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NON-PROFITS AND THE CARES ACT LOAN PROGRAMS

The Coronavirus Aid, Relief, and Economic Security Act (the CARES Act) provides assistance to organizations, including non-profits, in response to the COVID-19 pandemic. Among other things, the CARES Act established the Paycheck Protection Program and the expanded Economic Injury Disaster Loans, both of which are discussed below. The guidance on these loans changes daily as the programs develop and lenders and the Small Business Administration (the SBA) work through the logistics of the loan programs. The information below is current as of the date of publication of this article.

Paycheck Protection Program (SBA 7(a) Loans)

Overview of Program

- This is a loan from an SBA approved lender. The application may be obtained from the SBA approved lender, or can be accessed here: https://www.sba.gov/document/sba-form--paycheck-protection-program-borrower-application-form.
    - A non-profit should first reach out to its existing lender to see if such lender is participating. If not, the SBA has a lender match program: https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program-ppp and the SBA also maintains the following list of the 100 most active 7(a) lenders: https://www.sba.gov/article/2020/mar/02/100-most-active-sba-7a-lenders.
- The amount of the loan is determined by multiplying a business' average monthly payroll costs incurred in the past year by 2.5, up to a maximum loan amount of $10,000,000. Monthly payroll costs include more than just salary, and include, for example, health care benefits, retirement benefits and paid leave. There is a $100,000 salary limit per employee.
- The loan terms include a 1% interest rate, 2-year maturity, and 6-month deferral of loan payments. At least 75% of the loan must be used for payroll costs, with the remaining 25% eligible to be spent on rent, mortgage interest payments, utilities and certain other non-payroll cost items. There are no fees payable by the borrower and no prepayment penalties. The loans also do not require collateral or personal guarantees.
- The major benefit of the PPP loans is that a portion, up to all, of the loan may be forgiven. Specifically, loan proceeds that are used during the 8-week period following "origination" of the loan are eligible for forgiveness if the borrower complies with the 75%/25% expense allocation requirements described above, and certain other criteria are met. The amount of the loan that may be forgiven is reduced proportionately by reductions in employee

headcount, and may be reduced if employees experience reductions in their compensation. Employers are, however, permitted to rehire employees and reinstate salaries by June 30, 2020, in order to avoid a reduction in the amount of the loan that can be forgiven.

- Recent guidance from the New York Small Business Development Center suggests that an organization must meet at least 75% of its projected rehires/salary reinstatements to receive full forgiveness on the portion of the loan that is forgivable. Such recent guidance suggests that if the 75% threshold is not met, then forgiveness will be reduced, prorated for the percentage of rehires/salary reinstatements that are achieved. Any portion of the loan that is forgiven is not considered income for federal tax purposes.
- Further SBA guidance on loan forgiveness is expected to be published within 30 days of enactment of the CARES Act.

Non-Profit Eligibility and Other Non-Profit Specific Matters

- Unlike other SBA 7(a) loans, certain non-profits are eligible for a PPP loan, including Section 501(c)(3) organizations and tax-exempt veterans organizations under Section 501(c)(19). Other non-profits, including 501(c)(4) social welfare organizations, 501(c)(6) business leagues and 501(c)(7) social clubs are not eligible for a PPP loan.
- In addition to the eligibility criteria outlined above, the non-profit must also satisfy the following criteria: the non-profit has 500 or fewer employees (including full-time and part-time), and was in operation on February 15, 2020, at which point the non-profit either had employees for whom salaries and payroll taxes were paid, or the non-profit paid independent contractors, as reported on a Form 1099-MISC.
- Application Form Specifics:
  - In the top left box on page 1 of the application form, non-profit will need to select either "501(c)(3) nonprofit" or "501(c)(19) veterans organization".
  - The non-profit applicant should answer "N/A" or "none" to the application question regarding owners of 20% or more of the equity of the applicant, as the non-profit does not have owners.

<u>Expanded Economic Injury Disaster Loans (EIDLs) and Emergency Grants (SBA 7(b) Loans)</u>

Overview of Program

- The SBA's Economic Injury Disaster Loan program provides working capital loans directly from the SBA (and not from an SBA-approved lender). The loan proceeds cannot be used to refinance other debt.
- Non-profits can apply for an EIDL online: https://covid19relief.sba.gov/#/.
- The maximum amount of the EIDL is $2,000,000.
- The interest rate on EIDLs is 2.75% for non-profits. The loans can be repaid over a period not to exceed 30-years. Similar to PPP loans, borrowers do not have to make any loan payments for 6-months, and there are no prepayment penalties. Likewise, no collateral or personal guarantees are required for loans of $200,000 or less. The CARES Act also waived the requirement that the borrower certify that it is unable to obtain credit elsewhere.

- A unique feature of the EIDL is that the borrower can request up to a $10,000 advance on the full amount of the EIDL, which, according to the CARES Act, must be awarded within 3 days of receipt of the application.
- In practice, organizations are experiencing delays in the processing of their application and disbursement of the cash advance, given the volume of applications the SBA is receiving. The immediate $10,000 advance does not need to be repaid, even if the applicant is later denied the full loan amount under this EIDL 7(b) program.
    - Recent guidance from the New York Small Business Development Center suggests that the cash advance will be based on the number of employees of the borrower, using a calculation of $1,000 per employee, up to the maximum advance amount of $10,000. Such recent guidance suggests that disbursements of the cash advance will begin this week and will be based on when an application was received and processed. Similar guidance has been provided by other SBA district offices. However, as of the date of this publication, the main SBA office has not confirmed this cap of $1,000 per employee.

Non-Profit Eligibility and Other Non-Profit Specific Matters

- The following non-profits are eligible: private non-profit organizations that are tax-exempt under Sections 501(c), (d) or (e), and non-profits with satisfactory evidence from their state that the non-revenue producing organization is a non-profit organized or doing business under state law, or that it is a faith-based organization.
- Note that certain non-profits will be ineligible for a PPP loan, but may qualify for an EIDL. For example, a 501(c)(7) is not eligible for a PPP loan but will qualify for an EIDL if the other criteria are met, or, a non-profit with over 500 employees will not qualify for a PPP but may qualify for an EIDL as the EIDL program does not impose the same size restrictions on non-profits as the PPP program.
- Note that the non-profit applicant must have been in operation on January 31, 2020, in order to be eligible for the EIDL.

Whiteman Osterman & Hanna LLP can assist with these issues and more, as you and your business work to navigate the novel and difficult decisions arising from the COVID-19 pandemic. For assistance with nonprofit issues, please contact one of our nonprofit attorneys:

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