

# COVID-19 Impact on Non-Profits

Presented by:  
Greenberg Traurig's Government Law & Policy Practice

# Presenters

---

- **Tricia Asaro** | Chair, Albany Health Care & FDA Practice
- **Jonathan Bing** | Shareholder
- **Larry Levy** | Shareholder
- **John Mascialino** | Chair, NYC Government Law & Policy Practice
- **Mark Weprin** | Shareholder
- **Bryan Grimaldi** | Of Counsel
- **India Sneed** | Associate

# NY Government Law & Policy Group



# Topics

---

- Federal Legislative Overview
- Small Business Relief under the CARES Act
- NYS Budget & Legislative Update
- NYC Budget & Legislative Update
- Essential business designations
- Government Procurement
- Lobbying
- Attorney General Charity Bureau Guidance
- Not-for-Profit Revitalization Act
- Q&A

# Federal Legislative Overview

---

- Coronavirus Preparedness and Response Supplemental Appropriations Act (Pub.L. 116-123; March 6)
- Families First Coronavirus Response Act (Pub.L. 116-127; March 18)
- Coronavirus Aid, Relief, and Economic Security (CARES) Act (Pub.L. 116-136; March 27)
- Paycheck Protection Program and Health Care Enhancement Act (COVID 3.5) (April 23)
- Next Actions (Version 4) week of May 4th

# Paycheck Protection Program (PPP)

## Eligibility:

- Certain not-for-profits, 500 employees or fewer, or if applicable meet SBA “size standard”
- SBA Affiliation Rules apply
- Loans equal to 2.5 times the average monthly payroll cost up to \$10 million.
- Eligible payroll costs include compensation to all employees but exclude compensation to an employee compensated above \$100,000.
- Loans are 100% guaranteed by the SBA with maximum terms of 2 years and 1% interest.
- Payments are deferred for six months but will accrue interest during the deferral period.
- Eligible Expenses:
  - 75% must be used for payroll costs to be forgiven (Payroll, health ins., retirement).
  - 25% may be used for eligible operating costs (Mortgage interest, rent, and utilities).
- **Note:** 501(c)(6) organizations are ineligible for the PPP

# PPP (Cont'd)

## Forgiveness:

- The 8-week “covered period” for expenses begins the day the loan is funded
- Workers furloughed must be rehired by June 30th
- No additional furloughs after 4/26 to be eligible for forgiveness
- 75% must be spent on payroll to be eligible for forgiveness
- The amount forgiven will be reduced proportionally by any reduction in full-time equivalent employees retained compared to the prior year beyond a 25% reduction in full-time equivalents as compared to the prior year.
- Borrowers that re-hire workers previously laid off will help the calculation of the amount to be forgiven.
- Loan amounts not forgiven after the review of qualified covered expenses can be either returned to the SBA or carried forward as an ongoing loan with terms of a maximum of 2 years at 1% interest.
- Forgiveness must be requested; determination in 60 days

# Economic Injury Disaster Loan (EIDL)

---

- Maximum loan amount of \$2 million, an interest rate of 2.75% for nonprofits, and a maximum of 30 years to repay.
- First payment deferred for one year.
- Not-for-profits may be eligible for a waiver of collateral requirements
- Loans greater than \$200,000 require personal guarantees.



# EIDL - (Cont'd)

---

- Must have been in business on January 31, 2020
- The Act removed the traditional SBA requirement that the borrower is not able to secure credit from another lender.
- The Act added an emergency grant provision that allows a non-repayable advance of \$10,000.
  - Clarified to be \$1,000 per employee up to 10.
- This loan is not forgivable.

# Other CARES Act Provisions

## Employer Paid Social Security Tax Deferral

- IRS guidance allows Employers who have received a PPP loan to defer the employer's share of social security tax that otherwise would be required to be made beginning on March 27, 2020, through the date the lender issues a decision to forgive the loan.
- The amount of the deposit and payment of the employer's share of social security tax that was deferred through the date that the PPP loan is forgiven continues to be deferred and will be due on the "applicable dates" (in 2021 & 2022).

# Other CARES Act Provisions *(Cont'd)*

---

## Medium-Sized Businesses & Main Street Lending Program

- Term Sheet Comments Received 04/16
- Guidance on this program issued this morning
- Available to all businesses, including not-for-profits
- Favorable terms / low interest loans

# NYS Budget & Legislative Update

## Budget Director SUPERPOWERS:

- First, the new law authorizes the Budget Director to withhold all or some of the appropriated amounts in the Aid to Localities Budget.
- Second, the Budget Director is empowered to adjust or reduce any general fund and/or state special revenue fund appropriation made in the Aid to Localities Budget.
- While the Budget Director can only recommend cuts, not new revenue, the legislature can incorporate new revenues in its own plan should it choose to exercise this option.
  - 10 days to act after the Budget Director recommends cuts
- State Comptroller Cash Basis Report on revenues for April is expected shortly

# Legislation We Are Watching

- S.8253 (Carlucci)/ NSA: Authorizes any firm, business, corporation, association, entity or not-for-profit corporation may opt into requiring the taking of body temperature of any employee, vendor or customer entering a place of business owned by such firm, corporation, association, entity or not-for-profit corporation during the novel coronavirus, COVID-19 state disaster emergency declared by the governor on March 7, 2020
- A.10281 (O'Donnell) Enacts the "New York city small business rent stabilization act" instituting a commercial rent control system in the city of New York and creates the commercial rent guidelines board.
- A.10327 (Rosenthal)/ NSA: Requires certain perils be covered under business interruption insurance policies issued to certain human services and community based health providers during the coronavirus disease 2019 (COVID-19) pandemic.
- S.8254 (Myrie)/ NSA: Prevent disproportionately impacted populations from being further victimized in the wake of budget cuts resulting from the COVID-19 pandemic
- S.8191 (Parker)/ NSA: The proposed bill would prevent businesses from continuing to charge customers for services the customers cannot obtain because of the current state of emergency.
- S.8171 (Sanders)/ NSA: Extends the provisions found in Section 3000-a of the Public Health Law (Good Samaritan Law) to any individual or non-profit organization who voluntarily and without expectation of monetary compensation renders first aid or emergency treatment to an individual who is suffering and/or has been infected with coronavirus disease 2019 (COVID-19).
- S.8184 (Ramos)/ NSA: Establishes tiers of essential employees during a state of emergency
- A.10252 (Stern)/ S.8138 (Ramos): Relates to authorizing Counties to delay the payment of property taxes during a State of Emergency.

# NYC: Where are we now in the budget process?

- The Mayor released his FY21 executive budget on 4/16 with a proposed cut of \$3.4B, or 3.7%, compared to the adopted FY20 budget.
- The Council has resumed meetings (virtually) last week after not having met at all since March 13. They will hold limited budget hearings on executive budget starting in May.
- There will be more cuts coming depending on federal government /state action.
- From mid-May through the beginning of June, Council Finance briefs Budget Negotiation Team (BNT) and Members on FY 2020 initiatives and FY 2021 cuts.
- From the beginning of June to end of June, there will be negotiations between Council and Mayor on FY 2021 Budget / Adoption.

# FY21: Will there still be \$ available for NFPs?

- All application deadlines for FY21 NYC Council and BP funding have passed.
- The Projections for FY 2021 budget impacts on City Council Discretionary Funding are still a work in progress.
- There will be cuts. Our current thinking:
  - Likely cuts to members' discretionary funding
  - Small cuts / Level funding for existing City Council Initiatives
  - Requests for increases for existing programs are very unlikely.
  - No New Initiatives
- Capital Funding: no information yet about projected cuts.
- Potential COVID-19 Relief Funding -> dedicated fund?
  - City has asked to separate out COVID specific expenses

# NYC Council's Legislative Response to the Coronavirus

- A package of COVID-19-related legislation was introduced in the Council at its Stated meeting on 4/22.
- Hearings have been scheduled on the following bills:
  - Int. 1932 (Rivera) to prohibit the enforcement of personal liability provisions in commercial leases or rental agreements involving a COVID-19 impacted tenant where the default or other trigger event happened during the COVID-19 state of emergency. (4/29)
  - Int. 1936 (Torres) to amend the definition of harassment in the Housing Maintenance Code to include threats against an individual based on her status as a COVID-19 impacted person, her status as an essential employee, or her receipt of a rental concession or forbearance (4/28)



# NYC Council's Legislative Response to the Coronavirus (cont'd)

- Int. 1918 (Cumbo) would require large employers to pay premiums to certain essential non-salaried workers: Employers with more than 100 employees would pay hourly workers \$30 for a shift under four hours, \$60 for a shift of four to eight hours and \$75 dollars for any shift over eight hours. The obligation would end when the state of emergency is lifted. (5/5)
- Int. 1923 (Kallos) would prohibit employers from discharging an essential employee without just cause. (5/5)
- Int. 1926 (Lander) would amend the definition of “employee” in the Earned Safe and Sick Time Act to extend the its benefits to workers who meet certain conditions. (5/5)
- These bills face significant opposition from business groups and lawsuits would likely follow to block their enactment on grounds including that these changes can be made only by NYS action.

# Essential Business Designations / Return to Work

## What is an Essential Business?

- An essential business is any business providing products or services that are required to maintain the health, welfare and safety of the citizens of New York State.

## Why is this important?

- Essential businesses that are exempt are not subject to the in-person restrictions set forth in various Executive Orders and are allowed to continue operating. However, they must comply with Department of Health directives for maintaining a clean and safe work environment and are strongly urged to maintain social distancing measures to the extent possible.

# Essential Business Designations / Return to Work

## Is my non profit an Essential Business?

- Guidance as to whether a business is an “Essential Business” can be found on the website of Empire State Development.
- Greenberg Traurig, maintains a list of executive orders and changes to Essential Business designations.
- Entities may consider requesting an exemption from ESD after making certain certifications and providing a description of their work

## As an Essential Business employer, am I required to do anything?

- All essential businesses must provide (at their own expense) and employees must wear face coverings when in direct contact with customers or members of the public.

# NYS Return to Work

- Phase one will include opening construction and manufacturing functions with low risk.
- Phase two will open certain industries based on priority and risk level.
  - Businesses considered "more essential" will be prioritized, followed by other businesses considered "less essential."
  - As the infection rate declines, the pace of reopening businesses will be increased.
- Two weeks in between each phase to monitor re-opening effects and hospitalization rates.
- Implemented with multi-state coordination; special considerations will be made regarding downstate New York coordination.
- Coordinated opening of transportation systems, parks, schools, beaches and businesses with special attention on summer activities for downstate, public housing and low-income communities, food banks and child care.

# Essential Business Designations / Return to Work

## Helpful Links to Guidance and Resources

- [Executive Order 202.16 Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency](#)
- The latest guidance on the order, click [here](#)
- [Phased Plan to Re-open New York](#)
- [Protocols for Essential Personnel to Return to Work Following COVID-19 Exposure or Infection:](#)

# Government Contracting / Procurement

## Procurement/New Sales

- During health and safety emergencies, government may be able to procure essential goods and services that are necessary to avoid and/or mitigate serious threats and danger to life, safety, property or a necessary service.
- Standard procurement rules, processes and guidelines (i.e., competitive bidding, publication and notice provisions, etc.) generally are suspended.
- The goods and services your organization provides may be able to be contracted for by the government through such abbreviated procurement processes if the goods and services are deemed essential to the crisis.

## Existing Contract Requirements

- Your business may encounter difficulties meeting requirements in contracts you have with a government or a public authority for the provisions of goods and/or services, such as on-time deliveries, contractual milestones, etc., due to the effects of the public health emergency.
- It may be possible to reduce or obtain some relief from those requirements in the current health crisis situation.

# Attorney General Charities Bureau Guidance

## Disclosure (8/2019) Pursuant to Executive Law §174-b

### Written solicitations must contain

- Description of purpose of solicitation, or notice how to obtain same
- Notice annual financial report is available
- If using professional fundraiser or solicitor, name of person and indication solicitor is being compensated
- Include AG phone number to obtain further information
- Include such outreach notices in annual report to AG

# Attorney General Charities Bureau Guidance

## **ADDITIONAL EXTENSION OF TIME TO FILE ANNUAL FINANCIAL REPORTS INCLUDING FORM CHAR 500, IRS FORM 990, AND, WHERE REQUIRED, AUDITED FINANCIAL STATEMENTS**

- Must file annual reports and make them available to the public
- Automatic NYS six month extension to file annual report, and if due after February 15, 2020, with or without the extension, another six month automatic extension.
- Automatic IRS extension for 990 forms due on or after April 1, 2020 to July 15, 2020
- NO political activity for any 501(c)(3) registered charity
- Note: The Bureau is operating solely via email and through its website to track inquiries and responses while working remotely.



# Attorney General Charities Bureau Guidance

---

## Restricted Donations

- Special restriction placed by Donor, or raised through a specific purpose fundraising campaign
- Can't be used for other purpose unless released by the Donor
- If Donor not available, may go to Court to show impossible or impracticable to comply, must show general donative intent of Donor, such as absence of specific direction for limited alternate use or refund

# Attorney General Charities Bureau Guidance

## RESERVES, RESTRICTED ASSETS, AND USE OF ENDOWMENT FUNDS

Three specific kinds of assets are subject to legal restrictions on expenditures as the assets of these expenditures are subject to significant legal requirements and should not be considered as a first resort for financial shortfalls:

1. **RESTRICTED ASSETS** (assets designated by donors for special purposes, or assets received from a specific fundraising campaign for a specific purpose) must be used for the designated purpose unless the donor consents to a release of the funds for other purposes
2. **ENDOWMENT FUNDS** (the New York Prudent Management of Institutional Funds Act (“NYPMIFA”) (Article 5-A of the Not-for-Profit Corporation Law) provides mandatory standards for the management, investment, and use of institutional funds, including endowment funds, funds with donor-imposed restrictions on expenditure.
3. **SALE OR OTHER DISPOSITION OF ALL OR SUBSTANTIALLY ALL OF THE ORGANIZATION’S ASSETS BY PETITION**
  - The charity must be able to show a number of elements that can be discussed with an attorney at Greenberg Traurig.

# Attorney General Charities Bureau Guidance

## Gifts By Lobbyists & Clients

- Reminder: Lobbyists and their clients are prohibited from offering or giving gifts to third parties, including charitable entities, on behalf of, or at the designation or recommendation of a public official.
- Executive Order 202.6 suspended the law, but only if the donation is made to a state agency and is administered by the state agency in furtherance of the COVID-19 response efforts.
- If solicited by elected official, or government employee, for a specific charity, must refrain unless you can demonstrate:
  - Not reasonable to believe gift intended to influence public official.
  - Not reasonable or expected to influence public official in performance of duties.
  - Not reasonable to infer gift was intended as reward for any official action by public official.

# Do I need to Register as a Lobbyist?

---

- In what jurisdiction(s) am I lobbying (NYS, NYC, LI?)
- Is what I'm doing lobbying?
  - Yes: Seeking NFP \$, Legislation, Grassroots, Procurement, CB
  - No: Hearing Testimony, Press conferences, Technical info
  - Maybe: Social media, Scheduling
- Am I doing enough of it to qualify as registered lobbying?
- Have I registered and filed appropriate reports?

# Not-For-Profit Revitalization Act

- **Not-for-Profit Revitalization Act of 2013 made significant changes to the Not-for-Profit Corporation Law**
  - Several of those changes give not-for-profit organizations flexibility that is needed during the current emergency
  - Modernization of administrative requirements
  - Governance and oversight reforms
  - Processes and procedures governing corporate transactions
- These changes allow not-for-profit boards to react quickly in uncertain times

# Not-For-Profit Revitalization Act

---

- **Board Meetings**
  - Meet more frequently
    - Regular meetings
    - Special meetings
  - Meeting notice requirements still need to be satisfied
  - Meet via teleconference or videoconference
  - Open Meetings Law requirements suspended
- **Action by Unanimous Written Consent**
- **Board Committees**
  - Executive Committee
    - With some limited exceptions, can exercise full authority of the board
  - Other Committees
    - Advisory Committees

# Not-For-Profit Revitalization Act

---

- **Special Considerations**

- Board composition
  - Augmenting Board
  - Filling Board vacancies
- Related party transactions
- Sales and other dispositions of assets

- **Board Duties**

- Duty of care
- Duty of obedience
- Duty of loyalty

# Questions and Contact Info.

- **Tricia A. Asaro** | Chair, Albany Health Care & FDA Practice  
asarot@gtlaw.com | 518.689.1416 | [Detailed Biography](#)
- **Jonathan L. Bing** | Shareholder  
bingj@gtlaw.com | 212.801.9284 | [Detailed Biography](#)
- **Bob Harding** | Shareholder  
hardingr@gtlaw.com | 212.801.6750 | [Detailed Biography](#)
- **Larry Levy** | Shareholder  
levyl@gtlaw.com | 212.801.6796 | [Detailed Biography](#)
- **John L. Mascialino** | Chair, NY Government Law & Policy Practice  
mascialinoj@gtlaw.com | 212.801.9355 | [Detailed Biography](#)
- **Mark S. Weprin** | Shareholder  
weprinm@gtlaw.com | 212.801.6815 | [Detailed Biography](#)
- **Bryan X. Grimaldi** | Of Counsel  
grimaldib@gtlaw.com | 212.801.9337 | [Detailed Biography](#)
- **India Sneed** | Associate  
sneedi@gtlaw.com | 212.801.6909 | [Detailed Biography](#)





**Thank you!**