How Will the New Stimulus Act Affect You?

Many nonprofits are still struggling with financial problems due to COVID-19. This new law is designed to help.

By Andrew L. Steinberg

Rescue Plan Expands Relief for Nonprofits

The American Rescue Plan became law in March, 2021. It's one of the largest stimulus measures in history. The $1.9 trillion stimulus builds on the relief provided in the Coronavirus Aid, Relief, and Economic Security Act (CARES Act).

Several parts of the American Rescue Plan provide economic relief for nonprofit organizations. Here is a rundown.

Eligibility for PPP Extended

The American Rescue Plan extends eligibility for the Paycheck Protection Program (PPP) to nonprofits that were previously ineligible. It adds $7.25 billion to available PPP funding.

Now virtually all Section 501(c) organizations are eligible. Only 501(c)(4) social welfare organizations and 501(c)(7) social clubs are excluded. The size requirements for 501(c)(3), 501(c)(6), and 501(c)(19) organizations have been relaxed.

Originally, the CARES Act restricted PPP eligibility to Section 501(c)(3) and 501(c)(19) organizations with 500 or fewer employees. At the end of 2020, the Economic Aid Act expanded the availability of PPP loans to most Section 501(c)(6) organizations – including trade associations, professional societies, business leagues, and chambers of commerce – and to "destination marketing organizations" with 300 or fewer employees if they didn't engage in significant lobbying activities.

Section 501(c)(3) and 501(c)(19) organizations are now eligible to receive PPP if they employ no more than 500 employees per physical business location. Likewise, Section 501(c)(6) organizations and destination marketing organizations can receive PPP if the organization employs no more than 300 employees per business location, as long as don't do too much lobbying.

> "Newly eligible organizations must abide by lobbying rules."

> "More nonprofits are eligible for new federal programs."

Newly eligible 501(c) organizations are subject to the same lobbying and 300-or-fewer-employees limitations that apply to Section 501(c)(6) organizations. This means they must abide by the following rules:

1. They can't receive more than 15% of revenues from lobbying activities.

2. No more than 15% of their total activities can involve lobbying.

3. Lobbying costs can't exceed $1 million during the most recent tax year ended before February 15, 2020.

4. They can't have more than 300 employees per physical location.

Notably, the Economic Aid Act didn't specify how "lobbying activities" would be defined, leaving many organizations wondering how to count their lobbying activities for assessing PPP eligibility. Updated guidance on March 3, 2021, clarifies that 501(c)(6) organizations should use the definition of "lobbying activities" in the Lobbying Disclosure Act (LDA) to decide if they're eligible for PPP loans. Although the SBA hasn't yet explained whether the same definition applies to newly eligible 501(c) organizations, it would be reasonable for such organizations to apply the LDA definition until the SBA weighs in.

Previously, commentators suggested that organizations could use the federal tax law's definition of lobbying to determine eligibility. The LDA definition is far narrower than the tax code's definition of lobbying, which may be good news for many 501(c)(6) and newly eligible 501(c) organizations. Critically, the LDA doesn't require organizations to report state lobbying and grassroots lobbying expenses. Thus, many organizations that conduct state, local, or grassroots lobbying have a better chance of qualifying for a PPP loan than they would if a different definition had been applied.

The SBA's guidance doesn't state which time period you should look to when counting lobbying activities to decide if you've met the 15% threshold. The statute does provide that for purposes of deciding whether an entity has expended more than $1 million in lobbying, you should look to the organization's most recent tax year that ended before February 15, 2020. Many organizations have been applying this time frame for their 15% analyses in the absence of express guidance.

The PPP program application deadline has recently been extended. This extension will give newly eligible nonprofits additional time to apply for funding.

Nonprofits Receive Tax Credits for Giving Leave to Employees

Nonprofits with fewer than 500 employees can receive tax credits for voluntarily offering employees paid sick and family leave under the Families First Coronavirus Response Act (FFCRA). The American Rescue Plan extends the availability of these tax credits for paid sick and family leave taken for reasons related to COVID-19 and provided between April 1 and September 30, 2021.

The FFCRA, adopted in March 2020, required nonprofits with fewer than 500 employees to provide partially paid leave to eligible employees for COVID-19-related reasons until December 31, 2020. Employers received a dollar-for-dollar refundable tax credit for the cost of providing such leave.

> "PPP funds are available to virtually all nonprofits."

The mandatory paid leave provisions became voluntary at the beginning of this year, but employers could receive a tax credit for the cost of the paid leave that was provided through the first quarter of 2021. Thus, some employers continued to provide the same benefits in order to continue receiving the tax credits, as well as to generate goodwill with employees. Now employers can receive tax credits for qualified wages paid during leave provided through the second and third quarters of 2021.

Employee-Retention Tax Credit Continued till 2022

The American Rescue Plan extends till 2022 the employee-retention tax credit for nonprofits whose operations were fully or partially disrupted because of a government shutdown or which are facing significant revenue losses due to COVID-19. The employee-retention credit, initially enacted under the CARES Act, provided a refundable payroll tax credit on qualifying wages paid to certain employees from March 13, 2020 to December 31, 2020. Under the CARES Act, the employee-retention tax credit was capped at $5,000 for wages paid by eligible organizations in 2020.

> "Some tax credits have been extended."

Although the credit was set to expire at the end of last year, the employee-retention credit was previously extended to include the first and second quarters of 2021, and the maximum per-employee credit amount was increased to $7,000-per-quarter for 2021, for a maximum credit of $14,000 for 2021 wages. The American Rescue Plan further extends the availability of the maximum $7,000 per quarter credit for qualifying wages paid through December 31, 2021. Consequently, an eligible organization can now receive up to $28,000 in employee-retention credits per employee for wages paid in 2021 (for a total of up to $33,000 in employee-retention credits per employee across 2020 and 2021 wages).

Nonprofits that receive PPP loans may claim an employee-retention credit on a retroactive basis. But in order to prevent double-dipping, the employee-retention credit can't be claimed for wages funded by a PPP loan.

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