



Weekly Team Huddle Affiliate Call Tuesday, March 31, 2020 COVID-19 Questions & Answers

This document captures questions raised during the Weekly Team Huddle Affiliate call on Tuesday, March 31, 2020 regarding COVID-19. The speakers were Michael A. Clark, Partner, and co-leader of the Non-Profit Institutions practice area team at Sidley Austin, LLP., and Katherine Dudley Helms and Timothy J. Stanton of Ogletree, Deakins, Nash, Smoak & Stewart, P.C. This information is intended for general use only. We encourage you to consult your own attorney or tax professional for specific guidance.

Small Business Issues

- Q:** Can affiliates qualify for the small business loan forgiveness program because it specifically does not allow “affiliates”?
- A:** The Paycheck Protection Act specifies that the SBA’s typical affiliation rules will be suspended for PPP loans backed by the SBA for franchises.

The following language is recommended:

“[Affiliate] is an independently owned and operated non-profit entity, with its own independent board of directors. As a non-profit corporation, there are no shareholders. Its charitable mission is to assist disabled children and adults through various services and programs, such as _____. [Affiliate] is a non-profit corporation organized under [state] law with its principal place of business located in [state]. [Affiliate] alone hires, terminates, disciplines, and compensates its employees. [Affiliate] has entered into a Membership Agreement with Easter Seals, Inc., which licenses to the [Affiliate] the use of Easter Seals’ name and federally registered trademarks in exchange for a membership fee. Easter Seals, Inc., as the licensor, does not share in the risk of loss with [Affiliate], and the fee amount is not dependent on [Affiliate’s] financial success. [Affiliate] does not share staff, employees, or management with Easter Seals, Inc. Easter Seals, Inc. is not involved in the day-to-day management and operations of [Affiliate] and lacks the ability to control or direct [Affiliate’s] Board of Directors, management, staff, and employees. [Affiliate] files its own Form 990 separate and apart from Easter Seals, Inc. The Membership Agreement’s terms provide that either party may terminate the Membership Agreement with or without cause with 30 days’ notice.”



Q: Is it true that there is an emergency advance of up to \$10,000 to small businesses and private non-profits harmed by COVID- 19 available within 3 days of applying for an SBA Economic Injury Disaster Loan (EIDL)?

A: Yes. The actual amount of the loan is based upon your specific circumstances. This loan is not tied to payroll like the Paycheck Protection loan that is still in the works. To access the advance, you first apply for an EIDL and then request the advance. The advance does not need to be repaid under any circumstance, and may be used to keep employees on payroll, to pay for sick leave, meet increased production costs due to supply chain disruptions, or pay business obligations, including debts, rent, and mortgage payments.

In addition to the entities that are already eligible for SBA disaster loans (small businesses, private non-profits, and small agriculture cooperatives), eligibility is temporarily expanded to include:

- Business entities with 500 or fewer employees
- Sole proprietorships, with or without employees
- Independent contractors
- Cooperatives and employee owned businesses
- Tribal small businesses
- Private non-profits of any size

Grant Terms

- You must have been in business as of January 31, 2020.
- Emergency Grants of not more than \$10,000 will be distributed by the SBA within three days of applying.
- Grantees are not required to repay the grant.
- If you apply for an EIDL and the grant, it's our understanding that you can still apply for a Paycheck Protection loan. However, the amount forgiven under a Paycheck Protection loan will be decreased by the \$10,000 grant.

We encourage you to verify this information with your own financial team before you proceed to make sure it's the right fit for your organization. If you do want to apply for this assistance, begin here: <https://covid19relief.sba.gov/#/>

Q: Are small business loans at 0.00% percent interest in the CARES Act?

A: Through June 30 there are no fees -See Page 10 Small Business Loans PDF - includes information on CARES ACT.

Q: Is it true that nonprofit organizations who receive Medicaid reimbursement are not eligible for small business loans?



A: Nonprofits that receive Medicaid reimbursement are also eligible.

Q: How does one apply for a small business loan? (Nancy Knoebel, ESEP)

A: <https://www.sba.gov/page/coronavirus-covid-19-small-business-guidance-loan-resources#section-header-2>

Payroll and Taxes

Q: Can we use our entire payroll tax against the amount we are required to pay out, and then file a “nonprofit” tax return in December 2021 for any uncovered amount we are required to pay, but not reimbursed through the pay roll tax? (Sherri Nielsen, ES Iowa)

A: In the situation where a nonprofit employer’s payroll taxes are insufficient to cover the cost of mandated leave and/or sick pay expenses for a quarter, the IRS apparently plans to implement an expediated reimbursement process to pay back the excess to the nonprofit employer. <https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs>

Q: How can our human resources department try to calculate the impact of FFCRA? This could impact the decisions the organization makes about paying employees past the two original weeks we have already agreed to pay.

A: <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

Q: Has there been sufficient guidance issued by the Department of Labor, with regard to the payment of employees? (Verna Hensley, ES Delaware)

A: <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

Q: Is there any funding available for nonprofits to help with access to capital (and NOT small business loans) or other financial relief packages to help keep people employed or to recover lost revenues? (Ron Ekstrand, ES Arkansas)

A: At this time, we are not aware of any other program other than what is available under the CARES Act. Assistance for Mid-Size Nonprofits -The CARES Act provides funding and liquidity in the Federal Reserve System for a new program to provide financing to banks and other lenders that make loans – with no higher than 2 percent interest and no principal or interest payments due for the first six months – directly to nonprofit organizations. To be eligible, a nonprofit



organization must have between 500 and 10,000 employees and must be a U.S. entity with significant operations in the U.S. and a majority of its employees located in the U.S. A nonprofit organization seeking such a loan must certify that it will use the funds to retain at least 90 percent of its workforce at full compensation and benefits until Sept. 30, 2020, and that, within four months of the end of the COVID-19 emergency, it intends to restore at least 90 percent of the workforce that it had as of Feb. 1, 2020. In addition, the nonprofit must agree to certain limitations on compensation paid to highly compensated employees.

Q: Will the UI (unemployment insurance) provision (Employee Retention Payroll Tax Credit) of the 3rd Stimulus bill be based on a formula for a bulk credit OR will it require another form / paperwork to fill out? (Mitch Tropila, ESGW) NOTE -The employee retention payroll tax credit is a benefit for organizations that don't get Paycheck Protection Program loans.

A: <https://www.sidley.com/en/insights/newsupdates/2020/03/tax-relief-provided-by-the-coronavirus-aid-relief-and-economic-security-act>