

NON-PROFIT ORGANIZATIONS AND THE CARES ACT: CAN NON-PROFITS TAKE ADVANTAGE OF THE FINANCIAL ASSISTANCE PROGRAMS?

Hodgson Russ Tax-Exempt Organizations Alert
April 3, 2020

Like for-profit businesses, non-profit organizations are struggling with many of the same financial difficulties during this uncertain time. Some non-profits have several employees and largely depend on grants or donations to stay afloat. Some have hundreds of employees and provide programs or other services, many of which may or may not be considered essential services under the various state-mandated Coronavirus lockdown directives. In either case, many non-profits are facing financial hardship and uncertainty in the coming months. Financial relief for non-profit organizations is a critical component of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). This alert provides an overview of the relief programs available to non-profit organizations under the CARES Act.

Paycheck Protection Program

The Paycheck Protection Program is a Small Business Administration (SBA) loan that helps businesses keep their workforce employed during the Coronavirus (COVID-19) crisis. Historically, non-profits have not been eligible for loans under the SBA existing loan guaranty program; however, the Paycheck Protection Program expands the availability of SBA loans to non-profits (among others) and liberalizes certain requirements for such organizations. Under the Paycheck Protection Program, certain non-profits are eligible to receive a loan to be used for the payment of eligible payroll costs, and the CARES Act even sets forth the possibility for these loans to be forgiven under certain circumstances.

Under the Paycheck Protection Program, the maximum loan amount is the lesser of \$10 million or an amount calculated using a payroll-based formula specified in the CARES Act. Please see our prior alert [here](#) for a full description of the Paycheck Protection Program, the maximum loan amount formula and the terms and conditions for loan forgiveness.

In addition, the SBA made available its Interim Final Rule for the Paycheck Protection Program on April 2, 2020, which is available [here](#).

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Are all types of non-profits eligible under the Paycheck Protection Program?

No. Notably this program is generally only available to non-profits that are tax-exempt under Section 501(c)(3) and tax-exempt veterans organizations under Section 501(c)(19) of the Internal Revenue Code. In addition, to be eligible, these non-profits must have fewer than 500 employees existing on or before March 1, 2020. The program is not available to other nonprofit organizations, such as 501(c)(4) social welfare organizations, 501(c)(6) business leagues, 501(c)(7) social clubs, each of which would not be eligible under this program.

What can I do now? When to apply?

Call your financial institution to get the process started. If your lender is not an SBA-approved lender, your local SBA District Office can provide a list of approved lenders. Click [here](#) to find the district office closest to your location.

While the SBA has issued a model loan application (available [here](#)), each lender is likely to develop its own version of the loan application, and may subject applicants to further certification and eligibility requirements.

The Paycheck Protection Program is authorized to run through **June 30, 2020**, or until funds made available for this purpose are exhausted. Lenders will start processing applications on **April 3, 2020**. *Funds will be distributed on a first come, first served basis until the lender runs out of the funds.*

Can I apply for more than one loan under the Paycheck Protection Program?

No. No eligible borrower may receive more than one loan under the Paycheck Protection Program. This means that if your non-profit organization applies for a loan, it should consider applying for the maximum amount. While the CARES Act does not expressly provide that each eligible borrower may receive only one loan, the Interim Final Rule makes it clear that because all loans under the Paycheck Protection Program must be made on or before June 30, 2020, a one loan per borrower limitation is necessary to help ensure that as many eligible borrowers as possible may obtain a loan.

Emergency Injury Disaster Loans (EIDLs)

Certain non-profit organizations may be eligible for Economic Injury Disaster Loans (EIDLs) under section 7(b)(2) of the SBA Act. The SBA's Economic Injury Disaster Loan provides vital economic support to non-profits (among others) to help overcome the temporary loss of revenue they are experiencing as a result of the Coronavirus (COVID-19) pandemic. This loan program provides working capital loans of up to \$2 million that can provide vital economic support to small businesses to help overcome the temporary loss of revenue they are experiencing. In addition, applicants may request an advance of up to \$10,000 from the SBA. The advance will be distributed within three (3) days and applicants are not required to repay this advance. The interest rate on the EIDL loans is 3.75% for small businesses and 2.75% for nonprofits.

The EIDL program is for any small business with less than 500 employees, including any "private non-profit organization", which includes any entity exempt under section 501(c), including 501(c)(6) business leagues and trade associations, advocacy organizations, and 501(c)(7) social clubs otherwise excluded under the Payroll Protection Program, in addition to certain organizations tax-exempt under 501(d) (apostolic organizations) or 501(e) (cooperative hospital service organizations) and faith-based organizations.

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The SBA sample EIDL loan application is available [here](#).

Lenders may begin processing loan applications as soon as **April 3, 2020**.

If my non-profit receives loan forgiveness under the Paycheck Protection Program, does that affect my eligibility for other employer relief benefits?

Yes.

- *EIDL*: Organizations cannot receive loans under both the Paycheck Protection Program and the Emergency Injury Disaster Loans (EIDL) program, unless the loan applications are for different purposes (i.e. personnel and rent costs under the Paycheck Protection Program and other operating expenses for the EIDL).
- *Employment Tax Benefits; Payroll Tax Deferral*: Non-profit organizations can defer the payment of the employer portion of the Social Security payroll tax until year-end. The deferred amount would be paid equally over the two succeeding years (2021 and 2022). See our prior alert [here](#). If an organization receives loan forgiveness under the **Paycheck Protection Program**, that organization will not be able to take advantage of this deferral of payment.
- *Employee Retention Payroll Tax Credit*: Under CARES Act Section 2301, certain employers may receive a refundable payroll tax credit for 50 percent of qualified wages paid or incurred by employers to employees from March 13, 2020 through December 31, 2020. The credit is limited to the first \$10,000 of compensation, including health benefits, paid to an employee during such period. See our prior alert [here](#). If an organization opts to receive this Employee Retention Payroll Tax Credit, it must be taken in lieu of the SBA loan Paycheck Protection Program.

What about larger non-profits?

The Treasury Secretary is authorized in the CARES Act specifically to implement a program or facility for direct loans to larger qualifying organizations, including non-profits that have between 500 and 10,000 employees.

The CARES Act states that the Treasury Secretary will “endeavor” to create the mid-size-loan program; it does not require the creation of the program. If such lending program is created, such larger organizations may be eligible for loans with a low-interest rate not higher than 2% with no interest or payments for the first six months; however, loan forgiveness will not be available. To be eligible, applicants would be required to certify in good faith to the following, among other certifications: (i) that the uncertainty of economic conditions as of the date of its application makes the loan necessary for ongoing operations; (ii) that they are domiciled in the United States with significant operations and employees located in the United States; (iii) that the business is not a debtor in a bankruptcy proceeding. In addition, the borrower is required to use the loan proceeds to retain at least 90 percent of its workforce at full compensation and benefits until September 30, 2020, and must certify it intends to restore not less than 90% of its February 1, 2020 workforce, and to restore all compensation and benefits to such employees, no later than 4 months after the end of the COVID-19 emergency declaration.

Are there any direct funding provisions in the CARES Act?

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The CARES Act provides direct funding for various organizations, many of which directly support the efforts of non-profits, including hospitals, Head Start, the Supplemental Nutrition Assistance Program, legal service providers, and others.

Other Federal Tax Updates

As a reminder, we have previously posted various alerts covering certain tax changes enacted in response to the Coronavirus pandemic. The contents of those alerts are briefly summarized below.

- *The Families First Coronavirus Response Act* (“FFCRA”) contained a variety of payroll tax credits and sick leave tax credits available to certain employers, including some non-profit employers. Specifically, the Act provides for a 100 percent credit against certain employer’s share of FICA and Medicare for each affected employee and a quarterly tax credit equal to 100 percent of the amount of sick leave wages certain employers pay. For more detailed information regarding the FFCRA tax incentives outlined above, please see our prior alert here.
- *The CARES Act contains numerous tax changes that are applicable to tax-exempt organizations/non-profits.* Most notably, the CARES Act makes changes to the charitable deduction rules. Specifically, two important changes were implemented. First, the CARES Act provides that individuals can make charitable contributions and get a deduction for this contribution, even if the individual does not itemize. While there are certain restrictions (the contribution must be made in cash, the new deduction cannot exceed \$300 and is only available to taxpayers who do not itemize, etc.), this new law represents a significant change from the previous rules. Second, the CARES Act increases the 2020 charitable cash contribution deduction limit to 100% of the taxpayer’s adjusted gross income (AGI) for 2020 (with any excess amount eligible for a carry forward of 5 years), as opposed to the previously applicable 60% AGI limit. For corporate taxpayers the CARES Act increases the 2020 charitable contribution deduction limit to 25% of taxable income, as opposed to the previously applicable 10% limit. Our full update on the CARES Act tax provisions affecting non-profits can be found [here](#).

Please note that the situation surrounding COVID-19 is evolving and that the subject matter discussed in these publications may change on a daily basis.

We will continue to monitor this relief and publish updates as information becomes available. Please contact Marla Weiss (716.848.1203) or Patricia Sandison (518.433.2427) for any questions you may have regarding how this relief may impact your organization.

Please check our Coronavirus Resource Center and our CARES Act page to access information related to both of these rapidly evolving topics.

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