CARES Act Guide – Overview of Key Provisions Providing Relief for Nonprofits

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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 is intended to provide 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, by providing $2 trillion in stimulus to the U.S. Economy. This QuickStudy is intended to provide an overview of some of the key provisions of the CARES Act that may benefit both small and medium sized nonprofit organizations. Although regulations and specifics of the application process for some program elements of the CARES Act have not yet been released, nonprofits can still prepare by familiarizing themselves with the elements of the CARES Act with potential value to them, such as those described below.

Relief for Small Nonprofits (500 employees or less)

Paycheck Protection Program. Title I of the CARES Act focuses on supporting U.S. small businesses by, among other things, amending the Small Business Act to establish the Paycheck Protection Program (the “PPP Program”), which is designed to incentivize workforce continuity during the ongoing pandemic by providing forgivable 7(a) loans to eligible businesses, which are specifically defined to include nonprofits (each such loan, a “PPP Loan,” and collectively, the “PPP Loans”). The PPP Program is available to businesses employing not more than the greater of (i) 500 employees (full-time, part-time or otherwise) or (ii) the size standard in number of employees for the industry in which the entity operates as established by the Small Business Administration (the “SBA”). The PPP Program will lend up to an aggregate amount of $349 billion during the period beginning retroactively on February 15, 2020 through June 30, 2020 (the “Covered Period”). PPP Loan proceeds used to pay payroll, mortgage interest, rent and utilities between February 15, 2020 and June 30, 2020, subject to certain restrictions, may be forgivable in full. If you are interested in this program, we encourage you to review our previously published Locke Lord QuickStudy: Saving Our Small Businesses: Congress Reaches Agreement on New Forgivable Paycheck Protection Loans to Small Businesses, for detailed information on small business eligibility, authorized uses of PPP Loan funds, loan terms and lender considerations.

Economic Injury Disaster Loans. The Economic Injury Disaster Loan program, also operated by the SBA, is also of potential value to smaller nonprofits. As a result of the CARES Act, the aggregate appropriation to the SBA for Economic Injury Disaster Loans (“EIDLs”) has been increased to $10 billion. During the “Covered Period” beginning January 31, 2020 through December 31, 2020, EIDLs will be loaned to selected small businesses, including private nonprofit organizations, who (i) have suffered “substantial economic injury” as a result of COVID-19 and (ii) are located in a declared disaster area. EIDLs are available to U.S. businesses that meet the SBA’s small business size limits on average annual receipts or

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1 See Coronavirus Aid, Relief, and Economic Security Act, H.R. 748, 116th Con. (2020) § 1102. Nonprofits have historically been excluded from SBA 7(a) loan eligibility, so this is a notable change.
2 See id. at § 1102((D)(v).
3 See id. at § 1102(D)(i).
4 See id. at §§ 1101, 1107.
5 See id. at § 1110(e).
number of employees, which vary based on industry. EIDLs can be used for working capital expenses, including fixed debts, payroll and accounts payable when working capital is unavailable to the small business from other sources. The maximum interest rate for EIDLs to a nonprofit organization is 2.75% with a maximum term rate of 30 years. Nonprofits may receive both PPP Loans and EIDLs so long as such loans are not used for the same purpose or otherwise duplicative. For more information on the availability of EIDLs for businesses impacted by COVID-19, as well as information on how to apply for EIDLs, see the following two previously published QuickStudies:

- Locke Lord QuickStudy: Saving Our Small Businesses: CARES Act Expands Economic Injury Disaster Loan Program to Provide Additional Financial Relief to Small Businesses

Relief for Mid-Sized Nonprofits (between 501 to 10,000 employees)

Main Street Lending Program. Nonprofits may be eligible for direct loans through a new federal reserve program (the “Main Street Lending Program”) that will provide 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. To be eligible, a nonprofit must make several good faith certifications and 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. In addition, the direct loan must be entered into directly with the nonprofit organization as the 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. If you are interested in this program, we encourage you to review our previously published guidance in the following two QuickStudies:

- Locke Lord QuickStudy: Help for Mid-Sized Nonprofits: Congress Passes CARES Act providing for Implementation of New Direct Loan Program to Eligible Mid-Size Businesses
- Locke Lord QuickStudy: Congress Provides for Implementation of New Direct Loan Program to Eligible Mid-Size Borrowers in CARES Act.

We are still awaiting further guidance from the Treasury Department and/or the Federal Reserve on how the Main Street Lending Program will be administered, and we expect to publish additional guidance for the participation of lending institutions and mid-sized businesses, including nonprofits, in this program upon the release of such regulatory guidance.

Additional Relief for All Nonprofits (any size)

Employee Retention Tax Credit. The CARES Act provides a fully refundable tax credit for eligible employers equal to 50% of qualified wages paid to employees after March 12, 2020 and before January 1, 2021. Eligible Employers for the purposes of the Employee Retention Tax Credit are those that carry on a trade or business during calendar year 2020, including nonprofits, that either: (i) fully or partially suspends operation during any calendar quarter in 2020 due to orders from an appropriate governmental authority limiting commerce, travel, or group meetings (for commercial, social, religious, or other purposes) due to COVID-19; or (ii) experiences a significant decline in gross receipts during the calendar quarter. If the Eligible Employer averaged more than 100 full-time employees in 2019, “qualified wages” only covers wages paid to those employees who are not providing services during any period of economic hardship described in (i) or (ii) above. For these employers, “qualified wages” taken

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8 See Coronavirus (COVID-19), supra note 6.
9 See id.
11 See id. at §4003(c)(3)(D).
12 See id. at §4003(c)(3)(A)(l).
13 See id. at § 2301; see also IR-2020-62.
into account for an employee may not exceed what the employee would have been paid for working an equivalent duration during the 30 days immediately preceding the period of economic hardship. If the Eligible Employer averaged 100 or fewer full-time employees in 2019, “qualified wages” covers all wages paid to all employees during any period of economic hardship described in (i) and (ii) above. The maximum amount of qualified wages taken into account with respect to each employee for all calendar quarters is $10,000, so that the maximum credit for an Eligible Employer for qualified wages paid to any employee is $5,000. It should be noted that the Employee Retention Tax Credit is not available to employers that receive a loan under the PPP Program.

Expanded Charitable Deductions. The CARES Act provides for the allowance of a partial above the line deduction for charitable contributions up to $300 for taxpayers that do not itemize their deductions.\(^\text{14}\) Further, the CARES Act increases the limitations on deductions for charitable contributions during 2020 for both individuals who itemize and corporations. In particular, for 2020, the 50% of adjusted gross income limitation for individuals has been suspended, and for corporations, the 10% limitation has been increased to 25% of taxable income.\(^\text{15}\) It remains to be seen if this expansion of charitable deductions will positively impact contributions to nonprofits during this time.

Payroll Tax Deferral. The CARES Act permits employers to defer paying their portion of the social security payroll tax otherwise due for the period ending December 31, 2020. The deferred payroll taxes are due in two equal installments by December 31, 2021 and December 31, 2022.\(^\text{16}\) There is no requirement to show any specific COVID-19 related impact to be eligible for this payroll tax deferral; however, the deferral is not available to any employer that receives loan forgiveness with respect to the PPP Program.\(^\text{17}\)

SBA Express Loans. The CARES Act increases the maximum loan amount from $350,000 to $1,000,000 for SBA “Express Loans,” which are an expedited version of the loans provided under Section 7(a) and have a typical turnaround period of 36 hours.\(^\text{18}\) Credit decisions are made by the lender, which are not required to take collateral for loans up to $25,000.\(^\text{19}\) Similar to the PPP Program, the CARES Act expressly makes nonprofit organizations eligible for SBA Express Loans.\(^\text{20}\)

Your regular Locke Lord contact and the authors of this article would be happy to help you navigate the CARES Act as it relates to or otherwise affects nonprofit organizations of all sizes.

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

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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.

\(^{15}\) See id. at § 2205.
\(^{16}\) See id. at § 2302(d)(3).
\(^{17}\) See id. at § 2302(a)(3).
\(^{18}\) See id. at § 1102(c)(1).
\(^{19}\) See id. at § 1102(a)(2)(D)(i).