Help for Mid-Sized Nonprofits: Congress Passes CARES Act providing for Implementation of New Direct Loan Program to Eligible Mid-Size Businesses

By: Jennifer Capasso Mendonça

On Friday, March 27, 2020, the President signed into law the Coronavirus Aid, Relief, and Economic Security Act or the “CARES Act.” The CARES Act provides significant relief to state and local governments, small and medium sized businesses, individuals and certain sectors of the U.S. economy that have been hit hardest by the COVID-19 pandemic.

Help for Mid-Sized Nonprofits. Title IV of the CARES Act focuses on providing economic stabilization and assistance to severely distressed sectors of the U.S. economy by, among other things, providing for the implementation of a new federal reserve program or facility that provides financing to banks and other lenders that make direct loans to eligible mid-sized businesses, including nonprofit organizations. These direct loans would be subject to an annualized interest rate that is no higher than two percent (2%) per annum and payment of principal and interest would not commence until at least six-months after the loan is incurred.

Eligibility. In order to be eligible for a loan under this program, a business would need to show that (i) it was created or organized in the U.S. or under the laws of the U.S., (ii) it has significant operations in and a majority of its employees are based in the U.S. and (iii) it has between 500-10,000 employees. Any eligible borrower applying for a direct loan under this program will be required to make a good faith certification that:

1. The uncertainty of economic conditions as of the date of the application makes necessary the loan request to support ongoing operations;

2. The funds it receives will be used to retain at least 90% of its workforce, at full compensation and benefits, until September 30, 2020;

3. It intends to restore not less than 90% of the workforce that existed as of February 1, 2020 and to restore all compensation and benefits to its workers not later than four (4) months after the termination date of the national public health emergency declared on January 31, 2020 in response to COVID-19;

4. It is an entity or business domiciled in the U.S. with significant operations and employees located in the U.S.;

5. It is not a debtor in a bankruptcy proceeding;

6. It is created or organized in the U.S. or under the laws of the U.S. and has significant operations in and a majority of its employees based in the U.S.;

7. It will not pay dividends with respect to its common stock or repurchase any of its equity securities or any equity securities of any parent company while the loan is outstanding, with certain exceptions; [note: this is not applicable for a nonprofit]

8. It will not outsource or offshore jobs for the term of the loan and two years after completing repayment of the loan;

9. It will not abrogate existing collective bargaining agreements for the term of the loan and two years after completing repayment of the loan; and

10. It will remain neutral in any union organizing effort for the term of the loan.

**Other Restriction.** The direct loan must be entered into directly with an eligible business as borrower and cannot be part of a syndicated loan, a loan originated by a financial institution in the ordinary course of business, or a securities or capital markets transaction.\(^2\) In addition, although not applicable to nonprofit organizations, the applicable eligible business must agree that it will not purchase any of its own equity securities or equity securities of any parent company, nor pay dividends or make any other capital distributions with respect to its common stock, until a date that is 12 months after the date the direct loan is no longer outstanding.\(^3\)

**Eligible Lenders.** The Secretary is authorized to designate financial institutions, including but not limited to, depositories, brokers, dealers and other institutions, as financial agents of the U.S. to help administer these programs.\(^4\) Locke Lord will be publishing additional guidance for the participation of lending institutions and nonprofit borrowers in this program soon.

Your regular Locke Lord contact and the author of this article would be happy to help you navigate the CARES Act as it relates to or otherwise impacts nonprofit institutions.

For more information on the matters discussed in this *Locke Lord QuickStudy*, please contact the author.

Jennifer Capasso Mendonça | 617-239-0845 | jennifer.mendonca@lockelord.com

Please visit our COVID-19 Resource Center often for up-to-date information to help stay informed of the legal issues related to COVID-19.

---

2. *Id.* at §4003(c)(3)(A)(i).
3. *Id.* at §4003(c)(3)(A)(ii).
4. *Id.* at §4003(g).