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CARES Act Update

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CARES Act update: Audit risks and compliance insights for 2025

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Stay updated on PPP, PRF, and ERC developments, audit and enforcement risks, and compliance tips for businesses and healthcare providers in 2025.



What's the impact?

- The SBA and DOJ are engaged in PPP loan audits and enforcement—businesses must retain records and understand affiliate rules to minimize risk.
- HRSA is auditing PRF recipients, focusing on reporting errors.
- The IRS restarted ERC claims processing but pending legislation threatens to impose various retroactive rules to the program, creating uncertainty for businesses.

The Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 was a landmark piece of legislation designed to provide economic relief to businesses and healthcare providers near the onset of the COVID-19 pandemic. With ongoing audits, evolving guidance, and new legal developments, the CARES Act continues to affect businesses and providers that received relief and continue to wait for promised assistance. In this alert, we draw on our extensive experience

counseling and defending hundreds of clients to provide updates on three major CARES Act programs: the Paycheck Protection Program (PPP), the Provider Relief Fund (PRF), and the Employee Retention Credit (ERC).

Paycheck Protection Program (PPP): Ongoing audits, enforcement actions, and legal risks

PPP LOAN FORGIVENESS AND AUDIT ACTIVITY

The Paycheck Protection Program (PPP) was introduced to help small businesses stay afloat by offering forgivable loans to those who maintained their workforce during the pandemic. While most businesses have already received forgiveness for their PPP loans, recent developments indicate that the Small Business Administration (SBA) is ramping up its review and audit activities, even for loans previously considered low risk because they fall under the [\\$2 million "safe harbor" threshold](#) noted in SBA's May 13, 2020, FAQs.

Contrary to earlier expectations that loans under the safe harbor's \$2 million ceiling would be largely exempt from scrutiny, our experience and review of recent actions shows that the SBA and its enforcement agencies like the Department of Justice are now requesting documentation for numerous PPP loans, regardless of amount. Some lenders have reported receiving far ranging requests for loan files, signaling a comprehensive review effort. This means that businesses, even those with small loan amounts, should be prepared for potential audits and possibly civil and/or criminal enforcement action and ensure thorough documentation.

FALSE CLAIMS ACT INVESTIGATIONS AND STATUTE OF LIMITATIONS

The government continues to investigate FCA claims related to pandemic relief under the CARES Act. Many FCA investigations focus on the accuracy of the information submitted in the loan or forgiveness application, which the borrower needed to certify.

Importantly, in 2022, the statute of limitations for fraud claims related to PPP and Economic Injury Disaster Loans (EIDL) loans was extended to 10 years from the date the loan was received, used, or forgiven, whichever date is later. This long window means government enforcement actions can run into the next decade and highlights the importance of maintaining thorough records and documentation for all PPP-related transactions and eligibility determinations. In addition, this ongoing risk should be considered by buyers during due diligence in any sale transactions.

COMMON AUDIT AND ENFORCEMENT ISSUE: SBA AFFILIATE RULES

An issue arising more frequently in PPP audits or enforcement actions involves the SBA's complex affiliate rules. Eligibility for PPP loans depended on a business's size, which, under SBA rules, required aggregation of all affiliates. The definition of "affiliate" covers not only parent-

subsidiary relationships, but also entities under common management or ownership, or entities affiliated based on “identity of interest.” For example, two siblings owning separate businesses *in the same industry and geographic area* may be considered “affiliates” under the SBA rules. Many borrowers—and some legal and financial specialists on whose advice borrowers relied—may have misunderstood or misapplied these rules, which could lead to retroactive ineligibility and demands for repayment.

Provider Relief Fund (PRF): Heightened scrutiny and audit challenges

CONDITIONAL GRANTS AND REPORTING REQUIREMENTS

The Provider Relief Fund (PRF) was designed to support healthcare providers responding to COVID-19. Unlike PPP, PRF funds were distributed as conditional grants, with providers deemed to have accepted the terms and conditions if they did not return the funds within 30 days. Providers were permitted to use the funds to cover either increased expenses or lost revenues attributable to the pandemic. The PRF funds were released in tranches and recipients were required to complete detailed reporting to Health Resources and Services Administration (HRSA), depending on when they received the funds. HRSA’s reporting requirements sought detailed data on COVID-19 patients, employment, expenses, and lost revenues.

AUDIT INCREASES AND STRATEGIC CONSIDERATIONS FOR PROVIDERS

All reporting periods have now closed and HRSA has begun conducting audits through outside auditors hired for that purpose. In some cases, auditors have recommended [providers return funds](#) due to alleged noncompliance with terms and conditions or reporting errors. Notably, some audits have focused on small procedural technicalities, such as incomplete or incorrectly formatted reporting, rather than substantive eligibility issues. This raises questions of materiality and whether rescinding funds solely for reporting errors is consistent with the CARES Act, which did not expressly delegate power to HHS to rescind funds for alleged non-compliance with required reporting.

Importantly for providers, if HRSA determines that funds should be repaid, the agency may refer the debt to the government debt collection agency, the Centralized Receivables Service. This collection agency is empowered to engage in offsetting from other government funds such as reimbursements received through the Medicare/Medicaid programs.

Providers facing PRF audits should confer with legal counsel to help ensure that auditors consider all relevant data, such as lost revenues, that may offset any questioned expenses. Providers should also be aware that audits may continue for years, especially for those who received funds in later tranches. There is typically a very short window within which a provider can

appeal an adverse determination. It is critical to involve legal counsel to ensure that important deadlines are not missed and the best defense against recovery can be put forward.

Employee Retention Credit (ERC): IRS moratorium and legislative uncertainty

ERC ELIGIBILITY AND WIDESPREAD FRAUD CONCERNS

The Employee Retention Credit (ERC) offered a valuable tax credit to businesses that retained employees during the pandemic. However, the program became a target for widespread fraud and abuse by “promoters” who filed claims on behalf of ineligible businesses. The IRS, overwhelmed by fraudulent claims, imposed a [moratorium on processing new ERC claims](#) in September 2023 leaving many legitimate applicants in limbo while waiting for refunds. While the IRS ended the moratorium in August 2024, ERC processing has been sporadic since that time. In recent months there has been what appears to be an unofficial moratorium on processing ERC refunds for the third-quarter of 2021, so even those taxpayers who have finally received some ERC refunds are left with incomplete relief.

Some taxpayers, tired of waiting for refunds, have filed federal lawsuits under Section 7422 of the IRC attempting to force the IRS to pay the ERC refund. To date over 140 such complaints have been filed in federal courts across the country, with many taxpayers achieving positive results. We have been counseling clients on the pros and cons of such suits, including how to navigate applicable statutes of limitations, which vary depending on the circumstances.

POTENTIAL RETROACTIVE PROGRAM CHANGES

Congress is considering legislation that could retroactively end the ERC program, potentially invalidating claims that were fully valid under the law that existed at the time of filing. The “Big Beautiful Bill” (BBB) that recently passed the house contains a retroactive end date to the ERC program of January 31, 2024, among other significant changes to ERC. If this law passes, we expect litigation on constitutional grounds regarding various retroactive aspects to the BBB. This threat creates significant uncertainty for businesses awaiting refunds. The future of ERC claims may also hinge on direction received from the next IRS Commissioner once appointed. Nixon Peabody is prepared to guide clients through their options if they receive retroactive denials of ERC claims.

Navigating CARES Act developments

The CARES Act continues to shape the legal and financial outlook for businesses and healthcare providers. With increased audit activity, enforcement actions, and potential legislative changes, it is essential for recipients of PPP, PRF, and ERC funds and those still awaiting government relief to

maintain thorough documentation. Since the onset of the pandemic, Nixon Peabody has helped clients obtain and protect relief funds while ensuring compliance with complex and evolving federal requirements, and we are here to help clients navigate potential audits, enforcement actions, and appeals related to CARES Act funds.

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