NONPROFIT ORGANIZATIONS

CARES ACT PASSES: RELIEF APPLICABLE TO NONPROFIT ORGANIZATIONS

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On March 27, 2020, President Trump signed The Coronavirus Aid, Relief and Economic Security Act or the CARES Act, which provides significant relief, including $350 billion available to organizations through forgivable federally-backed loans. The loans and other proposed relief apply to nonprofit organizations with 500 or fewer employees.

How Loans Are Made

For purposes of making loans under the CARES Act, certain lenders shall have the delegated authority to make and approve covered loans. To determine a business’s eligibility, the CARES Act requires lenders to certify that “the uncertainty of the current economic conditions makes necessary the loan request to support the ongoing operations of the [business].”

A prior version of the CARES Act prohibited organizations receiving Medicaid funding from participating in the Act. This was removed in the final Act. Only 501(c)(3) organizations are eligible.

Loans provided will be guaranteed 100% by the federal government through December 31, 2020. No collateral is required. The interest rate on the loans may not exceed 4 percent. Loans are subject to deferral for a period of 6 months to 1 year. Most significantly, they may be forgiven as described below.

Loans Amounts and Uses

The maximum loan amount available is the lesser of 2.5 times the applicant’s average total monthly payroll costs incurred during the 1-year period before the date on which the loan is made (with adjustments for seasonal businesses and other special case situations) or $10,000,000. Payroll costs include, but are not limited to, salary, wage, commissions or similar compensation as well as payments for vacation, parental or sick leave and payments required for the provisions of group health care benefits, including insurance premium and retirement benefits. Payroll costs do not include: (i) compensation of individual employees in excess of an annual salary of $100,000 (prorated for the period of February 15, 2020 through June 30, 2020), (ii) certain taxes imposed or withheld during the covered period, (iii) compensation of employees whose principal place of residence is outside of the United States, and (iv) qualified sick leave or family leave for which a credit is allowable under the Families First Coronavirus Response Act.

Recipients may use funds received through covered loans for: (i) payroll costs, (ii) costs related to the continuation of health care benefits, (iii) employee salaries, commissions or similar compensations, (iv) payments of interest on mortgage obligations, (v) rent, (vi) utilities and (vii) interest on any debt obligations incurred before the covered period.

Businesses may only receive both the Economic Injury Disaster Loan (“EIDL”) previously made available and discussed in our recent LEGALcurrent and a covered loan under section 7(a) in limited circumstances. For example, if the EIDL was made before February 15, 2020 and was made for a purpose other than paying payroll costs or other obligations permitted under the section 7(a) loans.

Lenders must collect no fee or reduce fees to the maximum extent possible. The CARES Act provides that the lender must make a decision within 15 days of receipt of an application from an eligible recipient (provided all required financial information has been provided to lender).
Loan Forgiveness
Critically, the CARES Act provides a process by which borrowers would be eligible for loan forgiveness in an amount equal to the amount spent by the borrower during the eight-week period beginning on the date of the origination of the covered loan on any of the following costs: (i) payroll costs (determined with the same limitations noted above), (ii) interest payments on mortgages incurred prior to February 15, 2020, (iii) rent payments on any lease in force prior to February 15, 2020, and (iv) utility payments for which service began prior to February 15, 2020. The amount forgiven is reduced in proportion to any reduction in employees retained compared to the prior year (adjusted for seasonal employers) and to the reduction in salary or compensation of employees. Employers are not penalized for initially reduced payroll that reflects workers that were previously laid off but rehired.

Eligible businesses interested in utilizing the loan program under the CARES Act should contact their existing lender or banking partners. Banks will still be required to complete “know your customer” diligence and this will help shorten the time required to do so.

Payroll Tax Deferral
Nonprofit organizations are also eligible for payroll tax deferral. The employer’s share of payroll tax may be deferred with payments due interest-free in two installments on December 31, 2021 and December 31, 2022. Critically, organizations with loans forgiven under the CARES Act are not eligible.

Employee Retention Credit
Nonprofit organizations are also eligible for a refundable credit against employer’s share of Social Security taxes. This is available for employers whose operations were suspended as a result of coronavirus or quarterly receipts are less than 50% of receipts in same quarter of 2019. The credit is capped at $10,000 per employee. Critically, as with the payroll tax deferral loans forgiven under the CARES Act are not eligible.

If you would like more information on the Paycheck Protection Loan, the loan forgiveness programs, or other aspects of the CARES Act, please contact a member of our Nonprofit Organizations practice group at 585.232.6500, 716.853.1616, or visit www.hselaw.com.

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