

Memorandum

Pro Bono Department Update: Financial/Legal Assistance to Nonprofits in the Face of the COVID-19 Crisis (Congressional COVID-19 Stimulus Loans, Grant Expansions and Other Resources)

April 2, 2020

This Pro Bono Department Update examines, as of April 1, 2020, details of financial assistance programs (loans and grants, as well as certain forms of tax relief for charitable giving) that may assist nonprofit organizations at the outset of the coronavirus disease 2019 (“COVID-19”) crisis. The Update also provides a preliminary list of legal services organizations providing advice, guidance and referrals for *pro bono* assistance to nonprofits.¹

The Firm’s Pro Bono Department is engaged with a network of legal services organizations and other *pro bono* counsel from around the country as part of the coordinated effort to address this crisis, and will continue to update these resources. We urge you to check the links provided below as additional details of the programs emerge, and as efforts come online around the country and across the globe to assist those whose lives are upended by the health, economic and other disruptions resulting from COVID-19.

Our Pro Bono Department stands ready to devote significant resources to address the widespread implications of COVID-19. Please note that in all instances, the nonprofit organizations that come to be served through the Firm’s *pro bono* program are initially referred by the legal services organizations with whom we partner. Additional information on those programs is below.

A. COVID-19 Related Financial Assistance to Qualifying Nonprofit Organizations

RELIEF TO NONPROFITS (INCLUDING LOANS AND GRANTS) UNDER THE CARES ACT

- On March 6, 2020, the Coronavirus Preparedness and Response Supplemental Appropriations Act (“Phase I Bill”) was signed into law and addressed the Small Business Administration (the “SBA”) Economic Injury Disaster Loan Program (the “EIDL”). The Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”) was enacted by Congress and signed into law on March 27, 2020. The CARES Act, inter alia increased access to the SBA’s general business loans, including Paycheck Protection Program/7(a) loans to help cover payroll and other certain expenses (PPP/7(a) Loans, \$349 billion package) and Economic Injury Disaster Loans (EIDLs, \$10 billion package). The CARES Act also expanded existing loan deferments and loan forgiveness, in order to address economic losses and threat to

¹ By listing certain organizations and programs in this Update, Simpson Thacher & Bartlett LLP does not endorse participation but includes references only in order to assist concerned businesses and nonprofits with information about existing programs and links for additional information.

small businesses and others, caused by the economic disruption associated with COVID-19. For additional information, see the [Simpson Thacher & Bartlett LLP April 2, 2020 Memorandum: UPDATE: Congressional COVID-19 Stimulus: Small Business Loan Expansions](#).

- **PPP/7(a) Loans:** PPP/7(a) loans (available through June 30, 2020) are intended to assist employers, including nonprofits, in maintaining their payroll levels, will be 100% guaranteed by the federal government through December 31, 2020 and are subject to loan forgiveness up to the entire loan amount subject to the following eligibility requirements and restrictions.
 - **Nonprofit Eligibility:** A 501(c)(3) nonprofit organization that was in operation on February 15, 2020, that employs not more than the greater of 500 employees (includes full-time, part-time and those employed on another basis)²; or, if applicable, the size standard in number of employees established for the industry in which the nonprofit operates.³
 - A **good faith certification** must be made (i) that the uncertainty of current economic conditions makes the loan request necessary, (ii) acknowledging the funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments and/or utility payments, (iii) that the borrower does not have an application pending for a loan under 7(a) for the same purpose and duplicative of amounts already applied and (iv) during the period beginning on February 15, 2020 and ending on December 31, 2020 that the borrower has not received amounts under 7(a) for the same purpose and duplicative of amounts applied under a covered loan.⁴
 - **Amount:** The maximum loan size is \$10 million.⁵ The loan size up to that amount is determined as follows:
 - Organizations operating from February 15, 2019 to June 30, 2019 may receive a maximum loan of 2.5 times the organization's average total monthly payments for payroll costs incurred during the one-year period before the date the loan is made;

² Coronavirus Aid, Relief, and Economic Security Act, H.R. 748, 116th Con. (2020) § 1102(a)(2) amending 15 U.S.C. 636(a), at new subsection (36)(D)(i)(I)-(II). *See also id.* (36)(A)(vii). The affiliation provisions apply to nonprofits in the same manner as with respect to a small business concern. *Id.* at (36)(D)(vi). The affiliation rules are described in [Simpson Thacher & Bartlett LLP April 2, 2020 Memorandum: UPDATE: Congressional COVID-19 Stimulus: Small Business Loan Expansions](#), pp. 2-3.

³ For organizations with more than 500 employees, the CARES Act instructs the Treasury Secretary, through the Federal Reserve, to ensure that nonprofit organizations with more than 500 and less than 10,000 employees have access to a specific loan facility with loans not higher than 2% per year and no payments due for the first six months. Coronavirus Aid, Relief, and Economic Security Act, H.R. 748, 116th Con. (2020) § 4003 amending 15 U.S.C. 636(a), at new subsection (c)(3)(D)(i). In order to qualify, the eligible borrower must self-certify, among other things, that the loan is necessary to support the borrower's ongoing operations, the borrower will retain 90% of its workforce until September 30, 2020 and the borrower will not outsource or offshore jobs for a period of time ending two years after repayment of the loan. There are also restrictions on executive compensation for loan recipients. Details of this program will become available at a later date.

⁴ Coronavirus Aid, Relief, and Economic Security Act, H.R. 748, 116th Con. (2020) § 1102(a)(2) amending 15 U.S.C. 636(a), at new subsection (36)(G)(i).

⁵ *Id.* at new subsection 36(E).

- Organizations not operating between February 15, 2019 to June 30, 2019, may receive a maximum loan equal to 2.5 times average monthly payroll costs incurred between January 1, 2020 and February 29, 2020;
 - The size of the loan may be increased by the outstanding amount of an EIDL made under subsection (b)(2) of the Small Business Act between January 31, 2020 and the date on which covered loans under 7(a) are made available, with the EIDL to be refinanced under the covered loan; and
 - **Interest rates** cannot exceed 4%. SBA loan fees are waived. No collateral or personal guarantees are required.
- A PPP/7(a) loan shall be **eligible for forgiveness** (apply through lender) up to the amount spent by the borrower during an eight-week period after the origination date of the loan on payroll costs, interest payment on any mortgage incurred prior to February 15, 2020, payment of rent on any lease in force prior to that date and payment on any utility for which services began prior to February 15, 2020.⁶
- The amount eligible for forgiveness may not exceed the principal. The amount of the loan eligible for forgiveness will be reduced proportionally by the number of employees laid off during the eight-week period relative to the borrower's prior employment levels for one of two time periods: (1) February 15, 2019 through June 30, 2019 or (2) January 1, 2020 to February 29, 2020. The reduction would also apply if employees' salaries are reduced by more than 25%.
 - Borrowers that re-hire employees within a certain period of time that were previously laid off (or borrowers that remedy reduced salaries or wages) will not be penalized.
- **Permitted uses for loan proceeds:** Payroll costs (compensation and benefits of any employee or independent contractor up to an annual salary of \$100,000); costs related to the continuation of group healthcare benefits during periods of paid, sick, medical, or family leave, and related to insurance premiums; employee salaries, commissions, or similar compensations; mortgage payments; rent; utilities or interest on any other debt obligations incurred before February 15, 2020.⁷
- **How to apply for a PPP Loan:** An eligible nonprofit may receive one loan during the Covered Period in the CARES Act, beginning February 15, 2020 through June 30, 2020. PPP Loans will be available through approved/certified third-party lenders (organizations may contact their existing lender/bank for details).

⁶ Coronavirus Aid, Relief, and Economic Security Act § 1106(a)(7).

⁷ Coronavirus Aid, Relief, and Economic Security Act § 1102(a)(2) amending 15 U.S.C. 636(a), new subsection (36)(F).

- On March 31, 2020, the SBA made available a [PPP Sample Application Form](#), which includes information that will be requested of PPP participants.
- Additional guidance is expected in the coming days, with a target date of Friday, April 3, 2020 for the program to begin. Local SBA offices can provide application guidance if your regular third-party bank or lender is not part of PPP: <https://www.sba.gov/local-assistance/find/?type=SBA%20District%20Office&pageNumber=1>.
- **EIDLs:** For a nonprofit that has suffered a substantial economic injury as a result of COVID-19, and is “unable to meet its obligations as they mature or to pay its ordinary and necessary operating expenses.” **An applicant may request that the SBA provide an advance of no more than \$10,000 on the amount requested within three days of the SBA receiving the application.** The applicant must not own property subject to a judgment lien owed by the U.S. government.
 - **Nonprofit Eligibility:** “Private nonprofit organizations”⁸ in operation before January 31, 2020, with 500 or fewer employees.
 - The Federal Regulations define an eligible private nonprofit organization as a non-governmental agency or entity that currently has: (1) An effective ruling letter from the U.S. Internal Revenue Service, granting tax exemption under sections 5[01](c), (d), or (e) of the Internal Revenue Code of 1954, or (2) Satisfactory evidence from the State that the non-revenue producing organization or entity is a non-profit one organized or doing business under State law.⁹
 - **Amount:** The maximum amount available to eligible organizations is \$2 million, subject to waiver if the applicant’s business concern is a “major source of employment.”
 - The CARES Act waives existing rules related to the personal guarantee on advances and loans of not more than \$200,000 during the covered period of January 31, 2020 to December 31, 2020. The Act does not address collateral requirements and existing EIDL collateral requirements for loans of more than \$25,000 appear to apply.
 - The SBA has lower interest rates than the statutory limit for EIDL for business concerns impacted by COVID-19: 2.75% for nonprofits.
 - Under the CARES Act, an applicant is not required to repay any amounts of an advance, even if the applicant is subsequently denied the EIDL.¹⁰ If an applicant receives an advance under the CARES Act but is approved for a PPP/7(a) loan instead, the advance amount is reduced from the amount of the loan eligible for forgiveness under the PPP/7(a) program.

⁸ Coronavirus Aid, Relief, and Economic Security Act § 1110(b).

⁹ Electronic Code of Federal Regulations, Title 13, Chapter I, Part 123, Subpart D (Economic Injury Disaster Loans), available at <https://www.ecfr.gov/cgi-bin/text-idx?SID=0dfa14foee721b0a220eda52cce77e2f&mc=true&node=sp13.1.123.d&rgn=div6>.

¹⁰ Coronavirus Aid, Relief, and Economic Security Act § 1110(e)(5).

- **Permitted uses for loan proceeds:** Working capital necessary to carry the business concern until resumption of normal operations; expenditures necessary to alleviate the specific economic injury (not to exceed that which the business could have provided had the injury not occurred); providing paid sick leave to employees unable to work due to the direct effect of COVID-19; maintaining payroll to retain employees; meeting increased costs to obtain materials unavailable from the applicant's original source because of interrupted supply chains; rent or mortgage payments and repaying obligations that cannot be met due to revenue losses.¹¹
 - EIDL proceeds may not be used to refinance indebtedness incurred prior to the disaster event; make payments on loans owned by another federal agency (including the SBA) or an SBIC; pay tax penalty obligations; repair physical damage; or pay dividends or other disbursements to owners, partners, officers or stockholders, except for reasonable remuneration directly related to their performance of services for the business concern.
- **How to apply:** Directly to the SBA: <https://covid19relief.sba.gov/>.

TAX CREDITS/CHARITABLE CONTRIBUTION PROVISIONS IN THE CARES ACT

- **Individual Cash Charitable Contributions:** The CARES Act permits taxpayers who do not itemize deductions an “above the line” deduction of up to \$300 for cash charitable contributions to certain charitable organizations beginning in 2020. In addition, the CARES Act raises the annual limit on the deduction for cash charitable contributions made in 2020 to certain charitable organizations for individuals who do itemize deductions, increasing it from 60% to 100% of adjusted gross income. These changes do not apply to cash charitable contributions made to private non-operating foundations, supporting organizations or donor-advised funds.
- **Corporate Cash Charitable Contributions:** The CARES Act increases the limit on the deduction for cash charitable contributions made in 2020 by corporations to 25% of taxable income, from 10%. These changes do not apply to cash charitable contributions made to private non-operating foundations, supporting organizations or donor-advised funds.
- **Charitable Contributions of Certain Food Inventory:** The limit on the deduction for charitable contributions of eligible food inventory in 2020 is similarly increased to 25%, from 15%, of aggregate net income or taxable income (depending on the form of the taxpayer).
- **Employee Retention Credit:** The CARES Act creates a quarterly refundable credit against employment taxes for retaining employees despite the negative economic effects of COVID-19. This credit is applied dollar-for-dollar (subject to the limitations below) for up to 50% of “qualified wages” paid between March 13, 2020 and December 31, 2020.

¹¹ Coronavirus Aid, Relief, and Economic Security Act § 1110(e)(4).

- **Qualified Wages:** The term “qualified wages” is defined differently depending on the number of employees. For employers with 100 or fewer employees, the qualified wages includes all wages paid for the years the employer satisfies the eligibility requirements below. For employers with more than 100 employees, qualified wages only includes wages paid for employees not providing services due to COVID-19-related restrictions, while the employer satisfies the eligibility requirements below.
- **Eligibility:** The credit is available for tax-exempt organization employers carrying on operations during the 2020 tax year (i) which are fully or partially suspended during the quarter due to COVID-19-related governmental orders limiting commerce, travel, or group meetings or (ii) experience gross receipts for the quarter less than 50% of the gross receipts for the same quarter in the prior year.¹² Eligibility will end when the employer earns more than 80% gross proceeds as compared to the prior calendar quarter.
 - Employers who receive PPP/7(a) “Small Business Interruption Loans” under the CARES Act are ineligible for the credit.
 - **Limitations:** The credit is in the amount of 50% of qualified wages up to \$10,000 per employee. The credit is also limited to the amount of employment taxes on wages paid for the calendar quarter and is reduced by other credits claimed for employer-payroll taxes to prevent double benefits.

COVID-19 RELIEF GRANTS AVAILABLE TO NONPROFITS (IDENTIFIED TO DATE)

- **Multi-State/National:**
 - **Americans for the Arts:** Provides a comprehensive list of emergency grants, financial assistance and relief funds around the country for artists, theaters, and other arts-related organizations: <https://www.americansforthearts.org/by-topic/disaster-preparedness/coronavirus-covid-19-resource-and-response-center> (scroll to “Relief Funds and Financial Assistance”).
 - **Economic Opportunity Funders (EOF):** EOF is an informal network of funders which seeks to advance economic equity and opportunity. The EOF website maintains a list of funding opportunities in the wake of the COVID-19 crisis: <https://eofnetwork.org/philanthropys-response-to-the-coronavirus-outbreak/#>.
- **New York City:**
 - **Robin Hood’s Relief Fund** is accepting applications from 501(c)(3) organizations providing services in New York City on a rolling basis for immediate response grants in the following priority areas:
 - Serves vulnerable populations including low-income children and families, low-wage workers, individuals and families who are homeless and immigrant communities.

¹² Coronavirus Aid, Relief, and Economic Security Act § 1100(b) amending 15 U.S.C. 636(a), new subsection 2301(c)(1)(C).

- Provides or will expand services to include emergency assistance (e.g. food, shelter, and other basic needs).
- At risk for gaps in government contracts due to interruption of services.
- Incurred unexpected expenses (e.g. overtime pay, technology).
- Track record with administering emergency cash grants to individuals and families.
- **Brooklyn Community Foundation's** [Brooklyn COVID-19 Response Fund](#) is issuing grants of up to \$10,000, with a priority for nonprofits working toward racial equity.
- **New York Foundation for the Arts'** [Emergency Grants Page](#) has collected various sources of emergency grants for arts/cultural organizations.
- **NY Community Trust/NYC's** [NYC COVID-19 Response & Impact Fund](#) will assist nonprofit service providers struggling with the health and economic effects of the coronavirus. It will give grants and loans to NYC-based nonprofits that are trying to meet the new and urgent needs that are hitting the city. Priority will be given to nonprofits addressing essential healthcare and food insecurity as well as arts and culture, because New York is the cultural capital of the nation.
- **United Way New York City's** [COVID-19 Community Fund](#) will provide grants to the organization's partner agencies and community-based organizations that work with communities who are disproportionately impacted by coronavirus and the economic consequences of the outbreak.

B. General and Legal Services Information for Additional Guidance and Referrals

Organizations serving nonprofits will be at the frontlines during the crisis. These websites include links to nationwide and state-specific resources and information for nonprofits:

- National Council of Nonprofits: [Coronavirus Information Page](#)
- Bridgespan: [COVID-19 Resources for Nonprofits and Funders](#)
- Nonprofit New York: [COVID-19 News Page](#)

Nonprofits seeking free legal advice or referrals during the COVID-19 crisis will have access to programs that are developed as the *pro bono* community responds to this overwhelming need. Below is a list of the legal services organizations with whom Simpson Thacher has partnered over the years to provide advice and guidance to nonprofits, including referrals. While the list below is focused on the geographic areas where the Firm's attorneys are located, the national organizations above, local bar associations and nonprofit organizations in other areas will all be a source for information about *pro bono* programs as they come online.

- New York
 - New York Lawyers in the Public Interest ("[NYLPI](#)")
 - Lawyers Alliance for New York ("[LANY](#)")
 - Volunteer Lawyers for the Arts ("[VLA](#)")

- [Pro Bono Partnership](#)
 - California
 - [California Lawyers for the Arts](#)
 - [Public Counsel](#)
 - Washington, D.C.
 - [D.C. Bar Association](#)
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