

# **WEBSTER, CHAMBERLAIN & BEAN, LLP | NONPROFIT ALERT**

**December 29, 2020**

## **NONPROFIT RELIEF EXPANDED UNDER THE NEW COVID-19 STIMULUS LAW**

For the first time, nonprofit organizations that are exempt from federal income tax under §501(c)(6) are eligible recipients of Paycheck Protection Program (PPP) loans under the recently signed [Economic Aid to Hard-Hit Small Businesses, Nonprofits and Venues Act](#) (the “Act”)<sup>1</sup>, and nonprofit organizations that are exempt from Federal income tax under §501(c)(3) are eligible for additional funding. Not later than January 6, 2021, the Small Business Administration (SBA) must publish emergency regulations to implement the new loan provisions. The PPP, created by the Coronavirus Aid, Relief, and Economic Security (CARES) Act, offers low-interest, forgivable loans guaranteed by the SBA for small businesses and other entities to keep workers on the payroll during the COVID-19 crisis.

### **The Paycheck Protection Program Overview and Changes Under the Act**

PPP loans can be used to pay qualifying expenses, including payroll support, such as employee salaries, paid sick or medical leave, health, and other insurance premiums and retirement benefits, severance payments, state and local employment taxes, and mortgage, rent, and utility payments. The Act generally expands the use of outstanding or new loans to:

- Payments for certain software or cloud computing services;
- Costs related to property damage, vandalism, or looting that occurred in 2020, and that weren’t covered by insurance or other compensation;
- Payments made to suppliers;
- Purchases of personal protective equipment; and
- Adaptations of non-residential worksites to comply with COVID-19 federal health and safety guidelines, including ventilation systems, sneeze guards, and screening capabilities.

Each of the new definitions of expenses listed above is detailed, and employers should review them before using PPP loan funds for those purposes. The new definitions do not apply to PPP loans that were forgiven before December 27, 2020.

None of the proceeds of a PPP loan may be used for lobbying activities or other expenditures designed to influence legislation.

### **Eligibility for §501(c)(6) Organizations**

Under the Act, a §501(c)(6) organization will be eligible to receive a PPP loan if:

- (1) the organization does not receive more than 15 percent of its receipts from lobbying activities;
- (2) the lobbying activities of the organization do not comprise more than 15 percent of the total activities of the organization;
- (3) the cost of the lobbying activities of the organization did not exceed \$1,000,000 during the most recent tax year of the organization that ended prior to February 15, 2020; and
- (4) the organization employs not more than 300 employees.

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<sup>1</sup> The Act is Division M, Title III, of the Consolidated Appropriations Act, 2021 (H.R. 133), and begins on page 2042 of the linked PDF file.

The maximum loan amount for §501(c)(6) organizations (as well as other entities applying for a first-draw PPP loan) is the lesser of 2.5 times the average monthly payroll costs for the one-year period before the loan is made, or \$2 million. Organizations that were not in operation on February 15, 2020, are not eligible for a PPP loan.

### **Second Draw Loans for §501(c)(3) Organizations**

Loans are expanded so that eligible entities may apply for a second round of funding after exhausting their original PPP loan. Eligible entities for the original PPP loans were limited to §501(c)(3) and §501(c)(19) organizations, and for-profit small businesses (including sole proprietors), with fewer than 500 employees that were in existence on February 15, 2020.

These “second draw” loans are limited to the aforementioned entities which can demonstrate they have: (1) fewer than 300 employees; and (2) have at least a 25 percent drop in gross receipts in any 2020 quarter compared to the same quarter in 2019. This criterion is different from, and additional to, the original qualification rules for the PPP, which required the small business to state that economic uncertainty made the PPP loan necessary.

The maximum loan size for second-time borrowers is \$2 million, or 250% of their average monthly payroll costs, whichever is less. The second draw loans are forgivable but at least 60% must be spent on payroll costs. Second-draw loan proceeds can be used for up to 24 weeks after the loan’s origination.

### **Simplified Forgiveness Application**

For loans of \$150,000 or less, the Act requires the SBA to publish a simplified forgiveness application within 24 days of the Act’s enactment, i.e., not later than January 21, 2021.

Please contact WC&B if you would be interested in discussing these matters.

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