ROGERS & COMPANY

Rogers & Company PLLC
Certified Public Accountants

8300 Boone Boulevard
Suite 600
Vienna, Virginia 22182

703.893.0300 voice
703.893.4070 facsimile
www.rogerspllc.com

Memorandum

To: Our Clients

From: Jennifer Tan, Audit Principal

Date: As of March 31, 2020

Re: CARES Act for Nonprofits

Coronavirus Aid, Relief, and Economic Act for Nonprofits

We have summarized the provisions of the Coronavirus Aid, Relief, and Economic Act (CARES Act) applicable to nonprofits. The CARES Act provides a number of opportunities for existing nonprofit organizations to reduce the stress that COVID-19 may cause on their finances, whether through loans, grants, or tax credits.

Below are areas of particular help to nonprofit organizations:

<u>Loans Available for Nonprofits:</u>
- Paycheck Protection Program (PPP)
- Economic Injury Disaster Loans (EIDL) & Emergency Grants
- Economic Stabilization Fund Loans

<u>Other Benefits:</u>
- Employee Retention Tax Credit
- Unemployment Benefits
- Charitable Giving Incentives

Loans Available for Nonprofits in the CARES Act

<u>Paycheck Protection Program Loans</u>

The primary purpose of the Paycheck Protection Program (PPP) is to keep American workers paid and employed during this difficult time. These loans are available through June 30, 2020.

Eligibility:
- 501(c)(3) or 501(c)(19) organizations.
- 500 or fewer full- and/or part-time employees.
- The nonprofit was in existence on March 1, 2020.
- Loan is for expenses incurred between February 15, 2020 and June 30, 2020.

Paycheck Protection Program Loans (continued)

Loan Amount:
- Loans are capped at $10,000,000.
- Loan size is based on the nonprofit's "payroll costs" (see below).
- The lesser of $10,000,000 or 2.5 times the average total monthly payroll costs from the one-year period (look back) prior to the date of application.

Payroll Costs Include:
- Salary, wage, commission, or similar compensation
- Payment for vacation, parental, family, medical, or sick leave
- Allowance for dismissal or separation
- Payment required for the provisions of group health care benefits, including insurance premiums
- Payment of any retirement benefit
- Payment of state or local tax assessed on the compensation of employees

Payroll Costs Don't Include:
- Employee compensation over $100,000
- Taxes imposed or withheld under chapter 21 (FICA)
- Compensation of employees whose principal place of residence is outside of the United States
- Qualified sick and family leave for which a credit is allowed under sections 7001 and 7003 of the *Families First Coronavirus Response Act*

Permitted Uses of Loan Proceeds:
- Payroll costs (as noted above)
- Employer group health care benefits
- Interest on mortgage obligations
- Rent
- Utilities
- Interest on other debt incurred before February 15, 2020

The loan may not be used for the prepayment of mortgage interest or principal.

Loan Terms:
- The interest rate is capped at 4%
- The maximum loan term is 10 years
- Prepayment penalties, loan collateral, and guarantee are waived
- Repayments of the loan are deferred to six months but no more than one year
- Loan amount spent on payroll costs and mortgage interest, rent, and utility payments between February 15, 2020 and June 30, 2020 may be forgiven; however, the total amount forgiven may be subject to reductions discussed below

<u>Paycheck Protection Program Loans (continued)</u>

Application Process:
Starting April 3, 2020 nonprofits would be able to apply. The Small Business Administration (SBA) does not lend money – it sets guidelines for loans to be made by its participating lenders. A list of the 100 most active SBA 7(a) lenders can be found here: https://www.sba.gov/article/2020/mar/02/100-most-active-sba-7a-lenders

To apply for PPP loan, eligible nonprofits need to:

- Gather documentation as to the average monthly payroll costs and, with that, calculate your maximum loan amount (generally 2.5 times the average monthly payroll cost).
- Figure out how much of that maximum the organization will spend on Permitted Uses (including making payroll and paying rent) within eight weeks of receiving the loan (that's the amount that can be forgiven). If the organization will use it all, it is better to consider requesting the maximum amount. If the organization borrows more than it ends up spending on Permitted Uses in eight weeks, it can, without prepayment penalties, repay the outstanding/unforgiven balance.

Timing:
The goal is to issue a determination on each application within 2 to 3 weeks after receiving a completed application and to make an initial disbursement within five (5) days of receiving signed loan closing documents.

Loan Forgiveness:
The "covered period" during which expenses can be forgiven extends from February 15, 2020 to June 30, 2020. During the 8-week period beginning on the date a PPP loan is funded (the "forgiveness period"), a borrower will be eligible for forgiveness and cancellation of indebtedness for up to the full principal amount of such loan. The amount eligible for forgiveness is equal to the total costs incurred and payments made during the forgiveness period for (1) payroll, (2) mortgage interest, (3) rent and (4) utilities.

<u>Nonprofits must separately apply for loan forgiveness and will be notified of the decision within 60 days.</u> The lenders may require adequate documentation to process the loan forgiveness, such as verifying the full-time equivalent and pay rates for current and prior years. This may include the following:

- Documents verifying the number of full-time employees (FTE) on payroll and pay rates
- State income, payroll, and unemployment insurance filings
- Documents verifying payments on covered mortgage and lease obligations and utility payments (cancelled checks, payment receipts, etc.)
- Certification from an authorized representative that the documentation is true and correct and the amount for which forgiveness is requested was used for Permitted Uses

Paycheck Protection Program Loans (continued)

Nonprofits are eligible to have these loans forgiven through June 30, 2020, effectively turning the loans into grants. Forgiveness is available for the portion of the loan used for Permitted Uses during the forgiveness period. The borrower is not responsible for the interest accrued in the 8-week forgiveness period. The remainder of the loan that is not forgiven will operate according to the agreed loan terms.

The amount of loan forgiveness may not exceed the principal amount of the loan.

In addition, the amount of forgiven loan will be reduced:

- proportionally by any reduction in employees retained during 8-week covered period compared to the prior year.

- by reduction in compensation of any employee with salary of $100,000 or less during 8-weeks covered period beyond 25% of their prior year compensation. Reductions to compensation beyond 25% cuts will begin to reduce the loan forgiveness amount dollar for dollar. This reduction does not apply to salary reductions to employees who received, during any single pay period in 2019, compensation of more than $100,000. These wages may be cut by more than 25% without reducing the loan forgiveness amount.

Exception for Rehiring Employees and Restoring Salary Cuts:
If an organization reduced its staff or salaries between February 15, 2020, and thirty (30) days after March 27 (the enactment of the Act), the amount of loan forgiveness for which the organization is eligible will not be reduced according to the formulas above if the organization, no later than June 30, 2020, eliminates the reduction, as compared to February 15, 2020, in the number of full-time equivalent employees and/or salary of 1 or more employees.

Economic Injury Disaster Loans & Emergency Economic Injury Grants

Eligibility:
All nonprofits and tax-exempt organizations that were in operation before January 31, 2020 are eligible for the Economic Injury Disaster Loans (EIDL). Unlike PPP loan, EIDL expands eligibility to 501(c) trade associations, advocacy organizations, unions, and social clubs.

Maximum Loan Amount:
The maximum loan amount is $2 million.

Loan Terms:
The loan proceeds may only be used for expenses that could have been met had the disaster not occurred, such as payroll and other operating expenses. The loans are for up to 30 years and the interest rate for nonprofit organizations is 2.75%. Principal and interest may be deferred for up to four years.

Economic Injury Disaster Loans & Emergency Economic Injury Grants (continued)

Underwriting:
EIDLs do not require personal guarantees for advances of loans of less than $200,000. Applicants need to have been operating on January 31, 2020. There is no requirement that an applicant show that it cannot obtain credit elsewhere or for the applicant to prove that it has the ability to repay the loan. The loan may be approved based solely on the applicant's credit score (no tax return is required) or the SBA may approve the loan using alternative methods.

$10,000 Emergency Economic Injury Grants:
Nonprofits seeking an immediate relief can receive a $10,000 emergency advance within three days after applying for the EIDL. **If the application is denied, the applicant is not required to repay the $10,000 advance.** All "private nonprofit organizations" are eligible for the EIDL and emergency grants including 501(c) trade associations, advocacy organizations, unions, and social clubs. Emergency Economic Injury Grants are available January 31, 2020 – December 31, 2020.

Application and Repayment:
Unlike the PPP loans, which are administered by the SBA, EIDLs are made directly by the SBA without involving a third-party lender. Eligible nonprofit organizations may apply for EIDL at a local SBA District Office or online at:

https://covid19relief.sba.gov/#/

SBA application **Form 5** can be found at:

https://www.sba.gov/disaster/apply-for-disaster-loan/pdfs/Business%20Loan%20Application%20(SBA%20Form%205).pdf

EIDLs are not eligible for forgiveness and must be repaid according to the terms of the loan.

If a nonprofit received an EIDL loan related to COVID-19 between January 31, 2020 and the date at which the PPP becomes available, it would be able to refinance the EIDL into the PPP for loan forgiveness purposes. However, a nonprofit may not take out an EIDL and a PPP for the same purposes. Remaining portions of the EIDL, for purposes other than those laid out in loan forgiveness terms for a PPP loan, would remain a loan. If a nonprofit took advantage of an emergency EIDL grant award of up to $10,000, that amount would be subtracted from the amount forgiven under PPP.

Economic Stabilization Fund Loans

This fund provides low interest loans for larger nonprofits with 500 to 10,000 employees.

Loans:
- Dollar amount is unspecified
- Interest rate is no more than 2%
- Financing is for up to 30 years
- No principal or interest is due on the loans for at least the first six months after the loan is made
- These loans are not eligible for forgiveness

Economic Stabilization Fund Loans (continued)

Loan Application:
The Act provides that the Secretary of the Treasury shall publish procedures for application and minimum requirements for making loans and providing loan guarantees.

Eligible nonprofit organizations applying for direct loans under this program will be required to certify, among other things, that:

- the uncertainty of economic conditions makes the loan request necessary to support ongoing operations
- funds received will be used to retain at least 90% of the recipient's workforce, at full compensation and benefits, through September 30, 2020
- the recipient intends to restore not less than 90% of its February 1, 2020, workforce and to restore all compensation and benefits to the workers no later than four months after the termination date of the public health emergency declared by the Secretary of Health and Human Services in response to COVID-19
- the recipient is created/organized and domiciled in the United States with significant operations and a majority of employees located/based in the United States
- the recipient will not outsource or offshore jobs for the term of the loan, plus an additional two years
- the recipient is not a debtor in a bankruptcy proceeding; the recipient will not abrogate existing collective bargaining agreements for the term of the loan plus an additional two years
- the recipient will remain neutral in any union organizing effort for the term of the loan

Other Benefits

Self-Insured Nonprofits and Unemployment Reimbursements

Nonprofits have the ability to either be a reimbursable employer (i.e., reimburse a state for unemployment benefits paid to a former employee) or, like most, pay into a state unemployment trust fund.

The CARES Act provides that nonprofits that have chosen to be reimbursable employers may be reimbursed for one-half of the amounts paid into a state unemployment trust fund between March 13, 2020, and December 31, 2020. For example, if a "reimbursable employer" nonprofit organization's former employee receives $5,000 in unemployment benefits from the state, the organization would normally be required to reimburse the state for the $5,000. The CARES Act provides that the federal government may reimburse the nonprofit organization for half of this amount, or $2,500.

Employee Retention Payroll Tax Credit

501(c)(3) and 501(c)(19) organizations participating in the PPP are not eligible for this credit.

Eligibility:

- All of the tax-exempt 501(c) organizational types (e.g., 501(c)(3), 501(c)(4), 501(c)(5), 501(c)(6), etc.)
- Nonprofit organization operations were fully or partially suspended due to a governmental order that limited commerce, travel, or group meetings (for commercial, social, religious, or other purposes) due to COVID-19, i.e., a shutdown order
- Nonprofit organization gross receipts declined by more than 50% when compared to the same quarter in a prior year

Credit Amount:

The credit is a refundable payroll tax credit equal to 50% of "qualified wages":

Nonprofits with more than 100 employees – "qualified wages" equal to 50% of the wages paid to an employee even though the employee is unable to work due to a full or partial suspension of operations due to a governmental "stay at home" or other order.

Nonprofits with 100 or fewer employees – "qualified wages" include all wages paid, whether the employer is open for business or subject to a shutdown order. Qualified wages include health plan expenses.

Charitable Giving Incentives

CARES Act lifts the limitations on charitable contributions by individuals who itemize, from 60% of adjusted gross income to 100%, and for corporations by increasing the limitation from 10% to 25% of taxable income. Donations to donor-advised funds would not qualify for the increased deduction.

Conclusion

The CARES Act provides numerous opportunities for existing nonprofit organizations to reduce, or at least stall, some of the financial stress that COVID-19 have created. We are closely monitoring legislative and regulatory developments, including a potential Phase 4 congressional relief package, and will provide updates as more guidance is released.