UPDATE: CARES Act Assistance for Nonprofit Employers: Paycheck Protection Loans and Loan Forgiveness

April 3, 2020

On March 27, the Coronavirus Aid, Relief, and Economic Security ("CARES") Act was signed into law. This Alert updates and supersedes the March 30, 2020 Alert on Paycheck Protection Loans and the Loan Forgiveness program adding information from recently released guidance on how the programs will be implemented.

As of April 3, 2020, nonprofits can apply for a Paycheck Protection Loan from an existing Small Business Administration lender. The loan period is open through June 30, 2020. Applicants may only apply for one loan during that period, and the Treasury Department urges applicants to apply for the maximum amount to which they are entitled.

Paycheck Protection Loan Program[1]

- Which nonprofits are eligible for this program? Organizations exempt under Internal Revenue Code sections 501(c)(3) and 501(c)(19)(veterans organizations), so long as they employ no more than 500 employees and were in operation on February 15, 2020 and had employees for whom they paid salaries and payroll taxes.[2]

- How much can eligible nonprofits borrow? Up to 2.5 times their average monthly payroll amount for the preceding 12 months, capped at $10 million. Payroll costs include amounts paid to U.S.-resident employees (including salary, amounts paid for separation or dismissal, state and local taxes, and benefits). Annual compensation in excess of $100,000 for any employee is excluded.

- What types of certification are required? Principally, that as a result of current economic conditions the requested loan is needed to support ongoing operations and that the funds will be used to retain workers and maintain payroll or to make mortgage payments, lease payments, or utility payments. Applicants are not required to demonstrate that they cannot obtain credit elsewhere; nor is a personal guarantee of the loan amount required.

- What can borrowed funds be used for? To pay for expenses included in the calculation of payroll costs (described above) plus certain group health benefits, mortgage interest, rent, and utilities.

- What are terms of repayment? Loan payments are deferred for six months (interest will accrue). Lenders cannot impose a prepayment penalty. (No payments will be due on amounts forgiven.) The term is two years, and the interest rate is 1 percent.

[1] CARES Act § 1102.

[2] Both full-time and part-time employees of the nonprofit and its affiliated entities count in calculating the 500. Affiliation generally exists when one entity has the power to control another or a third entity controls both.

- How does a nonprofit apply? Nonprofits can apply to Small Business Administration-approved lenders for Paycheck Protection Loans beginning April 3, 2020 through June 30, 2020, although loans will be made on a first-come-first-served basis. Applicants will need to provide to their lenders SBA Form 2483 (Paycheck Protection Program Application Form) and payroll documentation as is necessary to establish eligibility such as payroll processor records, payroll tax filings, or for borrowers that do not have any such documentation, the borrower must provide other supporting documentation, such as bank records, sufficient to demonstrate the qualifying payroll amount. A lender does not need to conduct any verification if the borrower submits documentation supporting its request for loan forgiveness and attests that it has accurately verified the payments for eligible costs.

Loan Forgiveness Program[3]

- Can the entire Paycheck Protection Loan amount be forgiven? Yes, provided the nonprofit incurs sufficient qualifying expenses during the eight-week period following origination of the loan and satisfies employee retention and compensation requirements.

- What is the maximum forgivable amount? The amount equal to payroll costs and certain health benefits and mortgage interest, rent, and utilities for obligations incurred before February 15, 2020 over the eight-week period following the loan origination date[4]. However, not more than 25 percent of the loan amount forgiven may be spent on non-payroll costs. The SBA will release additional guidance on loan forgiveness.

- What happens if a nonprofit releases employees or cuts compensation?

    - Reduction in employees. Generally, the amount of a Payroll Protection Loan that may be forgiven is reduced proportionally if the nonprofit employed fewer employees during the eight weeks following the loan origination date than it employed between either February 15, 2019 and June 30, 2019 or between January 1, 2020 and February 29, 2020 (at the borrower's election).

    - Impact of reduction in compensation. Generally, the amount forgiven will be reduced dollar for dollar by the amount by which compensation for any employee who earned less than $100,000 in 2019 is reduced below 75 percent of what that employee earned in the last full quarter prior to the loan origination date.

    - Exception. Nonprofits will be eligible for the maximum forgivable loan amount even with a reduction in employees or compensation if:

        - a reduction in full-time employees occurs between February 15, 2020 and April 26, 2020 (30 days after enactment of the CARES Act) and the reduction is eliminated no later than June 30, 2020; and

[3] CARES Act § 1106.

[4] In addition, the amount of any emergency grant (up to $10,000) received under the Economic Injury Disaster Loan program will be subtracted from the maximum forgivable loan amount. We will cover the EIDL program in our next alert.

- a reduction in salary or wages occurs between February 15, 2020 and April 26, 2020 and is eliminated no later than June 30, 2020.

- How does a nonprofit apply to have a loan forgiven? The nonprofit will apply to the lender servicing the loan, and the lender must make a decision on loan forgiveness within 60 days of receiving the application.

For more information on this Alert or other CARES Act provisions, please contact a member of Caplin & Drysdale's Exempt Organizations team.

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