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Board Resource Informational Memorandum

Coronavirus Aid, Relief, and Economic Security Act

The Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") was enacted on March 27, 2020 for purposes including the support of **501(c)(3) tax-exempt public charities**. Title I of the CARES Act – "Keeping American Workers Paid and Employed Act" – contains the **Paycheck Protection Program** that provides emergency, government-backed loans for eligible 501(c)(3) organizations¹ for the purpose of funding payroll and related expenses through mid to late June 2020.

The Paycheck Protection Program is administered by the federal Small Business Administration ("SBA") under the SBA 7(a) Loan Program. **Paycheck Protection Program loan applications are submitted to authorized lenders (i.e., banks or credit unions approved by the SBA) rather than to the SBA directly.** To determine whether your organization would be eligible for the relief provided by this program, please read below.

- **Eligible 501(c)(3) Organizations (all of the following must apply)**
 - Employ 500 or fewer employees or independent contractors
 - The term "employee" includes persons working full time, part time, or "other."
 - In operation on February 15, 2020
 - Make a good faith certification regarding the need for and use of the funds
- **Covered expenses**
 - Payroll costs, including:
 - Salary, wage, commission, and cash payments
 - Vacation, medical leave, and family leave
 - Dismissal or separation payments
 - Health and retirement benefits and insurance premiums
 - Taxes on employee compensation

¹ This article is focused on the applicability of the Paycheck Protection Program to 501(c)(3) tax-exempt public charities; the program also applies to other entities not discussed herein.

- Operations/facilities costs, including rent under a lease agreement and payment of utilities
- Mortgage interest (**excluding** prepayment of interest or payment of mortgage principal)
- Interest on pre-existing debt
- **Excluded expenses** include:
 - Compensation to an individual in excess of \$100,000
 - Certain taxes
 - Compensation to employees residing outside of the United States
 - Sick or family leave wages for which a credit is allowed under the Families First Coronavirus Response Act
- **Beneficial Aspects of the Loan**
 - **No personal guarantee or collateral required**
 - The government has **no recourse** against the public charity's individual directors or officers, unless the loan funds are used for an unauthorized purpose
 - There is **no fee** for the application
 - **Eligible loans will be forgiven in whole or in part**
 - **BORROWERS MUST APPLY TO THEIR LENDER FOR LOAN FORGIVENESS**
 - Lenders must make a determination within **60 days** of the application
 - **Loan principal can be forgiven; interest is likely not forgiven**
 - This loan would essentially be turned into a **grant**, but note that action is required on the part of the borrower in the form of the loan forgiveness application
 - **Conditions for loan forgiveness**
 - Employer must maintain employment of staff for **at least 8 weeks** after origination of the loan *or*, under certain circumstances, rehire employees by **June 30, 2020**
 - **Employers that reduce salary amounts or staff numbers during the applicable period would have their loan forgiveness total reduced correspondingly**
 - At least **75%** of the forgiven amount must have been used for payroll. (See US Treasury Guidance, PPP Overview, available on our website.)
- **Loan Terms**
 - **Amount:** Eligible 501(c)(3) tax-exempt public charities can borrow the lesser of **\$10 million** or **2.5 times the average total monthly payroll** (the latter of which is determined by a formula set forth in the CARES Act).
 - **Note:** The US Treasury has issued this guidance: "Loans can be for up to two months [8 weeks] of your average monthly payroll costs from the

last year plus an additional 25% of that amount."

(See US Treasury Guidance, Borrower Information, available on our website.)

- **Length: The portion of the loan that is not forgiven** will mature **up to 10 years** from the date of submission of the application for forgiveness, depending upon the terms negotiated with the lender
 - **Note:** The Treasury's guidance states that loans **will be due in 2 years.** (See US Treasury Guidance, Borrower Information, available on our website.)
- **Interest Rate:** Between **.5% - 4%**. All or some principal can be forgiven, interest will likely still be paid.
- **Commencement of Repayment:** Between 6 months to 1 year after the loan is secured
- **Prepayment Penalty:** None
- **Where, When, and How to Apply**
 - Application start date: **April 3rd**
 - The **application form** is available via the US Treasury's website at <https://home.treasury.gov>. (See US SBA, PPP Application, available on our website.)
 - **Applications are submitted through SBA-approved lenders. The SBA has provided a list of its 100 most active lenders here:** <https://www.sba.gov/article/2020/mar/02/100-most-active-sba-7a-lenders>
 - Applicants are also urged to contact their local SBA offices for assistance. A link to the Massachusetts SBA is found here: <https://www.sba.gov/offices/district/ma/boston>
 - **Payroll documentation** will need to be submitted with the application
 - Borrowers are encouraged to apply as soon as possible, as there is a **funding cap** for this legislation and many applicants are anticipated

Best wishes from our office during this unusual time.

Note: The information reflected in this memorandum is subject to change by the US Government, including the US Department of the Treasury and the Small Business Administration.