



## ALERTS

### COVID-19, CARES Act Assistance Available To Nonprofit Organizations

March 30, 2020

## OVERVIEW

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act), an over \$2 trillion emergency economic relief bill enacted to provide immediate aid to individuals and businesses, in response to the coronavirus outbreak, includes important provisions applicable to nonprofit organizations.

Eligibility of a nonprofit organization under specific CARES Act programs or provisions will depend on its tax classification and the number of its employees:

- **501(c)(3) and 501(c)(19) Organizations With 500 or Fewer Employees** – A key component of the CARES Act is the provision of \$349 billion for small businesses through the Small Business Administration (SBA) 7(a) loan program entitled the Paycheck Protection Program (PPP), which will make loans available to eligible businesses, including 501(c)(3) and 501(c)(19) organizations, with 500 or fewer employees. The CARES Act also provides charitable giving incentives to 501(c)(3) organization donors by expanding the charitable deduction available to taxpayers for donations made in 2020.
- **All Nonprofit Organizations With 500 or Fewer Employees** – While nonprofit organizations that are not 501(c)(3) or 501(c)(19) organizations are ineligible for PPP loans, the CARES Act includes certain programs and provisions available to all nonprofits, including 501(c)(4)

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social welfare organizations and 501(c)(6) trade and professional associations, with fewer than 500 employees. These programs include the “Emergency EIDL Grants” program, the “Employer Payroll Tax Deferral” and, for those nonprofit organizations that do not receive Paycheck Protection Program loans, the “Employee Retention Credit” program.

- **Nonprofit Organizations With Between 500 to 10,000 Employees** – Under the CARES Act, larger nonprofit organizations with between 500 and 10,000 employees will not be eligible for Paycheck Protection Program loans, but may still benefit from other programs and provisions, including the CARES Act’s “Economic Stabilization Act” provisions, its “Employee Retention Credit” program and the “Employer Payroll Tax Deferral.”

## A. Paycheck Protection Program – Sections 1102 and 1106

The CARES Act provides \$349 billion for an emergency loan program providing loans of up to \$10 million for eligible small businesses and nonprofit organizations with 500 or fewer employees under the PPP.

Eligibility for Certain Nonprofits. Unlike other SBA programs that are limited to for-profit businesses, the PPP provisions defines eligible businesses to include nonprofit organizations organized under Section 501(c)(3) or 501(c)(19) of the Internal Revenue Code. Other nonprofit organizations are not eligible to participate in the PPP.

PPP Loan Amount. Under the PPP, 501(c)(3) and 501(c)(19) nonprofit organizations with 500 or fewer employees are eligible for SBA loans of up to \$10 million and expedited loans of up to \$1 million. The loan amount is the lesser of \$10 million or 2.5 times the average total monthly payroll costs (including benefits) from the 1-year period prior to the date of the loan application.

PPP Loan Uses. The PPP loans can only be used for the following types of expenses:

1. Payroll costs, including employee salaries and other compensation and benefits
2. Interest payments on debt obligations incurred before Feb. 15, 2020 (but not any payments or prepayments of principal)
3. Rent
4. Utilities

An important provision is that PPP loans cannot be used for the compensation of any employee in excess of an annual salary of \$100,000 or any employee with a principal place of residence outside the United States.

Loan Certifications and Terms. Borrowers will be required to make a good faith certification that 1) the PPP loan is necessary because of the uncertainty of current economic conditions, 2) the loan will be used to retain workers and maintain payroll or make mortgage, lease and utility payments, and 3) they have not applied for or received duplicative funds for the same purposes.

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Notably, 1) all fees for the PPP loans and all prepayment penalties are waived, 2) the PPP loans will not require borrowers to provide a personal guarantee or any loan collateral, and 3) borrowers will not be required to show that they are unable to obtain credit elsewhere.

The CARES Act provides that payments of principal, interest and fees under the PPP loans will be deferred for at least six months, and up to a year, and interest rates are capped at 4 percent per annum.

PPP Loan Forgiveness. Under the CARES Act, 501(c)(3) and 501(c)(19) nonprofit organizations are eligible for loan forgiveness of loan amounts made on qualifying payrolls costs, mortgage interest, rent obligations, and utility payments, during the eight-week period beginning on the date of the origination of the loan.

The amount of loan forgiveness will be reduced if the borrower reduces the number of its employees per month as compared to the prior year, or if the borrower reduces the pay of an employee by more than 25 percent as of the most recent full calendar quarter. The CARES Act provides an exception to the reduction if the borrower rehires employees and/or eliminates the reduction in salaries by June 30, 2020.

If a borrower receives PPP loan forgiveness, any remaining amount outstanding under the loan will have a maximum maturity date of 10 years after the application for loan forgiveness.

Any canceled indebtedness will not be included in the borrower's taxable income.

Loss of Eligibility Under Other CARES Act Programs. An organization participating in the PPP may become ineligible for other programs under the CARES Act. For example, an employer who receives a PPP loan will become ineligible for the employee retention credit program discussed below under "Employee Retention Credit." Also a borrower whose PPP loan is forgiven will not be eligible for this deferral of the payroll tax as discussed under "Delay of Payment of Employer Payroll Tax."

CARES Act Regulations and Guidance. The SBA is directed to issue regulations to carry out all of the CARES Act provisions described above within 15 days of its enactment, i.e., by April 11, 2020.

## **B. Emergency EIDL Grants – Section 1110**

The CARES Act provides an additional \$10 billion under SBA's existing Emergency Economic Injury Disaster Loans (EIDL) program for economic injuries resulting from COVID-19, waives certain program requirements, and creates emergency grants for eligible applicants, including nonprofits, with not more than 500 employees, enabling them to receive checks for \$10,000 within three days.

Eligibility for Nonprofits. All "private non-profit organizations" are eligible for both loans and grants under the EIDL program, including any entity exempt under Section 501(c), even if they would otherwise be excluded under the PPP.

For EIDLs made by Dec. 31, 2020, due to COVID-19, the SBA will waive the standard EIDL requirements that 1) the applicant provide a personal guarantee on loans of not more than \$200,000; 2) the applicant needs to be in business for one year prior to the disaster (except that borrower must have been in operation on Jan. 31, 2020); and (3) the applicant be

unable to obtain credit elsewhere. The SBA may also approve applicants for small dollar loans based solely on the basis of their credit score or other appropriate methods to determine their ability to repay.

Generally, EIDLs provide loans for nonprofits of up to \$2 million for working capital which will bear interest at 2.75 percent per annum.

Amount and Use of EIDL Grants. The emergency EIDL grant is an advance of \$10,000 to small businesses and nonprofits that apply for SBA's EIDL program. The advance will be provided within three days of applying for the EIDL loan, and applicants will not be required to repay the advance, even if they are denied for an EIDL. Emergency advance funds may be used for:

1. Paying sick leave to employees unable to work due to COVID-19
2. Maintaining payroll to retain employees
3. Meeting increased material costs
4. Making rent or mortgage payments
5. Repaying obligations that cannot be met due to revenue losses

### **C. Economic Stabilization Act (ESA) – Section 4003**

The CARES Act provides \$500 billion for loans, loan guarantees, and other investments to eligible businesses, including nonprofit organizations, states and municipalities related to losses incurred as a result of the coronavirus.

Under the ESA program, nonprofit organizations with between 500 and 10,000 employees are eligible for loans that will bear interest at not higher than 2 percent per annum and not require principal or interest payments for at least the first six months of the loan. An applicant for this program must make certain good faith certifications, including:

1. The uncertainty of economic conditions make the loan necessary to support its ongoing operations
2. Funds received will be used to retain at least 90 percent of its workforce, at full compensation and benefit levels, until Sept. 30, 2020
3. It intends to restore not less than 90 percent of its workforce that existed prior to Feb. 1, 2020, as well as restoring all compensation and benefit levels to its workers no later than four months after the termination date of the declared COVID-19 health emergency
4. It will not outsource or offshore jobs and will not abrogate collective bargaining agreements for the term of the loan or two years after completing repayment of the loan
5. It will remain neutral in any union organizing efforts for the term of the loan

### **D. Employee Retention Credit – Section 2301**

The CARES Act provides businesses, including nonprofits organized under 501(c), a payroll tax credit based on compensation paid to their employees during the COVID-19 crisis. It specifically provides a refundable payroll tax credit for 50 percent of qualified wages for the first

\$10,000 (i.e., up to \$5,000) per employee paid from March 13, 2020, through Dec. 31, 2020.

The credit is available to employers who were a going concern at the beginning of 2020, and whose 1) operations were fully or partially suspended due orders from a governmental authority due to the coronavirus, or 2) gross receipts declined by more than 50 percent when compared to the same calendar quarter in the prior year. The availability of the credit would continue until the employer's gross receipts in a calendar quarter exceed 80 percent of gross receipts for the same quarter in 2019.

For employers with 100 or fewer full-time employees, qualified wages include all employee wages, whether or not the employer's operations were suspended as a result of orders from a governmental authority due to the coronavirus. For employers with more than 100 full-time employees, qualified wages only include wages paid with respect to employees when they are not providing services as a result of orders from a governmental authority due to the coronavirus.

While all 501(c) organizations are eligible to take advantage of the Employee Retention Tax Credit, employers receiving a loan under the PPP will not be eligible for Employee Retention Tax Credit.

## **E. Employer Payroll Tax Deferral – Section 2302**

The CARES Act will permit employers, including nonprofit organizations, to defer payment of the employer's portion of federal payroll taxes they would otherwise be responsible for paying in 2020 with respect to their employees. The amount of the deferred payroll taxes may be paid over the following two years, with 50 percent to be paid by Dec. 31, 2021, and the remaining 50 percent to be paid by Dec. 31, 2022.

A borrower whose PPP loan is forgiven will not be eligible for this deferral of the employer payroll tax.

## **F. Emergency Unemployment Relief for Nonprofit Organizations – Section 2103**

The CARES Act includes a provision that is intended to allow certain nonprofit organizations to be reimbursed by states for one-half of their related unemployment costs for the period from March 13, 2020, through Dec. 31, 2020, to pay unemployment benefits.

## **G. Charitable Contributions – Sections 2204 and 2205**

The CARES Act provides individuals with up to an aggregate of \$300 in deductions for cash donations made in 2020 to charitable organizations. The act also lifts the existing cap on annual contributions for individuals, raising it from 60 percent of adjusted gross income to 100 percent. For corporations, the act raises the annual limit from 10 percent to 25 percent.

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