement and welfare benefit plans intended to deliver relief in connection with the Coronavirus pandemic. Those provisions include:

Retirement Plan Distribution Provisions

Distribution Relief. For eligible retirement plans, the Act prescribes special relief for “Coronavirus-related distributions.” Making Coronavirus-related distributions available to retirement plan participants is optional. *Click on the title to read the full alert.*

- **COVID-19 Developments for Tax-Exempt Organizations/Non-Profits** March 30, 2020

In response to the COVID-19 pandemic (the “Coronavirus”), a variety of relief efforts have been enacted, many of which may impact tax-exempt organization and non-profit clients. This update will discuss certain of these relief efforts, detailing their status as of Monday, March 30, 2020.

1. Non-Extension of Form 990 and 990-PF Filing Deadlines

In Notice 2020-18 and Notice 2020-20, the full text of which can be found here, the IRS extended the deadline for filing of certain Federal returns as well as the payment of Federal income, gift, and generation-skipping transfer tax liability. *Click on the title to read the full alert.*

- **What is the \$349 Billion Paycheck Protection Plan?** March 29, 2020

The Coronavirus Aid, Relief, and Economic Security, or “CARES Act” was signed into law on Friday, March 27, 2020. Among the programs in the Act is “Paycheck Protection Program”, which is a \$349 billion boost to the existing Small Business Administration (SBA) loan guaranty program.

How does the program work? – The Paycheck Protection Program, found in Title I of the Act, is a \$349 billion boost to the SBA’s existing 7(a) guaranty program. These are NOT loans from the Federal Government. Instead, the Federal Government guarantees loans made by eligible lenders to eligible borrowers. The Paycheck Protection Program also expands eligibility for, and liberalizes other requirements of, the SBA 7(a) guaranty program. Perhaps most notably, the Act sets forth the possibility for these loans to be forgiven under certain circumstances. *Click on the title to read the full alert.*

- **COVID-19 Federal, State and Local Tax Employer Relief Efforts Update** last updated March 29, 2020

Original posting March 21, 2020; updated through April 17, 2020

The unprecedented COVID-19 pandemic has triggered a wide variety of relief efforts from the Federal, state, and local governments. This update will provide insight into several of these relief efforts, and discuss the effect they might have on employers coping with the impact of the Coronavirus on their business operations. *Click on the title to read the full alert.*

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- **Trump Signs CARES Act – Federal Tax Law Changes March 27, 2020**

Earlier today the House of Representatives passed what was, in effect, the Senate version of the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”) previously passed by the Senate on March 25, 2020. Shortly thereafter, President Trump signed the CARES Act into law.

The first two COVID-19 federal legislative responses passed earlier this month focused largely on healthcare related funding, unemployment benefits and paid sick leave. This “phase 3” legislation known as the CARES Act attempts to address financial stability and liquidity issues, in part, through various federal tax law changes impacting businesses, employers and individuals. *Click on the title to read the full alert.*

Agriculture

- **Coronavirus Legislation and Programs - What Agricultural Producers Should Know April 20, 2020**

For weeks, farmers, ranchers, and other agricultural producers across the country have been working to address COVID-19 and the wide-ranging negative effects experienced across their industry. The federal government passed several major pieces of legislation in response to the Coronavirus pandemic and COVID-19, including the Families First Coronavirus Response Act (FFCRA) and the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). FFCRA requires certain employers to provide paid sick and other leave to address COVID-19 issues, while the CARES Act provides emergency economic relief to individuals and businesses. There are provisions in both Acts that apply to agricultural producers. Additionally, programs created under the Acts provide for economic relief specifically directed to farmers and other agricultural producers. *Click on the title to read the full alert.*

Banking & Finance

- **Relief from Some PPP Restrictions June 4, 2020**

As small businesses received Paycheck Protection Program (“PPP”) loans and began to consider the best way to maximize loan forgiveness, many argued the initial scope of forgiveness was too narrow to address the challenges they faced in these difficult times. Congress appears to have heard many of these borrowers’ concerns, and on June 3 passed the Paycheck Protection Program Flexibility Act of 2020 (the “Act”) to alleviate some of these issues. The President is expected to sign the Act into law in the coming days. *Click on the title to read the full alert.*

- **Paycheck Protection Program: SBA Releases Forgiveness Application – Some Questions Answered, Others Remain May 18, 2020**

The concept of a forgivable loan has been the most attractive feature of the Paycheck Protection Program (“PPP”) since the first rumors of the program began emanating from Washington. Millions of companies applied for and received PPP loans with the hope (and in many cases, expectation) that the loan would be fully forgiven. However, borrowers and professional advisors attempting to calculate potential forgiveness on issued PPP loans have been stymied by the forgiveness provisions

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in Section 1106 of the CARES Act. *Click on the title to read the full alert.*

- **PPP Update: SBA Provides Guidance on Application of Necessity Certification** May 13, 2020

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- **More Funds for Paycheck Protection Program, More Uncertainty for Businesses** April 24, 2020

President Trump is expected on April 24 to sign into law new legislation that will provide an additional \$310 billion in funding for the Paycheck Protection Program (PPP). Once effective, banks should again begin accepting applications for the program. While the additional funding may bring hope to some businesses who were left out of the first tranche of PPP funds, guidance released by the Small Business Administration (SBA) and Department of Treasury (Treasury) on April 23 is causing some borrowers to second guess their involvement in the massive program. *Click on the title to read the full alert.*

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- **Updates to the Paycheck Protection Program** April 8, 2020

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Title IV of the CARES Act, the “Coronavirus Economic Stabilization Act of 2020” (“Title IV”), provides up to \$500 billion in relief for states, municipalities, and severely distressed industries. Specifically, Title IV provides loans, loan guarantees and other investments in support of “eligible businesses,” which include air carriers and other United States businesses that have not otherwise received adequate economic relief in the form of loans or loan guarantees provided under the CARES Act. *Click on the title to read the full alert.*

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Bankruptcy, Restructuring & Commercial Litigation

- **CARES Act Impact on Bankruptcy Law** April 8, 2020

Business owners and individuals facing the impacts of COVID-19 should be aware of some important changes the Coronavirus Aid, Relief, and Economic Security (CARES) Act makes to the United States Bankruptcy Code. *Click on the title to read the full alert.*

Bond Counsel

- **The CARES Act and Public Finance** April 1, 2020

The Coronavirus Aid, Relief, and Economic Security, or “CARES Act” was signed into law on Friday, March 27, 2020. The CARES Act was enacted to provide approximately \$2.2 trillion of relief to Americans and the U.S. economy in connection with the COVID-19 pandemic. *Click on the title to read the full alert.*

College & University

- **Update on CARES Act Emergency Financial Aid Grants to Higher Education Students** July 31, 2020 COVID-19 higher education grants under the CARES Act Various provisions of the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act permit higher education institutions to use certain funds allocated by the Department of Education to support students with expenses and financial needs related to the Coronavirus (COVID-19) pandemic. This includes a Higher Education Emergency Relief Fund (“HEERF”) that provides more than \$14 billion in emergency funding to higher education. *Click on the title to read the full alert.*

Education

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Employee Benefits

- **FAQs Provide Additional Coronavirus Guidance for Health Plans** July 20, 2020

The departments of Labor, Health and Human Services, and Treasury jointly prepared a new set of frequently asked questions (“FAQs”) regarding implementation of the Families First Coronavirus Response Act (“FFCRA”), the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), and other related health coverage issues. *Click on the title to read the full alert.*

- **CARES Act: IRS Issues New Retirement Plan Guidance for the 2020 Waiver of Minimum Required Distributions** July 16, 2020

On March 27, 2020, the President signed into law the Coronavirus, Aid, Relief and Economic Security (CARES) Act. We previously reported on the CARES Act provisions relevant to employer-sponsored retirement plans that delivered certain relief in connection with the Coronavirus pandemic (see our March 30, 2020 Hodgson Russ Employee Benefits Alert [here.](#)) *Click on the title to read the full alert.*

- **CARES Act: IRS Issues New Retirement Plan Guidance for Coronavirus-Related Distributions and Plan Loan Relief** July 9, 2020

On March 27, 2020, the President signed into law the Coronavirus, Aid, Relief and Economic Security (CARES) Act. We previously reported on the CARES Act provisions relevant to employer-sponsored retirement plans that delivered certain relief in connection with the Coronavirus pandemic (see our March 30, 2020 Hodgson Russ Employee Benefits Alert [here.](#)) Recently released IRS Notice 2020-50, which focuses on the relief under CARES Act Section 2202, addresses coronavirus-related distributions (CRDs), the temporary increase to the allowable plan loan amount, and the delayed due date of plan loan repayments payable during the period beginning on March 27, 2020 and ending on December 31, 2020. *Click on the title to read the full alert.*

- **COVID-19 Stimulus Legislation: Benefit Plans Highlights** March 30, 2020

On March 27, 2020, the President signed into law the Coronavirus, Aid, Relief and Economic Security (CARES) Act (the “Act”). There are number of provisions relevant to employer-sponsored retirement and welfare benefit plans intended to deliver relief in connection with the Coronavirus pandemic. Those provisions include:

Retirement Plan Distribution Provisions

Distribution Relief. For eligible retirement plans, the Act prescribes special relief for “Coronavirus-related distributions.” Making Coronavirus-related distributions available to retirement plan participants is optional. *Click on the title to read the full alert.*

Healthcare

- **The Top Five Things to Know about Medicare Telehealth under the CARES Act** March 31, 2020

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It took a worldwide pandemic to bring telehealth into the 21st century. Today, the novel Coronavirus COVID-19 is disrupting the traditional model of delivering healthcare to the point where face-to-face visits are no longer tenable, or in many settings not even available. The CARES (Coronavirus Aid, Relief, and Economic Security) Act, enacted March 27, 2020, in large part to stimulate the U.S. economy, is banking on telehealth as a solution.

Envisioned initially as a rural healthcare strategy, telehealth is an effective means to care for patients efficiently and effectively, while reducing exposure to infectious disease. To facilitate access to telehealth, the CARES Act makes a number of important changes to Medicare and other policies surrounding its use. *Click on the title to read the full alert.*

Intellectual Property

- **New COVID-19 Pilot Program and Extensions for Patents and Trademarks** May 8, 2020

Many government agencies are implementing policies to reduce the need for in-person interaction and accommodate those affected by the COVID-19 outbreak. The United States Patent and Trademark Office is no exception. *Click on the title to read the full alert.*

Labor & Employment

- **What is the \$349 Billion Paycheck Protection Plan?** March 29, 2020

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Municipal

- **\$500 Billion in Direct Federal Loans Available for Local Governments** April 13, 2020

This alert describes a newly-announced Federal Reserve program to support the municipal bond market and the flow of credit and liquidity to state and local governments. Up to \$500 billion in direct federal short-term lending will be made available to help these governments manage cash flow disruptions arising out of the pandemic. These loans can be directly accessed by the largest state, county and city borrowers, and indirectly accessed by smaller governmental issuers (including smaller counties and cities, as well as towns, villages and school districts), once the program is fully in place.

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Public Authority

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Real Estate

- **The CARES Act: Financial Assistance Highlights for the Real Estate Industry** March 31, 2020

On March 27, 2020, President Trump signed into law H.R. 748, titled the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”), a \$2 trillion economic stimulus package that includes public health spending, immediate cash relief for individuals, and loans for businesses. Notably for the real estate industry, the CARES Act provides assistance to commercial property owners, residential homeowners, landlords and tenants impacted by the pandemic.

SBA Loan Guaranty Program

The “Paycheck Protection Program”, a \$349 billion boost to the Small Business Administration’s (SBA) loan guaranty program, allows eligible borrowers to use loan proceeds for, among other things, payments of interest on any mortgage obligations (but not prepayment or principal payments), rent payments and utilities. *Click on the title to read the full alert.*

Securities Regulation & Corporate Compliance

- **Relief from Some PPP Restrictions** June 4, 2020

As small businesses received Paycheck Protection Program (“PPP”) loans and began to consider the best way to maximize loan forgiveness, many argued the initial scope of forgiveness was too narrow to address the challenges they faced in these difficult times. Congress appears to have heard many of these borrowers’ concerns, and on June 3 passed the Paycheck Protection Program Flexibility Act of 2020 (the “Act”) to alleviate some of these issues. The President is expected to sign the Act into law in the coming days. *Click on the title to read the full alert.*

- **Updates to the Paycheck Protection Program** April 8, 2020

On March 30, 2020, Hodgson Russ issued an alert summarizing the basics of the Paycheck Protection Program (“PPP”). Since that release, the Treasury Department issued additional guidance regarding the PPP, found here. Below are a number of updates relevant to any business’s determination of whether and how to apply for a PPP loan. *Click on the title*

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Tax

- **Consolidated Appropriations Act Expands Employee Retention Credit** December 28, 2020

On December 27, 2020, President Trump signed the Consolidated Appropriations Act, 2021 (the “CAA”) which included provisions extending, increasing, and clarifying the employee retention tax credit (“ERC”) originally provided under the CARES Act. While important qualification requirements remain, the changes made to the ERC expand the availability and usefulness of the credit beyond what was previously provided under the CARES Act such that employers who have suffered shutdowns or other economic decline should reevaluate their ability to utilize the ERC under the enhanced rules provided by the CAA. *Click on the title to read the full alert.*

- **Congress Authorizes Deductions for Qualifying Expenses Paid with PPP Forgivable Loan Proceeds** December 28, 2020

On December 27, President Trump signed the Consolidated Appropriations Act, 2021 (the “Act”) into law. Despite opposition from the IRS, the Act provides that qualifying expenses paid with proceeds from a forgivable Paycheck Protection Program (“PPP”) loan are deductible for federal income tax purposes, notwithstanding the fact that the PPP loan may be ultimately forgiven and exempt from income tax. *Click on the title to read the full alert.*

- **IRS Clarifies Delayed PPP Forgiveness Filing Will Not Enhance Deduction Availability Position** November 19, 2020
While under the CARES Act, forgiveness of any portion of a Paycheck Protection Program (“PPP”) loan is expressly excluded from federal income inclusion, in Notice 2020-32, released on April 30, 2020, the U.S. Treasury and the IRS made it clear that their view was that expenses paid with such forgiven loan proceeds would not be deductible. Newly issued guidance clarifies that delaying PPP forgiveness certification into 2021 will not enhance a 2020 deduction availability position. *Click on the title to read the full alert.*
- **IRS Clarifies Interaction Between Paycheck Protection Program and Employee Retention Tax Credit in M&A Deals** November 19, 2020
Under the CARES Act, an employer otherwise eligible for employee retention credits (“ERC”) is denied such credits if it participates in a Paycheck Protection Program (“PPP”) loan. *Click on the title to read the full alert.*

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- **IRS Issues Additional Guidance on Employee Retention Tax Credit; Consistency with Congressional Intent Again Questioned** May 5, 2020

This is an update to our April 14, 2020 alert which discussed, in part, the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) employee retention credit (“ERC”) for certain employers subject to closure due to COVID-19. On April 29, 2020, the Internal Revenue Service (“IRS”) released additional Frequently Asked Questions (“FAQs”) on the ERC. The ERC is not available to businesses that took advantage of the Paycheck Protection Program (“PPP”). Recent frustration and open questions surrounding the availability of and qualifications for the PPP loan has given way to renewed interest in the ERC for some businesses.

- **IRS Denies Deductions for Expenses Paid with Forgiven PPP Loans** May 1, 2020

On April 30, 2020, the IRS issued Notice 2020-32 which provides that expenses paid with proceeds from a Paycheck Protection Program (“PPP”) loan are nondeductible for federal income tax purposes to the extent the payment of those expenses results in the forgiveness of the PPP loan. *Click on the title to read the full alert.*

- **CARES Act Update: IRS Issues Guidance on Federal Tax Changes** April 14, 2020

This is an update to our March 27, 2020 alert summarizing the various federal tax law changes enacted as part of the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”). Since, the IRS has been working furiously to issue guidance addressing those federal tax law changes, and we expect further guidance will be issued. Notable recent IRS guidance impacting the business federal tax law changes is addressed below. *Click on the title to read the full alert.*

- **COVID-19 Federal, State and Local Tax Employer Relief Efforts Update** last updated April 17, 2020

Original posting March 21, 2020; updated through April 17, 2020

The unprecedented COVID-19 pandemic has triggered a wide variety of relief efforts from the Federal, state, and local governments. This update will provide insight into several of these relief efforts, and discuss the effect they might have on employers coping with the impact of the Coronavirus on their business operations. *Click on the title to read the full alert.*

- **Trump Signs CARES Act – Federal Tax Law Changes** March 27, 2020

Earlier today the House of Representatives passed what was, in effect, the Senate version of the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”) previously passed by the Senate on March 25, 2020. Shortly thereafter, President Trump signed the CARES Act into law.

The first two COVID-19 federal legislative responses passed earlier this month focused largely on healthcare related funding, unemployment benefits and paid sick leave. This “phase 3” legislation known as the CARES Act attempts to address financial stability and liquidity issues, in part, through various federal tax law changes impacting businesses, employers and individuals. *Click on the title to read the full alert.*

Tax-Exempt Organizations

- **Non-Profit Organizations and the CARES Act: Can Non-Profits Take Advantage of the Financial Assistance Programs?** April 3, 2020

Like for-profit businesses, non-profit organizations are struggling with many of the same financial difficulties during this uncertain time. Some non-profits have several employees and largely depend on grants or donations to stay afloat. Some have hundreds of employees and provide programs or other services, many of which may or may not be considered essential services under the various state-mandated Coronavirus lockdown directives. *Click on the title to read the full alert.*

- **COVID-19 Developments for Tax-Exempt Organizations/Non-Profits** March 30, 2020

In response to the COVID-19 pandemic (the “Coronavirus”), a variety of relief efforts have been enacted, many of which may impact tax-exempt organization and non-profit clients. This update will discuss certain of these relief efforts, detailing their status as of Monday, March 30, 2020.

1. Non-Extension of Form 990 and 990-PF Filing Deadlines

In Notice 2020-18 and Notice 2020-20, the full text of which can be found here, the IRS extended the deadline for filing of certain Federal returns as well as the payment of Federal income, gift, and generation-skipping transfer tax liability. *Click on the title to read the full alert.*