



## MEMORANDUM

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**SUBJECT** Summary of Relevant CARES Act Provisions for Nonprofits

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The “Coronavirus Aid, Relief, and Economic Security Act” (CARES Act), is the third stimulus package enacted by Congress and signed by the President to help our nation overcome the health and economic challenges of the novel coronavirus.

This memorandum provides a high-level summary of provisions in the CARES Act that may be available to assist nonprofit organizations. The \$2.2 trillion package contains relief that may be accessible to nonprofits in the form of grants and loans (including forgivable loans), loan guarantees, and other investments. There are also important provisions arising under tax laws, including the ability to defer the time of payment of certain employment taxes, that may assist nonprofits in managing their cash flow. Employment-related provisions may also assist nonprofits whose employees are facing uncertainty triggered by the novel coronavirus. The CARES Act also expanded certain provisions of the Families First Coronavirus Response Act that require covered employers, including nonprofit organizations, to provide paid sick and emergency family leave.

### **Small Business Administration Provisions**

#### ***Paycheck Protection Program: Expansion of 7(a) Loan Guarantee***

Under **Section 1102** of the CARES Act, the Paycheck Protection Program (PPP) will provide loans of up to \$10 million per business for qualifying nonprofits with not more than 500 U.S. employees (or, if applicable, the size standard in number of employees established by SBA for the industry in which the nonprofit operates)<sup>1</sup> to fund payroll costs (as detailed in the following sentence), rent or interest on mortgage obligations, utilities and interest on other debts incurred before February 15, 2020. Payroll costs include salaries, other forms of compensation, and payroll expenses, including group healthcare benefits and paid sick, medical and family leave (up to \$100,000 of total payroll costs per employee on an annualized basis). The program is being implemented through an expanded version of the SBA’s existing Section 7(a) loan

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<sup>1</sup> The SBA has clarified that faith-based organizations are eligible to receive PPP loans regardless of whether they provide secular social services and provided additional guidance for faith-based organizations. See [here](#) for additional information.

guarantee program. Through the program, loans are being administered by financial institutions, and the SBA will guarantee 100% of any loan amounts. A significant amount of the loans contemplated under the program will be eligible for forgiveness. For more detail regarding the PPP, please see [COVID-19 U.S.: Navigating the Paycheck Protection Program \(PPP\) under the CARES Act.](#)<sup>2</sup>

We recommend that nonprofits that have not yet applied for a PPP loan to contact their regular bank, determine whether their bank will be participating in the PPP program and what eligibility criteria the bank has established, and commence the application process as promptly as practical. SBA offers a Lender Match tool [available here](#).

### ***Economic Injury Disaster Loan***

**Section 1110** of the CARES Act expands the current Economic Injury Disaster Loans (EIDL) program. The expanded EIDL program is administered by SBA and provides up to \$2 million in working capital to businesses demonstrating economic injury, such as a temporary loss of revenue due to the direct effect of the novel coronavirus. For a nonprofit to qualify, the nonprofit must be (i) a private nonprofit organization, (ii) have been in operation since January 31, 2020, (iii) be located in a [declared disaster area](#), and (iv) generally, have not more than 500 employees. Currently, all states and territories of the United States have been declared disaster areas in connection with COVID-19.

Importantly, organizations which apply for an EIDL can apply for an emergency advance. If such advance is requested in the EIDL application, SBA must advance up to \$10,000 of the loan within 72 hours. This advance is treated as a grant, and is forgiven even if the EIDL loan is ultimately denied.

The EIDL is a working capital loan to be used for payroll, fixed debts, and other bills that are unpayable because of the disaster's direct impact on the borrower. EIDLs cannot be used to repair, replace or purchase physical assets. EIDLs do not replace lost sales or revenue. The term of these loans cannot exceed 30 years and are determined on a case-by-case basis. There are no upfront fees or early payment penalties charged by SBA.

The CARES Act permits applicants to apply solely with a credit score, rather than tax documents, and expands the EIDL program by, among other things, not requiring a personal guarantee for an EIDL loan up to \$200,000 and waiving the requirement that the organization be unable to obtain credit elsewhere.

SBA plans to make decisions on each [application](#) within 21 days. After the request is approved, SBA will notify the applicant of documents that it needs to submit.

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<sup>2</sup> We note that the SBA has stated that receipt of a PPP loan constitutes federal financial assistance and carries with it the application of certain nondiscrimination obligations while the loan is outstanding. *Id.* The extent of these obligations is uncertain at present and may vary depending upon the activity conducted by a particular nonprofit.

A borrower who took out an EIDL between January 31, 2020 and April 3, 2020 can apply for a PPP loan as long as the EIDL was not used for payroll costs. A borrower who has taken out an EIDL between January 31, 2020 and April 3, 2020 that was used for payroll costs can refinance the EIDL into a PPP loan, but any emergency EIDL advance received will be subtracted from the PPP loan forgiveness. Borrowers who apply for an EIDL on and after April 3, 2020 may not apply for a PPP loan.

## **Tax Changes**

- **Employee Retention Tax Credit for Employers – Section 2301** provides a tax credit against employment taxes for 50% of qualified wages paid by eligible employers in 2020, up to a maximum of \$10,000 per employee in wages, to certain employees during the COVID-19 crisis. (With respect to employers with more than 100 employees, qualified wages are only those paid to employees not providing services at the time such wages are paid.) The credit is available to employers whose operations have been fully or partially suspended as a result of a government order, or whose gross receipts in any 2020 calendar quarter are less than 50% of the comparable 2019 quarter. Employers receiving this payroll tax credit are **not** eligible to apply for a PPP loan. (*Effective for qualified wages paid between March 12, 2020 and Dec. 31, 2020*) Further information about this program can be found [here](#).
- **Deferment of Payment Obligation – Section 2302** includes deferment of payment obligations of 2020 payroll taxes (i.e., employer's share of Social Security tax on employee wages that would otherwise be due between March 27, 2020 and December 31, 2020 to be paid over the following two years, with half to be paid by December 31, 2021 and the other half by December 31, 2022.)
- **Charitable Gifts – Sections 2204 and 2205** provide incentives for individuals and individuals and corporations, respectively, to make charitable contributions that could benefit nonprofit organizations.
  - **Section 2204** permits individuals to deduct up to \$300 of cash contributions that are made to charitable organizations in 2020, whether those individuals itemize their deductions or not.
  - **Section 2005** increases the limitations on deductions for charitable contributions by individuals who itemize, as well as corporations. For individuals, the 50-percent of adjusted gross income limitation is suspended for 2020. For corporations, the 10-percent limitation is increased to 25 percent of taxable income. This provision also increases the limitation on deductions for contributions of food inventory from 15 percent to 25 percent.

## **Employment Considerations**

### ***Paid Sick Leave***

The Families First Coronavirus Response Act provides that private-sector employers (including nonprofit organizations) with less than 500 employees are required to provide 80 hours of paid sick leave to full-time employees (prorated for part-time employees). This leave must be provided in addition to any existing leave the employer currently provides. Generally, all employees of covered employers are eligible, subject to certain special provisions for health care providers and emergency responders.

Employees are entitled to paid sick leave if they are unable to work or telework because the employee: (i) is subject to a Federal, State or local quarantine or isolation order related to COVID-19; (ii) has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; (iii) is experiencing symptoms of COVID-19 and seeking a medical diagnosis; (iv) is caring for an individual who is subject to an order or advice from a health care provider described in reasons (i) or (ii); (v) is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions; or (vi) is experiencing any other substantially similar condition identified by the Secretary of Health and Human Services (HHS).

For self-care, employees are entitled to full wage replacement, up to \$511 per day or to a total of \$5,110. For care of others, employees are entitled to two-thirds wage replacement, up to \$200 per day or a total of \$2,000. Employers with less than 50 employees may be exempted under certain circumstances from providing sick leave to an employee who is caring for a child if doing so would jeopardize the viability of the business as a going concern, if certain conditions set forth in the regulations are satisfied.

Employers will pay the sick leave, but will be reimbursed by the federal government through a tax credit against employment taxes for wages and the employer's contribution to employee health insurance premiums during the leave period. Additional instructions for employers will be provided by the Treasury Secretary on how to receive an advanced tax credit. Employers will submit the paid sick leave expenses as part of their estimated quarterly tax payments, and will receive a refund from the IRS if their costs more than offset their tax liability.

### ***Emergency Family Leave***

The Families First Coronavirus Response Act provides that employees of private employers with less than 500 employees who have been employed at least 30 days in the prior two months (including employees who were laid off after March 1, 2020, and then re-hired) and who are unable to work or telework for reason (v) above shall receive up to 10 weeks of paid leave (after 10 initial days of unpaid leave, during which the employee may be eligible for paid sick leave as described above). During such 10 week period, employees must receive two-thirds of their regular wages, up to \$200 per day or a total of \$10,000. Generally, all employees who have

worked for the employer for at least 30 calendar days are eligible, subject to certain special provisions for health care providers and emergency responders.

Employers with less than 50 employees may be exempted under certain circumstances from providing emergency family leave to an employee who is caring for a child if doing so would jeopardize the viability of the business as a going concern. Employers will pay the emergency family leave, subject to the same guidelines and tax credits as payment of sick leave described above, if certain conditions set forth in the regulations are satisfied.

Further information about paid sick leave and emergency family leave can be found [here](#).

### ***Unemployment***

Please see [here](#) for information regarding unemployment provisions in the CARES Act.

### **U.S. Department of Education-Related Provisions**

The CARES Act provides emergency funding and authorities to the U.S. Department of Education (ED) that may be of interest to some not-for-profit organizations, particularly those that operate in the education sector. The Act creates a **\$30.75 billion** “Education Stabilization Fund.” Funding is allocated based on formulas to States, institutions of higher learning, elementary school systems and local educational agencies to prevent, prepare, and respond to coronavirus. For higher education in particular, \$14 billion of the Education Stabilization Fund is designated for a higher education emergency relief fund. Most of that fund (90%) will be provided directly to higher education institutions in accordance with an allocation formula. The Act specifies the ways in which institutions must use the funds, including to provide grants to students and to cover certain institutional expenses related to the coronavirus pandemic.

In addition to funding, the CARES Act provides regulatory relief to higher education institutions with respect to requirements pertinent to the administration of the federal student financial aid programs. For example, the CARES Act allows institutions to continue payments to federal work study recipients for students who are no longer able to meet their work study obligations due to the emergency. The Act also provides relief for federal student loan borrowers. For example, the CARES Act suspends payments on federal student loans until September 30, 2020. During this period, federal loans will not accrue interest and ED will suspend involuntary collection practices.

### **Minority-Owned Business Education and Training**

- **Section 1108** of the CARES Act provides \$10 million to the Minority Business Development Agency, housed within the Department of Commerce, for financial assistance in the form of grants to minority business centers (designated by MBDA) and minority chambers of commerce to provide education, training, and advising to minority business enterprises.

- The Act defines “minority business enterprise” as a for-profit business enterprise, not less than 51 percent of which is owned by 1 or more socially disadvantaged individuals, as determined by MBDA; and the management and daily business operations of which are controlled by 1 or more socially disadvantaged individuals, also determined by MBDA.

## **Treasury Loans, Loan Guarantees, and Other Investments**

**Section 4003** of the Cares Act provides loans, loan guarantees, and other investments to severely distressed sectors of the economy in the amount of \$500 billion. Of that amount, \$454 billion is available for “eligible businesses, States, or municipalities,” which might include nonprofit organizations.

While the legislative text does not mandate the \$454 billion shall be available to nonprofit organizations, three aspects of the bill text regarding that amount suggest that a portion of the \$454 billion funding might be accessible to nonprofits.

### **1. Assistance for Medium-Sized Businesses**

**Section 4003(c)** directs the Secretary of Treasury to “endeavor to seek” implementation of a program for mid-sized businesses (500–10,000 employees), “*including, to the extent practicable, nonprofit organizations.*”<sup>3</sup> The program would provide an annualized interest rate capped at 2 percent and permit the Treasury Secretary to forego principal and interest for the first 6 months of any direct loan. The program would require the recipient to be organized in the United States and have a majority of its employees in the United States, among other requirements.<sup>4</sup> While establishing this program is not required, Congress clearly showed some desire to support nonprofit organizations under section 4003.

### **2. Discretion of the Secretary**

**Section 4003** gives the Secretary of Treasury immense discretion in establishing terms for loans, loan guarantees, and other investments—including creating conditions, covenants, representations, warranties, and requirements “as the Secretary determines appropriate.”<sup>5</sup> Now that the CARES Act is enacted, focus must shift to the Treasury Secretary’s implementation of the loan, loan guarantee, and other investment funding under Section 4003.

Section 4003 does not mandate a timeline for the procedures by which the \$454 billion in funding will be made available for other businesses, States, and municipalities

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<sup>3</sup> See § 4003(c)(3)(D) (emphasis added).

<sup>4</sup> These include: the use of funding relief to retain 90 percent of the recipient’s workforce; the intent to restore at least 90 percent of the recipient’s workforce as of February 1, 2020; certification the recipient will not outsource or offshore jobs for 2 years after completing repayment. See *Id.*, (i)I–X.

<sup>5</sup> See § 4003(c).

(including assistance to nonprofits). Given the critical need for relief, we expect Treasury to work expeditiously to publish procedures for nonprofits to obtain assistance under Section 4003.

### 3. ***Instrumentality***

**Section 4002** defines the term municipality to include “an instrumentality of a municipality, a State, or a political subdivision of a State.”<sup>6</sup> There are likely many nonprofits that function directly or indirectly as an instrumentality of States, or political sub-divisions thereof, that may qualify under this definition and therefore eligible to receive loans, loan guarantees, or other investment assistance under Section 4003.

## **Appropriations**

**Division B** of the CARES Act provides \$340 billion in emergency appropriations for federal agencies and States to respond to the coronavirus, supplement normal activities, and boost programs that are popular among members of Congress. This emergency funding could present opportunities for nonprofits that depend on grants from the Federal government or otherwise might be eligible to receive funding in return for services. Below are several examples of agency appropriations provided in the CARES Act that could be of interest to nonprofit organizations. We can provide more information about many of these programs if they are of particular interest to a Hogan Lovells nonprofit client.

- **Department of Agriculture**
  - **Child Nutrition Programs**, \$8.8 billion for food purchases and demonstration projects to increase flexibility for schools.
  - **Supplemental Nutrition Assistance Program**, \$15.5 billion to meet anticipated increases in participation as a result of coronavirus
  - **Emergency Food Assistance Program**, \$450 million in additional funding for the distribution of emergency food assistance through community partners, including food banks
  - **Reconnect Pilot Program**, \$100 million in grants for construction, improvement, or acquisition of facilities and equipment needed to provide broadband service in rural areas
- **Department of Commerce**
  - **Economic Development Administration**, \$1.5 billion to support economic development grants for communities suffering economic injury as a result of the coronavirus
- **Department of Interior**

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<sup>6</sup> See § 4003(7)(B), H.R. 748, the CARES Act (signed into law on March 27, 2020).

- **Bureau of Indian Affairs**, \$453 million for coronavirus containment in detention facilities; aid to tribal governments; tribal welfare assistance and social services programs
- **National Endowment for the Arts**, \$75 million for grants, including funding to state arts agencies and other partners in an effort to help local, state, and regional communities provide continued access to cultural organizations and institutions of learning
- **National Endowment for the Humanities**, \$75 million for grants, including funding for state humanities councils and other partners in an effort to help local, state, and regional communities provide continued access to cultural organizations and institutions of learning
- **Department of Health and Human Services**
  - **Hospital Preparedness Program**, not less than \$250 million to improve the capacity of healthcare facilities to respond to medical events
  - **Health Resources and Services Administration**, \$275 million to expand services and capacity for rural hospitals, telehealth, poison control centers, and the Ryan White HIV/AIDS program
  - **Child Care and Development Block Grant**, \$3.5 billion in grants to States for immediate assistance to child care providers to prevent them from going out of business and to otherwise support child care for families
  - **Substance Abuse and Mental Health Services Administration**, \$425 million provided to address mental health and substance use disorders as a result of the coronavirus pandemic
  - **Head Start**, \$750 million for grants to all Head Start programs to help them respond to coronavirus-related needs of children and families, including making up for lost learning time
  - **Community Services Block Grant**, \$1 billion in direct funding to local community-based organizations to provide a wide-range of social services and emergency assistance to those in need
  - **Family Violence Prevention and Services**, \$45 million to provide additional support to family violence shelters
  - **Administration for Community Living**, \$955 million for aging and disability services programs, including senior nutrition; home and community-based supportive services; family caregivers; elder justice; and independent living
- **Department of Education**
  - **Safe Schools and Citizenship Education**, \$100 million to respond to coronavirus and supplement funds otherwise available for “Project SERV”,



including to help elementary, secondary and post-secondary schools clean and disinfect affected schools, and assist in counseling and distance learning and associated costs

- **Department of Veterans Affairs**

- **Medical Services**, \$14.4 billion to support increased demand for health care services at VA facilities, and funding for additional support for vulnerable veterans through programs to assist homeless or at-risk of becoming homeless veterans
- **Modifications to Comprehensive Service Programs for Homeless Veterans**, Section 20012 waives funding limits for financial assistance for supportive services for very low income veteran families in permanent housing during the public health emergency.
- **Financial Assistance for Supportive Services for Very Low Income Veteran Families**, Section 20013 waives any limits on grant amounts and rates for Per Diem payments for temporary housing to maximize social distancing within the vulnerable homeless veteran population.

- **Department of Housing and Urban Development**

- **Community Development Block Grant**, \$5 billion for a flexible program that provides communities and States with funding to provide a wide range of resources to address COVID-19, such as services for senior citizens, the homeless, and public health services—funding formula used for distribution
- **Homeless Assistance Grants**, \$4 billion to enable state and local governments to address coronavirus among the homeless population
- **Housing Opportunities for Person with Aids**, \$65 million for the housing needs of people living with HIV/AIDS through grants to local communities, States, and nonprofit organizations for projects that benefit low-income persons living with HIV/AIDS and their families
- **Section 202 Housing for the Elderly**, \$50 million to maintain housing stability and services for low-income seniors
- **Section 811 Housing for Persons with Disabilities**, \$15 million in additional funding to make up for reduced tenant payments as a result of coronavirus