

## CLIENT BULLETIN

To: Raines Feldman LLP (“**RF**”) Clients  
From: Raines Feldman LLP  
Date: April 3, 2020  
Re: CARES Act and Small Business Loans and Selected Taxation Impacts

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In response to the public health emergency in the United States due to the 2019 novel coronavirus, also known as SARS-CoV-2 and the illness it causes, COVID-19 (collectively, “**COVID-19**”), which the World Health Organization has declared a “pandemic,” the United States Congress passed, and the President signed into law, the Coronavirus Aid, Relief, and Economic Security (“**CARES**”) Act (P.L. 116-136) on March 27, 2020.

The CARES Act is primarily an emergency stimulus package to address the economic fall-out from the COVID-19 pandemic and its effects in the United States. The CARES Act provides up to \$349 billion in loans to small businesses through the “**Paycheck Protection Program**” or “**PPP**” and up to \$10 billion in additional Emergency Economic Injury Disaster Loans, or “**EIDLs**.” Loans under both programs are in part forgivable, their application processes have been streamlined and a wide range of businesses are eligible for them. The CARES Act also provides some tax relief to both businesses and individuals. The rules implementing the CARES Act are subject to change: *clients are cautioned to keep up to date with all developments and changes.*

This Client Bulletin summarizes key aspects of the CARES Act, including:

- Paycheck Protection Program: loan features and terms, borrower eligibility, application process, borrower documentation, loan amounts and eligibility for forgiveness;
- Expansion of EIDLs: loan features and terms, borrower eligibility, application process, borrower documentation, loan amounts and eligibility for forgivable emergency advances on loans; and
- Tax Relief: selected tax relief provisions provided by the CARES Act for both businesses and individuals.

## **PAYCHECK PROTECTION PROGRAM**

The Paycheck Protection Program (“**PPP**”) established by the CARES Act provides for Small Business Administration (“**SBA**”)-approved lenders to expeditiously make loans to eligible small businesses for the period from February 15, 2020 to June 30, 2020. The primary purpose of these loans is to allow small businesses to maintain as much as possible their current payroll and staffing. The CARES Act has relaxed SBA requirements for borrowers to obtain loans. As of April 3, 2020, the anticipated launch date for SBA-approved lender applications, the SBA has since issued an interim rule to clarify the procedures of the PPP. While some lenders have already opened up their PPP application process to clients with pre-existing banking and lending relationships, other lenders have not yet launched their application process. **Applicants are strongly encouraged to contact their bank or lender with whom they have pre-existing relationships to determine if their PPP loan application program is currently accepting applications.**

### **PPP Loans:**

- Principal amounts up to \$10 million.
- 100% federally guaranteed.
- Do not require any personal guarantees or collateral.
- Subject to a maximum term of two (2) years.
- Have a fixed interest rate of 1.0% (per SBA’s Interim Final Rule (Docket No. SBA-2020-0015)).
- Payments on principal, interest and any loan fees are deferred for a minimum of 6 months and up to one (1) year (but interest still accrues).
- No pre-payment penalties.
- Loan principal and interest accrued are forgivable so long as used to cover payroll costs and employee and compensation levels are maintained.

### **Uses of PPP Loans:**

Borrowers may use the proceeds of PPP loans only to pay payroll costs, utilities, mortgage interest payments (but NOT mortgage principal payments), rents, interest payments (but NOT principal payments) on certain existing debt obligations incurred prior to February 15, 2020 and to refinance EIDLs applied for and obtained by the borrower due to COVID-19 related circumstances between January 30, 2020 and April 3, 2020 (see, generally, “EIDLs”).

**Borrowers must be careful in their use of proceeds of PPP loans. If a borrower uses PPP loan proceeds for unauthorized purposes, the SBA may direct the borrower to repay those misused amounts. Further, if the borrower knowingly uses the funds for unauthorized purposes, the borrower will be subject to additional liability (e.g., charges of fraud). The SBA will also have recourse against any shareholder, member or partner of a borrower who uses PPP loan proceeds for unauthorized purposes.**

### **Borrower Eligibility for PPP Loans:**

*Which borrowers are eligible to apply for PPP Loans?*

- A small business with fewer than 500 employees\*.
- A small business otherwise meeting the SBA’s size standard.
- A 501(c)(3) organization with fewer than 500 employees\*.
- An individual who is a sole proprietor.
- An individual who operates as an independent contractor.
- An individual who is self-employed who regularly carries on any trade or business;
- A Tribal business concern that meets the SBA size standard.
- During the disaster-covered period (February 15, 2020 to June 30, 2020), SBA regulations applicable to entity affiliations are waived for:
  - any franchise that is assigned a franchise identifier code by the SBA;
  - any business that receives financial assistance from a Small Business Investment Company; and
  - any business with not more than 500 employees that has a North American Industry Classification System (“NAICS”) Sector 72 code (hotel and food services).
- The 500 employee threshold noted above includes ALL employees, full-time, part-time and any other status.

*Are Hotel and Food Service Businesses Eligible to Apply for PPP Loans?*

Accommodation and Food Services businesses in the NAICS Sector 72 are eligible to apply for PPP loans if they do not employ more than 500 employees per physical location.

*Which borrowers are ineligible to apply for PPP Loans?*

- A business or individual engaged in any activity that is illegal under federal, state or local law.
- A household employer (i.e., individuals who employ household employees such as nannies or housekeepers).
- Any applicant with an owner of twenty percent (20%) or more of the applicant's equity that is: incarcerated, on probation or on parole; presently subject to an indictment, criminal information, arraignment or other means by which formal criminal charges are brought in any jurisdiction; or has been convicted of a felony within the last five (5) years.
- Any applicant, or any business owned or controlled by the applicant or any of the owners of the applicant, that has ever obtained a direct or guaranteed loan from the SBA or any other federal agency that is currently delinquent or has defaulted within the last seven (7) years and caused a loss to the government.

**Determination of the Amount of a PPP Loan:**

*How do I calculate the amount of a PPP Loan?*

The maximum amount of a PPP loan is capped at \$10 million, but in any event will be equal to the lesser of \$10 million or two and one-half times (2.5 X) of one of the following:

- The average total monthly payments for payroll costs incurred during the one (1)-year period before the date on which the PPP loan is made;
- For an otherwise eligible business that was not in business between February 15, 2019 and June 30, 2019, the average total monthly payments by the applicant borrower for payroll costs incurred between January 1, 2020 and February 29, 2020; OR
- For a seasonal business, the total monthly payments for payroll costs for the twelve (12)-week period beginning February 15, 2019 or March 1, 2019 (as decided by the borrower applicant) and ending June 30, 2019.

**In all cases above**, to calculate the final maximum amount of a PPP loan, borrowers must add the outstanding amount of any SBA disaster loan (e.g., an EIDL) made between January 31, 2020 and April 3, 2020, but also subtract the amount of any emergency advance made under an EIDL obtained due to COVID-19 related circumstances (see "EIDL – Forgivable Emergency Advance" and "EIDL – EIDLs and PPP Loans").

*What are Payroll Costs? How do I calculate them?*

Payroll costs, for purposes of calculating the total amount of a PPP loan, are the sum of payments to employees that include:

- Salaries, wages, commissions, tips or equivalents (capped at \$100,000 on an annualized basis for each employee);
- Employee benefits, including costs and payments for vacation, parental, family, medical or sick leave; allowances for dismissal or separation; payments required for the provisions of group healthcare benefits, including insurance premiums;
- Payments of any retirement benefits;
- Payments of state or local taxes assessed on the compensation of a particular employee; and
- For a sole proprietor or independent contractor ONLY: wages, commissions, income or net earnings from self-employment, capped at \$100,000 on an annualized basis for each employee.

*What, if anything, is excluded from calculating Payroll Costs?*

Payroll costs exclude:

- Any compensation of an individual employee or portion of a salary on an annualized basis that is in excess of \$100,000, as prorated for the period February 15, 2020 to June 30, 2020;
- Payroll taxes, railroad retirement taxes and income taxes;
- Any compensation of an employee whose principal place of residence is outside of the United States; and
- Certain qualified sick leave wages for which credit is allowed under the Families First Coronavirus Response Act, or qualified family leave wages for which a credit is allowed under the Families First Coronavirus Response Act.

**Application Process:**

Applicants must submit an SBA Form 2483 (Paycheck Protection Program Application Form) with an SBA-approved lender. A sample application for a PPP loan is found here:

<https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Application-3-30-2020-v3.pdf>

*What else will I need to provide? Applicants must certify the following to their SBA-approved lender:*

- That the uncertainty of current economic conditions makes the loan request necessary to support ongoing operations.
- That the loan proceeds will be used to retain workers and maintain payroll or make mortgage interest, lease and utility payments.
- That applicant does not have another application pending for a loan that is duplicative of the purpose and amounts applied for under the PPP loan.
- That from February 15, 2020 to December 31, 2020, applicant will not receive a loan duplicative of the purpose and amounts applied for under the PPP loan, including any EIDLs (see “EIDLs – EIDLs and PPP Loans”).
- That the information provided in the application and the information provided in all supporting documents and forms is true and accurate in all material respects, including a statement that the applicant understands that knowingly making a false statement to obtain a guaranteed loan from the SBA is punishable under law, including: under 18 U.S.C. 1001 and 3571 by imprisonment of not more than five (5) years and/or a fine up to \$250,000; under 15 U.S.C. 645 by imprisonment of not more than two (2) years and/or a fine of not more than \$5,000; and, (if the application is submitted to a federally-insured institution), under 18 U.S.C. 1014 by imprisonment of not more than thirty years and/or a fine of not more than \$1,000,000.
- Additionally, the lender may ask for evidence that the applicant’s business was in operation before February 15, 2020 and had paid employees or independent contractors.

*What documentation will I need to provide?*

Each borrower applicant should be prepared to provide the following documentation to their SBA-approved lender:

- Copies of payroll tax reports filed with the Internal Revenue Service (“**IRS**”) (including Forms 941, 940, state income and unemployment tax filing reports) for the entire fiscal year of 2019 and the first quarter of 2020 (if available).
- Copies of payroll reports for each pay period for the preceding twelve (12) months (such reports should include gross wages, including Paid-Time-Off (“**PTO**”) (which might include vacation, sick leave or other PTO)). This includes payroll reports through the pay period preceding the origination of the PPP loan.

- Documentation reflecting the health insurance premiums paid by the employer-borrower under a group health plan, including owners of the employer-borrowers for the immediately preceding twelve (12) months prior to the date of the PPP loan origination. Copies of monthly invoices may suffice.
- Documentation of all retirement plan funding by the employer for the immediately preceding twelve (12) months. Copies of workpapers, schedules and remittances to the retirement plan administrator may suffice.
- Documentation that borrower does not have an application pending for a loan that is duplicative of the purpose and amounts applied for under the PPP loan.

*When can I apply for a PPP Loan?*

The U.S. Department of the Treasury originally indicated that the application process for PPP loans for small business and small proprietorship applicants will open on **Friday, April 3, 2020**, and that it will open for independent contractors and self-employed individuals on **Friday, April 10, 2020**. **However, several institutional lenders have already stated that their PPP loan application programs will not open as anticipated on April 3, 2020.** Certain lenders have opened their application processes, but only to those borrower clients who have pre-existing banking and lending relationships with the lender. **Applicants are strongly encouraged to check with their bank or lender with whom they have such pre-existing relationships to determine if their PPP loan application program is currently accepting applications.**

*What if I do not have a pre-existing banking or lending relationship with an SBA-approved lender?*

For now, if applicants do not have a pre-existing banking and lending relationship with an SBA-approved lender and need to find a participating lender, applicants may apply through any federally insured depository institution, federally insured credit union and Farm Credit System institution that is a participating lender. According to the SBA, other regulated lenders will be available once approved and enrolled in the program.

*Can I apply for more than one PPP Loan?*

No. Eligible borrowers may not receive more than one PPP loan. Borrowers who are considering a PPP loan should thus apply for the maximum amount of a PPP loan allowable.

*What about agent fees for PPP Loans?*

Borrowers are not responsible for any agent fees for PPP loans. The SBA-approved lender will pay the agent fees out of the fees that the lender receives from the SBA. Agents may not collect fees from the borrower, and the agent fees may not be paid out of the PPP loan proceeds.

*When must applications for a PPP Loan be Processed?*

**All applications for PPP loans must be processed by June 30, 2020. Although the PPP is open until June 30, 2020, applicants are strongly encouraged to apply for a PPP loan as quickly as possible because lenders will need time to process all applications and the CARES Act places an aggregate funding cap of \$349 billion on PPP loans. Indeed, the SBA has noted that the PPP program runs on a “first come, first serve” basis.**

**PPP Loan Amounts that are Forgivable:**

*How and to what extent is a PPP loan forgivable by the government?*

PPP loan amounts are forgivable to the extent that the payment of the proceeds of the loan go towards payroll costs (as used in the sense for determining the amount of the PPP loan), mortgage interest payments in the ordinary course of business, rent on a leasing agreement, utilities payments and, for borrowers with tipped employees, additional wages paid to those employees, all during the period that is eight (8) weeks following the origination date of the PPP loan. **However, the SBA has specified that not more than twenty-five percent (25%) of the loan forgiveness amount may be attributable to non-payroll costs to ensure that the finite program resources of the PPP are devoted primarily to payroll costs and the forgiveness of those costs.**

In no event shall the amount of loan forgiveness exceed the amount of the PPP loan. Further, loan forgiveness applies to BOTH payment on the principal of the PPP loan and accrued interest.

*Can the forgivable amount of a PPP loan be reduced in any way?*

Yes. In short, if a borrower has reduced the number of its employees or has reduced the wages paid to its employees in an amount greater than twenty-five percent (25%) during the period beginning on February 15, 2020 and ending thirty (30) days following the enactment of the CARES Act on March 27, 2020, the amount of the borrower’s loan forgiveness may be reduced. However, if the borrower re-hires those employees or restores employee wages to their previous levels by June 30, 2020, then the reduction of the number of employees or reduction in their wages as described above shall not reduce the amount of loan forgiveness.

Additionally, if a borrower has an EIDL outstanding and has received an emergency, forgivable \$10,000 advance, that amount would be subtracted from the amount forgiven under the borrower’s PPP loan (see “EIDLs – Forgivable Emergency Advance”).

To calculate the amount of a PPP loan that may be forgivable, see the following calculation model prepared by the U.S. Chamber of Commerce:

[https://www.uschamber.com/sites/default/files/023595\\_comm\\_corona\\_virus\\_smallbiz\\_loan\\_fina\\_l.pdf](https://www.uschamber.com/sites/default/files/023595_comm_corona_virus_smallbiz_loan_fina_l.pdf).

**Borrowers should remain aware of all developments concerning SBA loan forgiveness, as the SBA has indicated that it may still issue additional guidance on loan forgiveness amounts.**

*How do I request forgiveness of my PPP loan amount?*

Borrowers would begin by requesting loan forgiveness from their SBA-approved lender. Generally, borrowers may need to be prepared to provide the following documentation, which they must certify is true and correct and was used for permitted purposes:

- Copies of payroll tax reports filed with the IRS (including Forms 941, 940, state income and employment tax filing reports) for the eight (8) week period following the origination of the PPP loan.
- Copies of payroll reports for each pay period for the eight (8) week period following the origination of the PPP loan, including information concerning gross wages including PTO (which might include vacation, sick leave or other PTO).
- Documentation reflecting the health insurance premiums paid by the employer-borrower under a group health plan, including of the owners of the employer-borrower for the eight (8) week period following the origination of the loan. Copies of the monthly invoices may suffice.
- Documentation of all retirement plan funding by the employer-borrower for the eight (8) weeks following the origination of the loan. Copies of workpapers, schedules and remittances to the retirement plan administrator may be available.
- Proof of payment of leases and mortgage interest during the eight (8) week period following the origination of the loan.
- Copies of all statements of interests paid on debt obligations incurred prior to February 15, 2020 indicating payment amounts and proof of payment for the eight (8) week period following the origination of the loan; and
- Copies of canceled checks, statements or other evidence of utilities paid during the disaster covered period for the eight (8) week period following the origination of the loan.

## **EIDLs**

EIDLs have previously been available to small businesses in presidentially-declared disaster areas, but because the COVID-19 pandemic is now a national emergency, small businesses in every state and territory are now eligible to apply for EIDLs. The CARES Act has allotted \$10 billion more to the making of these loans, expanded the uses for these loans and has relaxed

borrower eligibility requirements. Applicant borrowers must demonstrate in their application “substantial economic injury” from COVID-19. Borrowers may apply online now for EIDLs directly from the SBA from January 31, 2020 to December 31, 2020, at the link available here: <https://covid19relief.sba.gov/#/>.

### **EIDL Features:**

- Principal amounts up to \$2 million.
- Emergency \$10,000 advance that is forgivable (see below).
- Approved by SBA based solely on applicant’s credit score.
- Interest rates are 3.75% for small businesses; 2.75% for non-profits.
- Term of up to 30 years.
- Repayment deferred until twelve (12) months from the date of loan disbursement.
- Collateral required for loans of more than \$25,000 (\$100 processing fee also added to the amount of the loan) but may consist only of the business assets, not any of applicant’s real property.

### **SBA-Waived Requirements:**

The SBA has waived the following requirements for EIDLs in response to the COVID-19 pandemic:

- Requirement for personal guarantee on advances and loans of up to \$200,000.
- Requirement for an applicant to be in business for the one (1)-year period before the disaster (but excluding any business that was not in operation on January 31, 2020).
- Requirement that an applicant be unable to obtain credit elsewhere.

### **Uses of EIDLs:**

Following enactment of the CARES Act, EIDLs may now also be used for the following:

- Paying sick leave to employees who are unable to work due to the direct effects of the COVID-19;
- Maintaining payroll to retain employees during business disruptions or substantial slowdowns;

- Meeting increased costs to obtain materials unavailable from the business's original source because of supply chain issues;
- Making rent or mortgage payments; and
- Repaying certain obligations that cannot be met due to revenue losses.

### **Borrower Eligibility for EIDLs:**

*Which borrowers are eligible to apply for EIDLs?*

- A business with fewer than 500 employees.
- A cooperative with fewer than 500 employees.
- An ESOP (as defined in Section 3 of the Small Business Act) with fewer than 500 employees.
- A Tribal small business concern (as described in Section 31 of the Small Business Act) with fewer than 500 employees.
- Any individual who operates under a sole proprietorship, with or without employees, or as an independent contractor.

### **Forgivable Emergency Advance:**

*How do I get an emergency advance under an EIDL?*

EIDL applicants are able to request an emergency advance of up to \$10,000 within three (3) days after applying to the SBA for an EIDL loan, even if the SBA ultimately rejects the EIDL application.

*Do I need to pay the emergency advance back to the SBA?*

No. The emergency advance is not required to be repaid. However, it is important to note, that if an EIDL applicant successfully applies for and receives a PPP loan, any loan forgiveness amount under the PPP loan will be reduced by the amount of the forgivable EIDL advance.

### **EIDLs and PPP Loans:**

Prior to the enactment of the CARES Act and since January 31, 2020, many small businesses and other applicants may have already applied for EIDLs as a result of the COVID-19 pandemic and may now be seeking PPP loans instead of, or in addition to, EIDLs.

*Can I have both a PPP Loan and an EIDL?*

Yes, a borrower may still apply for a PPP Loan if they received an EIDL during the period from January 31, 2020 through April 3, 2020. If the borrower used the proceeds of the EIDL to pay payroll costs, however, the borrower must use their new PPP loan to refinance the EIDL loan. If the borrower did not use the proceeds of the EIDL to pay payroll costs, then the EIDL does not affect the borrower's eligibility for a PPP loan.

*If I have both a PPP Loan and an EIDL, how will that affect any loan amount forgiveness?*

If a borrower refinances an EIDL through a PPP loan, for purposes of determining the percentage of use of proceeds for payroll costs for loan forgiveness under the PPP loan, the SBA will include the amount of any EIDL refinanced. However, the SBA will deduct the proceeds from any emergency advance (up to \$10,000) made under the EIDL from any amount of loan forgiveness under the PPP loan. Any proceeds from other outstanding portions of an EIDL that a borrower does not use to pay payroll costs remain unforfeitable loans.

**Application Process:**

*Basis for Approval*

Applicant borrowers must demonstrate in their application "substantial economic injury" from COVID-19. An applicant for an EIDL may be approved for an EIDL during the disaster covered period solely on its credit score. Although a tax return may not be required for approval, an applicant should have such documentation ready to be provided. An applicant should also be prepared to supply other documentation that the SBA may require to determine a business's ability to repay a loan.

*Disqualifications for Eligibility*

Borrowers should carefully review each page of the EIDL application. Please note that businesses must certify on the first page of the application that they are not engaged in the following activities or that the statement does not otherwise apply to them, or else the applicant is disqualified from obtaining an EIDL:

- Applicant is not engaged in any illegal activity (as defined by federal guidelines).
- No principal of the applicant with a fifty percent (50%) or greater ownership interest is more than sixty (60) days delinquent on child support obligations.
- Applicant is not an agricultural enterprise (e.g., farm), other than an aquaculture enterprise, agricultural cooperative, or nursery.

- Applicant does not present live performances of a prurient sexual nature or derive directly or indirectly more than de minimis gross revenue through the sale of products or services, or the presentation of any depictions or displays, of a prurient sexual nature.
- Applicant does not derive more than one-third of gross annual revenue from legal gambling activities.
- Applicant is not in the business of lobbying.
- Applicant cannot be a state, local, or municipal government entity and cannot be a member of Congress.

*When must applications for an EIDL be Processed?*

All applications for EIDLs must be processed by **December 31, 2020**.

## **CERTAIN TAX RELIEF PROVIDED BY THE CARES ACT**

In addition to making loans available to small businesses, the CARES Act has provided tax relief measures to both individuals and small businesses, some of which are summarized below.

### **Relief for Businesses:**

#### *Employee Retention Tax Credit*

The CARES Act makes certain employers eligible for a tax credit against their employment tax equal to fifty percent (50%) of “qualified wages,” available for the first \$10,000 of compensation, including health benefits, paid to an eligible employee. The tax credit is provided for wages paid or incurred from March 13, 2020 through December 31, 2020.

- For employers with more than 100 full-time employees, qualified wages are wages paid to employees when they are not working due to COVID-19 related circumstances.
- For employers with 100 or fewer employees, all employee wages qualify for this tax credit, whether the employer is open for business or subject to a shut-down order.

An employer is only eligible for this tax credit if the employer was carrying on a trade or business in 2020 and (a) the operation of that business is fully or partially suspended by the government, be it federal, state or local, due to COVID-19 circumstances, or (b) the employer’s business has seen a significant decline in gross revenue, fifty percent (50%) or less, than in the calendar quarter of the prior year and for so long until the business recovers to eighty percent (80%) of the prior year’s revenue.

**\*\*\*This Employee Retention Tax Credit is unavailable if the employer applies for and receives a PPP loan.**

*Deferment of Payroll Taxes*

The CARES Act permits for-profit and non-profit employers, and self-employed individuals, to defer the employer portion of payroll taxes with regard to their employees, amounting to the 6.2% portion of Social Security taxes. This deferral applies to payroll taxes for the period from the enactment of the CARES Act, March 27, 2020, to December 31, 2020. Fifty percent (50%) of deferred payroll taxes will be payable by December 31, 2021, while the remaining fifty percent (50%) of deferred payroll taxes will be payable by December 31, 2022.

**\*\*\*This Deferment of Payroll Taxes is unavailable if the employer receives forgiveness of a PPP loan.**

*Net Operating Loss (“NOL”) Modification*

The CARES Act permits NOLs from the taxable years 2018, 2019 and 2020 to be carried back for five (5) years, without regard to any taxable income limitation.

*Increase in Limit on Business Interest Expense*

For taxable years 2019 and 2020, businesses can now deduct business interest up to a limit of fifty percent (50%) of taxable income, which is an increase from the usual limit of thirty percent (30%). Please note that there are special rules for pass-through businesses.

**Relief for Individuals:**

*One-Time Rebate*

Perhaps one of the most touted features of the CARES Act is the one-time rebate that the federal government will provide to certain individual taxpayers. Single tax filers with an adjusted gross income of \$75,000 or less will receive a one-time rebate from the Internal Revenue Service (“IRS”) of \$1,200, and married joint tax filers with an adjusted gross income of \$150,000 or less will receive a one-time rebate of \$2,400. The IRS will reduce the one-time rebates by \$5 for each \$100 over the adjusted gross income limits set forth above, such that the IRS will fully phase-out the rebates for a single tax filer with an adjusted gross income of \$99,000 or more and for married joint tax filers with an adjusted gross income of \$198,000 or more.

*COVID-19 Impacted Withdrawals from IRAs*

The CARES Act has temporarily eliminated the ten percent (10%) early withdrawal penalty for withdrawals from qualified investment retirement accounts by individuals aged 59<sup>1/2</sup> and younger during 2020. However, these withdrawals must be for a COVID-19 related purpose, such as the individual withdrawer is diagnosed with COVID-19, the spouse or dependent of the

individual is diagnosed with COVID-19 or the individual is experiencing adverse financial consequences as a result of COVID-19 from any of the following:

- Quarantine, furlough, lay-off or reduced work hours;
- Inability to work due to lack of childcare due to COVID-19;
- Closing or reducing of the hours of a business owned or operated by the individual due to COVID-19; or
- Other factors as may be considered by the U.S. Department of the Treasury.

The individual withdrawer may repay any of the distributions in one or more payments during a three (3) year period beginning on the date after he or she received their distribution. The repayment of the distributions will be treated as a tax-free rollover without regard to any contribution cap. If the individual withdrawer has not repaid the distributions within the three (3) year period mentioned in the preceding sentence, the distributions will be treated as taxable income, but the amount can be included in income and taxed ratably over three years.

#### *Loans from Qualified Retirement Plans*

Individuals may now borrow up to \$100,000 from qualified retirement plans, so long as the loan amount is not greater than the plan balance, for 180 days from March 27, 2020. Any loans outstanding on or after March 27, 2020 with payment due in 2020 shall have their due date delayed by one (1) year.

#### *Waiver of Required Minimum Distributions*

For certain defined contribution plans, the CARES Act has waived, for calendar year 2020, the taking of required minimum distributions. If an individual has already taken a required minimum distribution in 2020, the distribution is not considered a required minimum distribution and can be rolled over within sixty (60) days of withdrawal (if it otherwise qualifies for rollover treatment).

## **FURTHER RESOURCES**

- Full text of the CARES Act:  
<https://www.congress.gov/bill/116th-congress/house-bill/748/text#toc-HCC079DAB5D724A3B9AE86D4E64A83BBE>
- Full text of the SBA's Interim Final Rule (Docket No. SBA-2020-0015):  
<https://home.treasury.gov/system/files/136/PPP--IFRN%20FINAL.pdf>

- Small Business Administration's COVID-19 Small Business Guidance & Loan Resources:  
<https://www.sba.gov/page/coronavirus-covid-19-small-business-guidance-loan-resources>
- U.S. Chamber of Commerce Summary of PPP Loans:  
[https://www.uschamber.com/sites/default/files/023595\\_comm\\_corona\\_virus\\_smallbiz\\_loan\\_final.pdf](https://www.uschamber.com/sites/default/files/023595_comm_corona_virus_smallbiz_loan_final.pdf).
- U.S. Department of the Treasury PPP Information Sheet for Borrowers:  
<https://home.treasury.gov/system/files/136/PPP--Fact-Sheet.pdf>
- Link to Sample PPP Loan Application:  
<https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Application-3-30-2020-v3.pdf>
- Link to EIDL Application:  
<https://covid19relief.sba.gov/#/>.

## FURTHER INFORMATION

If you have any questions or concerns about any of the information briefly summarized in this Client Bulletin or require any further information, please contact one of the following lawyers at Raines Feldman LLP:

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