



THE CARES ACT PROVIDES RELIEF *for* NONPROFITS

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On March 27, President Trump signed the Coronavirus Aid, Relief and Economic Security Act (the “CARES Act”) passed by the U.S. House of Representatives earlier that day. The legislation provides a \$2 trillion relief package for U.S. businesses and individuals impacted by the coronavirus outbreak and resulting business and workforce interruptions.

Those interruptions are also having a profound impact on nonprofit charitable organizations, as fundraising events are postponed or cancelled, performing and visual arts events are cancelled and charitable giving is redirected toward health and emergency needs. The CARES Act contains a number of important provisions for nonprofit organizations and their employees.

Paycheck Protection Program (SBA Section 7(a) Emergency Loans)

Paycheck Protection Program (PPP) – The PPP provides up to \$349 billion in 100 percent federally guaranteed loans to eligible entities, with such loans being subject to forgiveness under certain circumstances. Nonprofit organizations under section 501(c)(3) are included among those eligible to apply for loans. The loans will be issued by financial institutions that are approved for the Small Business Administration 7(a) loan program. The loans are non-recourse, no personal guarantee required except if using the loans for purposes other than those allowed. Final rates (which are not to exceed 4%), underwriting standards and other terms and conditions are to be determined.

Eligible Businesses – To qualify, eligible entities, including nonprofits, must not have more than 500 total full-time and part-time employees (or if greater, the number of employees under SBA size standards). In

determining the number of employees that an organization has, the SBA affiliation rules would apply. (See 13 CFR § 121.103.)

Allowable Use of Funds – The loans may be used for a variety of purposes, including eligible payroll costs, rent, utilities, mortgage interest (not principal), and other debt obligations incurred during the “covered period,” which is between February 15, 2020 through June 30, 2020, and interest on debt existing prior to February 15, 2020.

Eligible Payroll Costs – Payroll costs include salaries, wages, cash, tips, severance, group healthcare benefits (including insurance premiums), retirement benefits, state or local payroll taxes, compensation paid to independent contractors. Payroll costs also include paid sick, medical, or family leave, and costs related to the continuation of group healthcare and retirement benefits during those periods of leave for which the employer did not receive a payroll tax credit pursuant to the Families First Coronavirus Response Act. Payroll costs exclude compensation paid in excess of \$100,000; federal taxes; compensation paid employees who principally reside outside of the United States; and sick leave and family leave wages for which the employer received a payroll tax credit pursuant to the Families First Coronavirus Response Act.

Loan Duration and Amount – Maximum maturity of 10 years, the amount to be the lesser of (a) \$10 million, or (b) the sum of the borrower’s total average monthly payroll costs

incurred during the one-year period before the date on which the loan originates (excluding comp above \$100K/employee) multiplied by 2.5, plus any Emergency Economic Injury Disaster Loans received after January 31, 2020, that are refinanced under the CARES Act. The calculations for subsection (b) are different for seasonal employers and new employers not in business between February 15, 2019 and July 30, 2019. Please contact a Waller representative if this may apply to your business.

Loan Forgiveness – Under the PPP, a business is eligible for forgiveness of indebtedness equal to the amount actually paid for payroll costs, salaries, benefits, rent, utilities and mortgage interest, and other allowable uses during the eight weeks following disbursement of the loan. Borrowers must apply for forgiveness with the lender servicing the loan. Any portion of the loan that is forgiven will be excluded from gross income. If the borrower reduces salaries in excess of 25%, or reduces number of employees, or both during the covered period, then the loan amount available for forgiveness is reduced proportionally. But, if a small business borrower rehires or ends the salary reduction before June 30, 2020, then the small business has eliminated the layoff or salary cuts and its loan amount eligible for forgiveness is not affected.

Emergency Economic Injury Disaster Loans (Businesses with not more than 500 Employees)

The CARES Act allows the U.S. Small Business Administration (SBA) to offer Emergency Economic Injury Disaster Loans (EIDL) loans to eligible businesses based solely on an applicant's credit score or an appropriate alternative method for determining applicant's ability to repay. Establishes an Emergency Grant to allow an eligible entity who has applied for an EIDL loan to request an advance on that loan, of not more than \$10,000, which the SBA must distribute within 3 days. The applicant shall not be required to repay advance payments, even if subsequently denied for an EIDL loan. In advance of disbursing the advance

payment, the SBA must verify that the entity has applied for an EIDL loan. Unlike the SBA 7(a) loan program (PPP loans), these loans are not eligible for forgiveness.

Allowable Use of Funds – Outlines that advance payment may be used for providing paid sick leave to employees, maintaining payroll, meeting increased costs to obtain materials, making rent or mortgage payments, and repaying obligations that cannot be met due to revenue losses.

Eligible Entities – Defines an eligible entity to include businesses, including private nonprofits, startups, cooperatives, and ESOPs with fewer than 500 employees or any individual operating as a sole proprietor or an independent contractor. The SBA shall waive any personal guarantee on advances and loans made in response to COVID-19 before December 31, 2020, that are below \$200,000. The Act also waives the requirement that an applicant needs to have been in business for the 1-year period before the disaster and the requirement that the applicant be unable to obtain credit elsewhere.

Loans to Large Organizations (Businesses with more than 500 Employees)

The CARES Act provides up to \$454 billion in financial assistance to businesses, including nonprofits. Pursuant to the Act, the Secretary of the Treasury is granted the authority to make loans, loan guarantees, and other investments in support of eligible businesses, states and municipalities. Unlike the SBA 7(a) loan program (PPP loans), these loans cannot be forgiven. The Secretary is authorized to implement a special facility under Section 13(3) of the Federal Reserve Act targeted specifically towards businesses, *including, to the extent practical,*

nonprofit organizations, between 500 and 10,000 employees. The funding will be provided to banks and other lenders that make direct loans to eligible businesses. The loans will be subject to an annualized interest rate, not higher than 2% per annum. For a minimum of 6 months from the date of the loan, no principal or interest on the loan shall be due and payable.

The direct loans to the end borrower pursuant to this special 13(3) facility will be subject to additional loan criteria and obligations on the recipient, including, but not limited to:

- The funds will be used to retain at least 90 percent of the recipient's workforce at full compensation and benefits until September 30, 2020;
- The recipient intends to restore at least 90 percent of the recipient's workforce that existed as of February 1, 2020, and to restore all compensation and benefits to their workforce no later than 4 months after the termination of the public health emergency;
- The recipient is not a debtor in a bankruptcy proceeding; and
- The recipient will not abrogate existing collective bargaining agreements for the term of the loan plus an additional two years after repayment of the loan.

Employee Retention Credit under the CARES Act

The CARES Act provides that eligible employers, including nonprofit employers, can obtain a credit against employment taxes equal to 50% of the qualified wages paid to employees since March 12, 2020 during any period in which the employer was subject to a full or partial shutdown due to government order or any quarter in which the employer experiences at least a 50% drop in gross receipts from the same quarter of 2019. Qualified wages of an employer with more than 100 employees are limited to wages (including qualified

health plan expenses) paid to employees who are not providing services due to the full or partial shutdown or drop in gross receipts. Qualified wages of an employer with 100 employees or fewer include all wages (including qualified health plan expenses) paid to employees during the shutdown period or quarter not just those who are not providing services. Neither the employer nor the employee is required to otherwise be directly impacted by COVID-19. The amount of wages eligible for the credit is calculated for each separate employee and is capped at an aggregate of \$10,000 for all quarters (for a maximum \$5,000 credit per employee). The compensation of self-employed individuals, including partners and proprietors, are not included in wages. The statute appears to contemplate that the credit would be claimed on a quarterly basis. However, the IRS has published draft Form 7200, which provides in the instructions that an eligible employer should retain withheld federal income tax, the employee's share of social security and Medicare taxes and the employer's share of social security and Medicare taxes up to the amount of the employer's employee retention credit rather than depositing these taxes with the IRS. An employer whose retention tax credit exceeds the retained taxes, would request an advance of the excess by filing Form 7200 with the IRS. Employers will be required to reconcile the advanced credits and reduced deposits on their employment tax returns.

There are several requirements defining qualified employers, qualified wages and qualified employees. There are no size limitations on the employer. As indicated above, the employer must have a partial or complete suspension of business due to a government order or a 50% drop in gross receipts from the same quarter of 2019 to be a qualified employer.

The employer may be a taxable business or a Code Section 501(c) organization exempt from tax under Code Section 501(a). Employees are qualified unless (i) they directly or indirectly or through attribution are 50% or more owners of the business or (ii) already covered by certain other tax credits providing benefits to the employer. As indicated above, qualified wages means wages paid after March 12, 2020 and before January 1, 2021 to an employee for a calendar quarter in which there is a government order limiting commerce, travel or group meetings or when the gross receipts of the employer has fallen by 50% from the prior period in 2019. Employers receiving SBA Section 7(a) (PPP) loans are not eligible for the employee retention credit.

Payroll Tax Deferral

The CARES Act also provides for a 100% deferral of the employer's share of the Old-Age, Survivors, and Disability Insurance ("OASDI") tax of 6.2% of the first \$137,700 of each employee's wages. This deferral is applicable to taxes due on or after March 27, 2020 until December 31, 2020. Fifty percent (50%) of such deferred amount is due by December 31, 2021 and the remaining 50% is due December 31, 2022. An equivalent benefit is provided for the Self-Employed's Social Security tax on self-employed income of up to \$137,700 in 2020 with half being deferred (equivalent to the employer's share of OASDI). This may reduce the individual's quarterly estimated tax payments since such tax is included in those payments. Taxpayers participating in the Paycheck Protection Program are not eligible for the deferral.

Emergency Unemployment Relief

The CARES Act contains a number of provisions applicable to workers whose employment has been affected by COVID-19.

Pandemic Unemployment Assistance – Creates a temporary Pandemic Unemployment Assistance program through December 31, 2020 to provide

payment to those not traditionally eligible for unemployment benefits (self-employed, independent contractors, those with limited work history, and others) who are unable to work as a direct result of the coronavirus public health emergency.

Emergency Unemployment Relief for Governmental Entities and Nonprofit Organizations – Provides payment to states to reimburse nonprofits, government agencies, and Indian tribes for half of the costs they incur through December 31, 2020 to pay unemployment benefits.

Emergency Increase in Unemployment Compensation Benefits – Provides an additional \$600 per week payment to each recipient of unemployment insurance or Pandemic Unemployment Assistance for up to four months.

Temporary Full Federal Funding of the First Week of Compensable Regular Unemployment for States with No Waiting Week – Provides funding to pay the cost of the first week of unemployment benefits through December 31, 2020 for states that choose to pay recipients as soon as they become unemployed instead of waiting one week before the individual is eligible to receive.

Pandemic Emergency Unemployment Compensation – Provides an additional 13 weeks of unemployment benefits through December 31, 2020 to help those who remain unemployed after weeks of state unemployment benefits are no longer available.

Temporary Financing of Short-Time Compensation Payments in States with Programs in Law – Provides funding to support "short-time compensation" programs, where employers reduce employee hours instead of laying off workers and the employees with

reduced hours receive a pro-rated unemployment benefit. This provision would pay 100 percent of the costs they incur in providing this short-time compensation through December 31, 2020.

Temporary Financing of Short-Time Compensation

Agreements – This section provides funding to support states which begin “short-time compensation” programs. This provision would pay 50 percent of the costs that a state incurs in providing short-time compensation through December 31, 2020.

Grants for Short-Time Compensation Programs –

Provides \$100 million in grants to states that enact “short-time compensation” programs to help them implement and administer these programs.

Charitable Giving Incentives

Suspension of Adjusted Gross Income (AGI) Limits for

Individual and Corporate Donors – This is intended to foster and promote more giving to nonprofit organizations during 2020. Under this section, the 60 percent AGI limits would not apply for individuals. For corporations, contributions would increase from 10 percent of taxable income to 25 percent (does not apply to contributions to a supporting organization or a Donor Advised Fund). The contribution limits of food inventory increase from 15 percent to 25 percent of taxable income.

Partial Above the Line Charitable Deduction for

Individual Donors – This tax incentive provides a maximum deduction of \$300 for charitable contributions (cash contributions only) for taxpayers who elect not to itemize their deductions on their tax return. The incentive does not apply to contributions to a supporting organization, a Donor Advised Fund or a carryover contribution. It applies to contributions made during 2020.

**Appropriations to Government Programs
Impacting Nonprofit Work**

The CARES Act allocates direct funding to a number of government programs and public nonprofit organizations, including:

- Aging and Disability Services – \$955 Million
- Bureau of Indian Affairs – \$453 Million
- Child Care Development Block Grant – \$3.5 Billion
- Child Nutrition Programs – \$8.8 Billion
- Child Welfare Services – \$25 Million
- Children and Family Services Programs – \$1.9 Billion
- Community Development Block Grant – \$5 Billion
- Community Services Block Grant – \$1 Billion
- Emergency Food Assistance Program – \$450 Million
- Family Violence Prevention – \$45 Million
- Head Start – \$750 Million
- Institute of Museum and Library Services – \$50 Million
- International Disaster Assistance – \$50 Million
- Low-Income Home Energy Assistance – \$900 Million
- National Domestic Violence Hotline – \$2 Million
- National Endowments for the Arts and Humanities – \$75 Million each
- Public Health and Social Services Emergency Fund – \$27 Billion
- Runaway and Homeless Youth – \$25 Million
- Supplemental Nutrition Assistance Program (SNAP) – \$15.5 Billion
- Veterans Administration Homelessness Assistance Grants – \$4 Billion

Other Provisions of Interest

Limited Liability for Volunteer Health Professionals –

Provides additional liability protections for healthcare volunteers.

Modify Volunteer Credits for Education – Authorization

for the Corporation for National and Community Service to modify volunteer requirements for education awards.

Blood Donation Awareness – Directs the Secretary of Health and Human Services to carry out an initiative to improve awareness of the importance and safety of blood donation during the emergency period.

Mortgages and Foreclosures – The bill prohibits foreclosures on all federally backed mortgages (held by Fannie Mae and Freddie Mac, or insured by HUD, the Veterans Administration or the USDA) for a 60-day period starting on March 18, 2020, and provides for 180 days of forbearance for such borrowers if they experienced financial hardships because of the pandemic crisis. For multifamily borrowers with federally backed multifamily mortgages, section 4023 provides up to 90 days of forbearance. For both provisions, the relief expires the earlier of either December 31, 2020, or the date the national emergency is terminated.

Application of Cooperative and Small Employer Charity Pension Plan (CSEC) Rules to Certain Charitable Employers whose primary Exempt Purpose is Providing services with respect to Mothers and Children – Amends the definition of CSEC Plans to provide that a pension plan will be a CSEC plan if, as of January 1, 2000, the plan was sponsored by an employer that (i) is exempt from taxation under Code section 501(c)(3), (ii) has been in existence since 1938, (iii) conducts medical research directly or indirectly through grant making, and (iv) has as its primary exempt purpose providing services with respect to mothers and children. This section is effective for plan years beginning after December 31, 2018.

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