CARES Act Assistance for Nonprofit Employers: Loans, Emergency Grants and Other Assistance

April 3, 2020

On March 27, the Coronavirus Aid, Relief, and Economic Security ("CARES") Act was signed into law. This Alert discusses two types of loans available to nonprofits under the Act: Economic Stabilization Fund loans to nonprofits with more than 500 employees and Economic Injury Disaster Loans available to all nonprofits that are paired with Emergency Grants. It also discusses two programs tied to payroll taxes: a payroll tax credit and payroll tax deferral. Finally, it discusses assistance for charities that reimburse states for unemployment claims.

A previous Alert discussed the Paycheck Protection Loan program, which allows certain nonprofits with no more than 500 employees to borrow funds on favorable terms, and the related rules for forgiveness of some or all of the borrowed amount.

Economic Stabilization Fund Loans[1]

- Which nonprofits are eligible for Economic Stabilization Fund ("ESF") Loans? U.S. nonprofit organizations with between 500 and 10,000 employees. (Organizations that do not qualify for Paycheck Protection Loans may qualify for ESF loans.)
- How does this program relate to the Paycheck Protection Loan ("PPL") program? Entities that are eligible to apply for PPLs (501(c)(3)s with 500 or fewer employees) are not eligible to apply for ESF loans.
- 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 90% of workforce at full compensation and benefits until September 30, 2020. The borrower must also certify that it will restore not less than 90% of the workforce in place as of February 1, 2020, and restore all compensation and benefits to those workers, no later than 4 months after termination of the COVID-19 public health emergency. In addition, recipients must agree to limits on compensation and severance paid to certain employees until one year after the loan is repaid.
- What are terms of repayment? The interest rate is capped at 2 percent, with no payments due for at least six months. Loan forgiveness is not available for ESF loans.
- How does a nonprofit apply? Nonprofits will apply directly to lenders. The Treasury Department will release information on applications and minimum qualifications by April 6, 2020.

[1] CARES Act § 4003.

Economic Injury Disaster Loans and Emergency Grants[2]

The CARES Act changes some of terms of Economic Injury Disaster Loan ("EIDL") program already available to nonprofits under the Small Business Act and also provides for advances (*i.e.*, emergency grants) to EIDL applicants.

- Which nonprofits are eligible for EIDLs? "Private nonprofit organizations" that were operating on January 31, 2020 are eligible to apply for EIDLs.[3]
- How much can eligible nonprofits borrow? Up to $2 million.
- What types of certification are required? Applicants are not required to demonstrate that they cannot obtain credit elsewhere; nor is a personal guarantee of the loan amount required for loans up to $200,000.
- What is an emergency grant? It is an advance payment on an EIDL. Nonprofits that apply for a loan in response to COVID-19 may request an advance payment of not more than $10,000. The advance is to be paid to the applicant with three days of receipt of the application.
- When does a nonprofit have to repay the advance? The advance payment does not need to be repaid, even if the applicant is denied or ultimately refuses to accept an EIDL. Therefore, the advanced amount is a grant. (Note, however, that the amount advanced under the EIDL is subtracted from any amount forgiven under the Loan Forgiveness Program for PPLs.)
- How does this program relate to the PPL program? Nonprofits eligible to receive PPLs are also eligible for EIDLs. EIDL applicants may transfer into or be approved for a PPL and apply for forgiveness of a PPL. The amount of an advance received under the EIDL program will be subtracted from any forgiveness granted for PPLs.
- What can borrowed funds be used for? EIDLs may be used to pay costs due to COVID-19, including sick leave, maintaining payroll to retain employees, meeting certain cost increases, making rent or mortgage payments or making debt payments. EIDLs may not be used to cover the same specific costs covered by a PPL.
- What are terms of repayment? The interest rate for non-profits is 2.75%. Loan forgiveness is not available for EIDLs.

[2] CARES Act § 1110.

[3] Private nonprofit organizations include entities recognized by the IRS as exempt under sections 501(c) (organizations described in section 501(a)), 501(d) (religious and apostolic organizations), and (e)(cooperative hospital service organizations) and entities organized or doing business as nonprofits under state law or faith-based organizations.

- How does a nonprofit apply? At the application website: https://covid19relief.sba.gov/#/.

Employee Retention Tax Credit for Employers Subject to Closure Due to Covid-19[4]

- Who is eligible? All nonprofit employers that, in any quarter between March 12 and December 31, 2020, fully or partially suspended operations due to a government order concerning COVID-19 or had a significant decline in gross receipts when compared to the same quarter in 2019.

- What benefits are available? A credit against federal employment taxes equal to 50% of eligible wages with respect to each employee up to a total of $10,000 (a $5,000 maximum credit per employee). Eligible wages are those paid to employees who are not providing services due to a COVID-19 order. In addition, eligible wages include all wages paid by employers with no more than 100 full-time employees that have a significant decline in gross receipts.

- How does this program relate to the PPL program? Recipients of PPLs are not eligible for the tax credit.

- How do eligible organizations qualify? Eligible organizations can be immediately reimbursed for the credit by reducing the amount of withheld payroll taxes that they are required to deposit with the Treasury.

Delay of Payment of Employer Payroll Tax[5]

- Who is eligible? All employers.

- What benefits are available? Nonprofits may defer payment of the employer share of OASDI taxes (6.2% of employee compensation) normally due for the period from March 27, 2020 to December 31, 2020. Payment of the deferred amounts will be due in two equal parts by the end of 2021 and 2022, respectively.

- How does this program relate to the PPL program? Payroll tax deferral is not available to recipients of forgiveness of PPLs.

- How do employers qualify? The Treasury Department will release guidance.

Emergency Unemployment Relief for Nonprofits[6]

- Who can benefit? A 501(c)(3) organization that satisfies its unemployment obligations by reimbursing the state for claims paid rather by making regular unemployment tax contributions to the state.

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[4] CARES Act § 2301.
[5] CARES Act § 2302.
[6] CARES Act § 2103.

- What benefits are available? The U.S. government will reimburse states for one half of the unemployment compensation paid to former employees of 501(c)(3) organizations between March 13, 2020 and December 31, 2020. States are required to use the federal funds to reimburse 501(c)(3) employers for half of the amounts paid to the state for such claims.

- How does this program relate to the PPL program? Participation in the PPL does not disqualify nonprofits from receiving Emergency Unemployment Relief.

- How does a nonprofit apply? Each state will administer the reimbursement program in accordance with guidance to be issued by the U.S. Department of Labor.

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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