COMMUNITY LAW CENTER

LAWYERS FOR NEIGHBORHOODS AND NONPROFITS

CORONAVIRUS RELIEF MEASURES 2020:

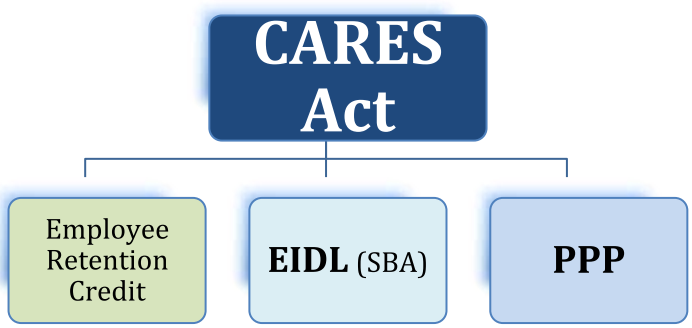
A FACT SHEET
for our
501(c)(3) Nonprofits with 1-500 employees

If your organization is tax exempt under 501(c)(3) with 1 to 500 employees and has been impacted by COVID-19, there are several Federal measures and a State grant (if you have 1-50 employees) to be aware of, and act quickly on. (Note: further guidance will be provided by the Treasury and the SBA, which may change some of this information in days ahead.)

RELIEF MEASURES FOR SMALL NONPROFIT EMPLOYERS:

FEDERAL MEASURES: The CARES Act (Coronavirus Aid, Relief, and Economic Security Act) was signed into law on Friday, March 27.
The first thing to note is that your organization may **defer payment of its share of payroll taxes** (6.2%) for this year – deferred amounts are payable over the next 2 years (50% due at the end of 2021 and 50% due at the end of 2022) – this is for all employers *except* PPP borrowers whose loans are forgiven (see below).

Your organization may qualify for one of three possible measures:



1. **Employee Retention Credit (ERC)** – This is a refundable and advanceable tax credit for payroll taxes owed by the employer on <u>50% of up to $10,000 of qualified wages</u>.
   - CRITERIA: The business was forced to suspend or close operations due to COVID-19, or otherwise had significantly decreased revenue (at least 50% reduction in gross receipts comparing calendar quarters, year-over-year), and continues to pay its employees while not currently working – for wages paid after March 12, 2020 through end of 2020. Refundable to the extent it exceeds the business's payroll tax liability.
   - For each eligible quarter, credit is given against the employer 6.2 percent (social Security and Railroad Retirement) portion of payroll tax. "Qualified wages" depends on size: if you had 100 or fewer FT employees in 2019, all your employees' wages qualify (but if you

had >100, ONLY employees who didn't provide services during the impacted period qualify). Max credit $5,000.

- NOTE: ERC is not available to employers receiving a PPP loan.

2. **Economic Injury Disaster Loan (EIDL)** – A low-interest loan was made available to businesses and nonprofits suffering substantial economic injury from COVID-19.

- CRITERIA: The business was in operation on January 31, 2020 and is unable to meet financial obligations and cover operating expenses which could have been met had the disaster not occurred (self-certify under penalty of perjury). The lender will evaluate applicants' credit score or use a similar method to determine applicants' ability to repay.
- 2.75% interest rate for nonprofits
- Loans of up to $2M with long-term repayment (max 30 years) and loan repayment deferred for up to 4 years.
- ALLOWED USES: payroll, paying fixed debts, accounts payable and other bills that can't be paid because of the disaster's impact.
- This loan is open to most nonprofits (not religious organizations or governmental nonprofits) as well as small businesses, small agricultural cooperatives, and small businesses engaged in aquaculture. Individuals operating as a sole proprietor or independent contractor between January 31, 2020 and December 31, 2020 are also eligible for EIDL.
- APPLICATION REQUIREMENTS: No personal guarantee is required for loans up to $200k; applicant need not demonstrate that it is unable to obtain credit elsewhere (unlike traditional SBA 7(b) loans). Collateral may be required (UCC lien against assets of the business) for loans greater than $25k.
- NOTE: A $10k advance on the loan may be available upon request as an **emergency grant** within three days to eligible nonprofits who are waiting for the loan to come through (and this $10k is forgiven even if you are denied the loan). NOTE: if you already received an EIDL advance, it would be subtracted from the PPP loan forgiveness amount if the borrower transfers into, or is approved for PPP.

3. **Paycheck Protection Program (PPP)** – This is a very low-interest SBA loan with a significant portion of it being forgivable (in essence, becoming a grant, as you will not pay tax on this forgiven debt).

- CRITERIA: The business was operating as of 2/15/2020 and paying salaries and taxes (either paid employees & payroll taxes or paid independent contractors). To the extent that your business retains its employees and maintains salary levels, the SBA will forgive up to 8 weeks of these costs. (For details on employee retention and reduced compensation, including timelines for curing, see our PPP Fact Sheet)
- Interest rate 1% with max term of 2 years; loan repayment is deferred for 6 months.
- ALLOWED USES: payroll costs (including salaries and health insurance premiums), general operating costs (mortgage/rent for leases before 2/15/2020), utilities (electricity, gas, water, transportation, telephone, internet), and interest on any debt incurred before 2/15/2020.
- FORGIVENESS: If certain criteria are met (see above, in CRITERIA), debt up to a 8-week period of these qualifying costs would be forgiven by applying for loan forgiveness with the same lender who approved your loan, with certified documentation of the qualifying costs, payroll and pay rates. Note: a borrower whose PPP loan is forgiven is not eligible for deferral of the payroll tax; or vice versa, applicants for payroll tax deferral are not eligible for PPP loans.

- Loan amounts are calculated for 250% of your average monthly payroll for a period in the year before the loan is made (see our PPP Fact Sheet for details and caveats), with max loan of $10M. Loans are approved by lenders who opt in (e.g., your current bank may be participating – you may be given priority as a customer). Borrower & lender loan fees are waived.
- Eligible nonprofits include 501(c)(3) organizations, veterans groups, and tribal organizations.
- APPLICATION REQUIREMENTS: a good faith certification: (1.) that the uncertainty of current economic conditions makes necessary the loan request to support the ongoing operations of the eligible recipient; (2.) acknowledging that funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments; (3.) that you don't have an application pending for a loan under this subsection for the same purpose and duplicative of amounts applied for or received under a covered loan; and (4.) during the period beginning on 2/15/2020 and ending on 12/31/2020, that you haven't received amounts under this subsection for the same purpose and duplicative of amounts applied for or received under a covered loan. No personal guarantee or collateral required; no requirement that applicant was unable to obtain credit elsewhere (unlike traditional SBA 7(a) loans).
- For details / exceptions on the PPP's 500-employee limit, see our PPP Fact Sheet.
- NOTE: You may not borrow through both a PPP Loan and EIDL for COVID-19, for the same purposes. (If you received an SBA EIDL loan in 2020 prior to April 3, you can apply for a PPP loan – if your EIDL loan was not used for payroll costs, you can still be eligible for a PPP loan; however, if your EIDL loan was used for payroll costs, your PPP loan must be used to refinance your EIL loan and any EIDL advance is deducted from the loan forgiveness amount on the PPP loan. PPP also excludes you from the deferred payroll payments and ERC.

MARYLAND MEASURE: The Maryland Small Business COVID-19 Emergency Relief Grant Fund is grant assistance intended to provide interim relief to support ordinary operating expenses.

- CRITERIA: COVID-19 disrupted your businesses operations or inflicted demonstrable financial stress, and your organization: was established prior to March 9, 2020; is in good standing; and has **1-50 employees** on its payroll for whom you have had payroll taxes withheld (i.e., W-2 employees). Your annual revenues also must not exceed $5 Million and the minimum personal credit score is 575.
- ALLOWED USES: payroll expenses, rent, mortgage payments, utility expenses, or other similar ordinary operating expenses.
- APPLICATION REQUIREMENTS: financial statements (P&L or income statement plus your most recent balance sheet and results to February 2020 if available; or tax returns); also a short impact statement about your business prior to COVID-19, the impact, and financial estimate of the impact based on your previous revenues and expenses.
- Up to $10,000, but not to exceed 3 months of cash operating expenses.
- The organization is expected to seek longer term funding through your bank, SBA, etc.

OTHER LEGISLATION TO BE AWARE OF:

- **FFCRA** (Families First Coronavirus Response Act) is federal legislation that was enacted on March 18 to provide benefits to individuals, including **Emergency Paid Sick Leave and Family & Medical Leave**. (Some of these original provisions were amended through the

CARES Act.) Certain employers are required to pay sick or family leave wages to employees who are unable to work or telework due to certain circumstances related to COVID-19 (up to $511 per day for sick or $200 per day for e-FMLA), if the employee was employed at least 30 days prior to the request for leave (or where an employee was laid off on or after March 1, 2020 and then rehired subsequently, the employee will be eligible for leave rights if he/she worked for the employer on at least 30 of the 60 days preceding the layoff).

- Employers are entitled to a refundable tax credit for the required paid leave, up to specified limits. [See the Dept of Labor's FAQs sheet for details: https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave].

NOTE: The same wages cannot be counted for both FFCRA and the Employee Retention Credit (ERC).

- **TAX INCENTIVES FOR DONORS:** This is a great time to encourage donations from anyone who can afford to give. The CARES Act includes tax incentives to encourage charitable:
  - For individual taxpayers who take the standard deduction, cash contributions in 2020 of up to $300 made to public charities are eligible for a one-time, above-the-line deduction;
  - For taxpayers who itemize deductions, the normal limits on deductions will be suspended for cash contributions to public charities in 2020 (deduct up to 100% instead of 60% of AGI);
  - For corporations, the normal limits on deductions for contributions to public charities in 2020 are raised to 25% of taxable income (instead of 10%).

This fact sheet is for informational purposes only and shall not be construed as legal advice. Legal advice must be tailored to the specific circumstances of each case and laws are constantly changing. Organizations should seek the assistance of competent legal counsel for specific legal advice.

To request legal assistance for a nonprofit in Maryland, contact Ingrid Hitchens at ingridh@communitylaw.org) or download an Application for Legal Services at http://communitylaw.org/apply-for-services/.