



Statement of

**Tim Delaney**  
**President & CEO**  
**National Council of Nonprofits**

to the

**Pandemic Response Accountability Committee**

**Listening Forum:**  
**Stakeholder Perspectives on Federal COVID-19 Spending and Response**

June 3, 2020

*[submitted May 28, 2020]*

Thank you for your invitation to provide insights and suggestions on behalf of the nonprofit sector regarding the federal COVID-19 spending and response, especially specific areas where the Pandemic Response Accountability Committee (PRAC) should focus its oversight attention to enhance transparency and accountability over emergency pandemic funds.

Before beginning, I pause to thank you for your public service. Inspectors General play a vital, yet oft-hidden, role for our country. Now, on top of your more than full-time duties, the CARES Act tasks you with serving on the PRAC to provide oversight of more than \$2 trillion in emergency federal spending to address the economic impacts of the coronavirus pandemic. On behalf of the organization I lead, the nonprofit community, and people across the nation, I thank you, your staffs, and the PRAC staff.

### **Overview**

Recognizing how busy you are, here is a quick summary of the more significant issues, arranged by the responsible entity. Each issue is explained in greater detail below.

#### **Contextual Background**

- Charitable nonprofits employ more than 10 percent of the private workforce in America – more than the finance, construction, and manufacturing industries.
- With more than 40 million Americans newly unemployed (as of May 28), an overwhelming number of people are turning to and relying on nonprofits for assistance. Yet while this skyrocketing demand for assistance keeps increasing, nonprofit resources keep plummeting, jeopardizing nonprofit jobs and the ability to continue providing services to those in need.

#### **All Federal Departments and Agencies – Government Grants & Contracts**

- Governments at all levels hire nonprofits to deliver services to the public, and that certainly will continue through the CARES Act and other “Coronavirus response” legislation as Congress provides relief and stimulus funds to federal departments and out to state and local governments.

- Suggestion – Mitigate Major Risks: Proactively streamline and eliminate complexification of application and reporting forms and procedures; ban unilateral, mid-stream changing of written agreements; and ensure that nonprofits – which already are not being paid any profit – are at least paid their full costs. For research documenting these common problems experienced during and after the Great Recession, see [Toward Common Sense Contracting: What Taxpayers Deserve](#), which also provides straightforward solutions.
- Suggestion – Mitigate Major Risks: Ensure timely payments to nonprofits. During our country's last economic crisis, almost half of nonprofits hired by governments to provide services to the public were paid late – sometimes more than a year – essentially forcing nonprofits to subsidize governments. Inspectors General need to take affirmative steps – up front, now – to ensure that all governments using federal funds are paying nonprofits promptly. Otherwise, simply waiting until the end of audit processes to see whether payments were made timely almost guarantees that nonprofits on which communities rely will go under.

### **Department of Labor – Unemployment Insurance**

- Suggestion – Oversight: Many nonprofits across the country are about to be put out of business, unable to provide services the public desperately needs, because the Department of Labor issued a strange interpretation of a provision of the CARES Act. It is forcing self-insured nonprofits to pay 100 percent of unemployment expenses to their states and then wait until overwhelmed state unemployment offices pay back 50 percent. It makes no sense and must be corrected.

### **Small Business Administration – PPP Loans**

- Suggestion – Accountability: Nonprofits, like for-profits, are in a precarious position because the rules keep changing. Since Congress passed the CARES Act in March, the Small Business Administration (SBA) has issued 14 sets of Interim Final Rules, 48 Frequently Asked Questions, and two sets of applications (for loans and for loan forgiveness) – some of which are inconsistent, some of which conflict with the CARES Act, and most of which were issued after many organizations had applied for and received loans.
- Suggestion – Transparency: Despite repeated requests by nonprofits and others, the SBA still has not released basic information about how many nonprofits – total and by state – have applied for, received, or been denied PPP loans.

## **Insights and Suggestions**

### **Contextual Background**

The National Council of Nonprofits is a trusted resource that advocates for America's nonprofits nationwide. Through our network of state associations of nonprofits and 25,000-plus member charitable nonprofits, faith-based groups, and foundations – the nation's largest network of nonprofits – we serve as a central coordinator and mobilizer to help nonprofits achieve greater collective impact in local communities across the country. We identify emerging trends, share proven practices, and promote solutions that benefit charitable nonprofits and the communities they serve.

Most people recognize that nonprofits are dedicated to the public good, working to serve people and solve community problems in ways that improve lives, strengthen communities and the economy, and lighten the burdens of government, taxpayers, and society as a whole. But few realize the

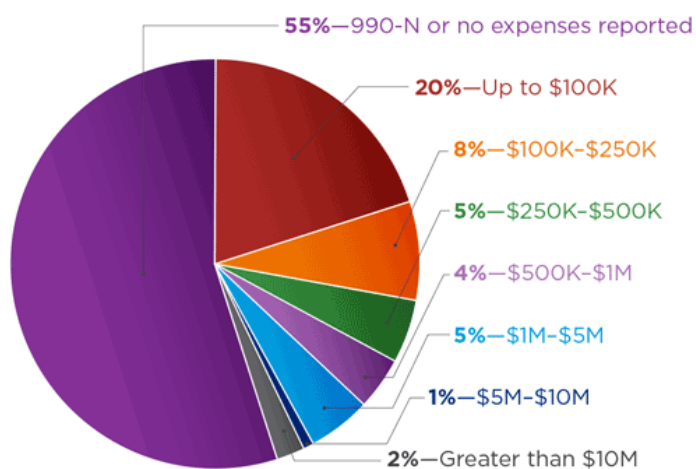
enormous breadth and operational complexities of the 501(c)(3) nonprofit community: charitable nonprofits, houses of worship, and private foundations. Based on our decades of experience working with governments at the local, state, and federal levels, we offer the following to help you become more familiar with nonprofits.

The large number and broad scope of America's charitable nonprofits surprise many people.<sup>1</sup> More than 1.3 million charitable nonprofits feed, heal, shelter, educate, inspire, enlighten, and nurture people of every age, gender, race, and socioeconomic status, from coast to coast, border to border, and beyond. Before the pandemic, nonprofits employed 12.5 million people, which was 10.2 percent of the private workforce, making the sector the third largest private employer in the country – larger than manufacturing, construction, finance and insurance, transportation, and real estate. [The 2019 Nonprofit Employment Report](#), Lester M. Salamon and Chelsea L. Newhouse, Johns Hopkins Center for Civil Society Studies (Jan. 2019) (based on 2016 data from the U.S. Bureau of Labor Statistics).

Nonprofits operate in every community in our country, whether educating children, caring for returning soldiers, rebuilding cities, nursing the sick, providing safety for domestic violence survivors, training the workforce, supporting our elders, elevating the arts, mentoring our youth, protecting natural resources, nurturing our faith and spirituality, promoting diversity, equity, and inclusion, and much more. In virtually every city and town in America, charitable nonprofits are the front-line providers of services; as organizations grounded in their communities, charitable nonprofits have a stake in the strength and wellbeing of the economy and governments at all levels. Likewise, given the vital role nonprofits play in both the economic and social well-being of our nation, society has an equally strong stake in ensuring that charitable nonprofits are healthy and able to fulfill their missions in support of the public good.

Despite the collective size of the sector, most charitable nonprofits are relatively small: 97 percent have budgets of less than \$5 million annually, 92 percent operate with less than \$1 million per year, and 88 percent spend less than \$500,000 annually for their work. See [Nonprofit Impact Matters](#), National Council of Nonprofits (Fall 2019) (based on data from 2016 IRS Form 990 filings). The “typical” charitable nonprofit is community-based, serving local needs. As mission-focused entities with limited resources, they put their money towards mission, not paying attorneys hundreds of dollars an hour to analyze scads of Interim Final Rules or the like. Also, it should be

### 501(c)(3) Charitable Nonprofits by Size (excluding private foundations)



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<sup>1</sup> Congress has created almost three dozen categories of tax-exempt organizations in different sections of the tax code. These include Section 501(c)(4) (social welfare organizations), Section 501(c)(5) (includes labor unions), Section 501(c)(6) (includes associations and chambers of commerce), and Section 501(k) (childcare organizations). The data in this Statement focuses on 501(c)(3) charitable nonprofits unless noted otherwise.

no surprise that relatively few charitable nonprofits have an endowment upon which to rely when revenue shortfalls occur. Indeed, most charitable nonprofits have limited reserves – about 50 percent have less than one month of cash reserves, according to one analysis of nonprofit financial records. See [The Financial Health of the United States Nonprofit Sector](#), Oliver Wyman and SeaChange Capital Partners (Jan. 2018) (based on data from 2010-2014 IRS Form 990 filings).

There is limited government data right now about the full extent to which the COVID-19 pandemic is ravaging the nonprofit organizations on which so many people rely. But survey data paint a bleak picture. In this [national survey](#), 90 percent of nonprofits reported revenue losses. Several state associations of nonprofits in our network found similar startling numbers in surveys they have taken, including:

- [New Hampshire Center for Nonprofits](#) – 92 percent of responding nonprofits had experienced a loss in revenue, 45 percent had instituted layoffs, and 44 percent had increased their operations to meet the surge in demand.
- [Florida Nonprofit Alliance](#) – almost 80 percent of respondents indicated they had experienced a negative financial impact, 53 percent report staff layoff, cuts, or reductions, and 39 percent reported increased demand for their services.
- [Kentucky Nonprofit Network](#) – 92 percent reported experiencing disruptions in their programs and services, 51 percent had been forced to reduce programs/services – which has negatively impacted 489,161 Kentuckians (as of April 22), 26 percent of responding nonprofits were laying off or furloughing staff members, and 28 percent were reducing staff pay and/or hours.
- [Alliance of Arizona Nonprofits](#) – 86 percent of nonprofits reported decreased revenues, with the anticipated loss through the end of the organizations’ respective fiscal years to be nearly \$433 million.
- [Minnesota Council of Nonprofits](#), in partnership with the partnership with the Federal Reserve Bank, found that nonprofits in the state may have collectively lost more than \$1 billion in revenues in April alone. Moreover, as of “early April, most nonprofits had experienced decreased ability to provide services (50%), decreased staffing levels (31%), reduced revenue from service fees (25%), decreased or anticipated decreased revenue from philanthropic funds (51%), and increased expenses (22%).”

These surveys reveal charitable nonprofits of all types and missions are struggling with rapidly declining revenues as they have had to cancel fundraising events and their usual fees, ticket sales, membership dues have vanished, and the capacity of donors to give has plunged.

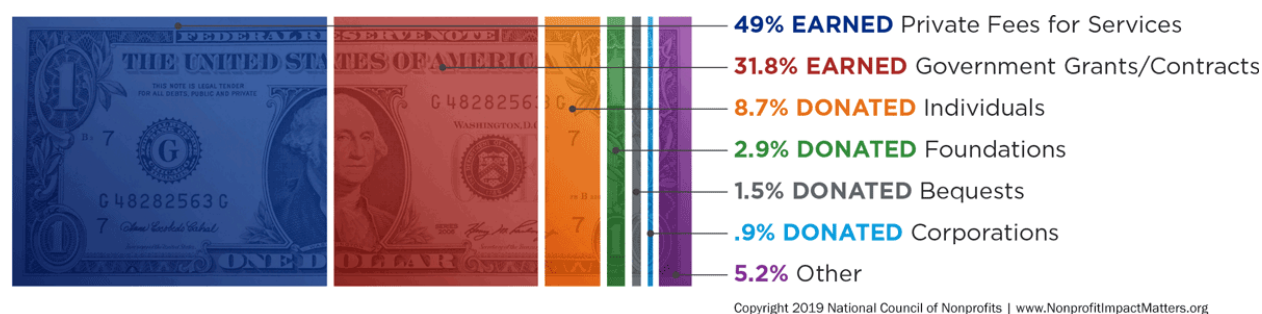
**The bottom-line:** The federal government and the American people cannot afford to ignore the third largest private-sector employer upon which almost everyone in the country relies in one way or another. It is a tragedy for the owner and employees when a small business goes under. It is a double tragedy when a nonprofit goes under, because then people – often in dire need – no longer have access to that nonprofit to address these needs.

### **All Federal Departments and Agencies – Government Grants & Contracts**

Since at least the 1960s, and accelerated in the 1980s, all levels of government have been hiring charitable nonprofits to deliver a broad array of services to the public. Governments have largely found nonprofits to be good partners: mission-driven rather than profit-focused, and often more

efficient and effective than government. Indeed, the federal government has long recognized that “Federal, state and local governments rely on nonprofit organizations as key partners in implementing programs and providing services to the public, such as health care, human services and housing-related services.” [Nonprofit Sector: Treatment and Reimbursement of Indirect Costs Vary among Grants, and Depend Significantly on Federal, State, and Local Government Practices](#), U.S. Government Accountability Office Report 10-477 (May 2010).

As this graph illustrates, the charitable nonprofit community earns almost a third (31.8 percent) of its collective total revenues by performing services pursuant to government grants and contracts. See generally [Nonprofit Impact Matters](#), National Council of Nonprofits (Fall 2019). (NOTE: There is no standard source of revenue for charitable nonprofits; the mix of revenue streams for a given nonprofit varies widely between organizations based on a variety of factors.)



So when there are problems with governments’ administration of nonprofit grants and contracts, it has a tremendously negative ripple effect throughout the nonprofit community and out to the public.

#### **A. Proactively Avoid and Fix Systemic Problems in Government Grantmaking**

Congress created PRAC to “mitigate major risks that cut across program and agency boundaries” and to “prevent and detect fraud, waste, abuse, and mismanagement.” CARES Act §15010(b). Both purposes come into play regarding processes and management practices governments use when hiring, paying, and overseeing nonprofits to deliver services to the public.

Research consistently finds that governments are not always good partners with nonprofits, with many governments routinely failing to pay the full costs of the contracted services, imposing unnecessary and wasteful burdens, and not honoring their legal obligations of the written contracts they signed — all of which add unnecessary costs to governments and nonprofits alike. The consistent underfunding is a significant contributor to what is known as the “nonprofit starvation cycle” and results in a myriad of challenges for nonprofits, all of which ultimately limit a nonprofit’s ability to achieve outcomes and erode the availability of quality services in communities throughout the country. For more information, go to [Common Problems in Government-Nonprofit Grantmaking and Contracting](#).

Because of the significance and multitude of problems nonprofits experienced with government-nonprofit grants during the Great Recession, the National Council of Nonprofits worked with the Urban Institute, which gathered and analyzed the quantitative data, and our network’s state associations of nonprofits, which focused on the qualitative data, to document the repeated major problems nonprofits were encountering. The research project uncovered five major common problems, the first two of which occur before contracts/grants were entered, and the last three afterwards:

- Governments not paying nonprofits the full costs of services
- Complexification of grant application processes, creating waste and costs for all
- Governments changing terms of written agreements mid-stream
- Governments paying nonprofits late
- Complexification of reporting requirements, again adding costs and waste for all

We embrace and fully support efforts to prevent and detect fraud. That shared goal is achievable without unduly burdensome and needless problems like those listed above. That is why we commit to work with you to reform antiquated and broken government-nonprofit grants processes to avoid waste and duplication, develop standardized definitions for contracting and grant language, and ensure that payments to nonprofit organizations for direct and indirect costs from the federal government through state and local governments are applied consistently, fairly, and in a timely manner. In particular, we stand ready to work to eliminate from federal statutes and regulations arbitrary caps on reimbursement of nonprofit indirect, administrative, or overhead costs that are needed for any enterprise – for-profit, government, and nonprofit – to be effective and efficient.

Government grantmaking and contracting systems must be fixed so people receive services when they need them, taxpayers receive full value for the programs they fund, and communities are strengthened through effective programs. Without responsible solutions, our communities will suffer even more.

#### **B. Ensure That Any Government Using Federal Funds Pays Nonprofits Promptly**

Congress created this Committee to, among other things, “mitigate major risks that cut across program and agency boundaries.” CARES Act §15010(b)(2). As explained above, there is a major risk factor to the public when a looming problem that cuts across federal departments and agencies – oversight of government grants, those directly from the federal government and those indirectly through state and local governments – is ignored.

Following our country’s last economic crisis, almost half of nonprofits hired by governments to provide services to the public reported governments had been paying them late under the terms of the legally binding contracts/grants. Late payments by governments is a problem that was both frequent (45 percent of nonprofits responding) and debilitating, given the significant dollar amounts reported by nonprofits that said they were paid late: on average state governments owed each nonprofit the past due amount of \$200,458, the federal government owed \$108,500, and local governments owed \$84,899. The substantial sizes of those late payments present serious challenges for nonprofits struggling to deliver reliable services. And the length of delays – sometimes more than a year – essentially forced nonprofits to subsidize governments. See generally [Toward Common Sense Contracting: What Taxpayers Deserve](#), National Council of Nonprofits (May 2014) at pages 22-28.

Communities suffer severe consequences when governments do not pay their bills when due. Among nonprofits reporting late payments as problematic, 31 percent indicated that they had to reduce the number of paid employees, 25 percent had to increase their lines of credit, and 15 percent were forced to reduce the number of their programs or services. The Urban Institute found that nonprofits reporting problematic late payments took those survival actions at a significantly higher rate than nonprofits without payment problems from government. *Id.*

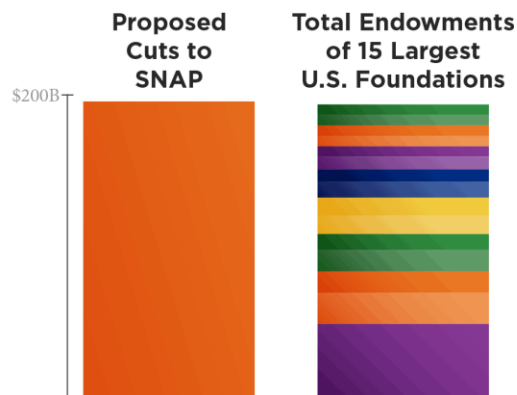
Charitable nonprofits with government grants and contracts to deliver programs like anti-poverty, education, emergency food assistance, health care, affordable housing, public improvements, social services, and much more cannot possibly fill gaps if governments do not pay the full costs or pay on a timely basis. The common refrain nonprofits often hear is “just go out and hold a fundraiser.” That is patently unrealistic in normal times, and beyond impossible in these abnormal times with donations vanishing.

Nor can foundations fill the gap. Consider the scale differences between governments and the largest foundations in the country:

### ▶ **Foundations Can't Replace Government Cuts** (even if they wanted to)

Consider: The White House proposed cutting \$193 billion from the Supplemental Nutrition Assistance Program (SNAP). It didn't happen, but if it had, the amount of money needed to replace such a large funding gap would have required the equivalent of the 15 largest foundations in the country (such as the Gates Foundation and Ford Foundation) to cash out all their assets and permanently close their doors.

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Delays in payments could prove devastating to the work and sustainability of tens of thousands of nonprofit organizations across the country – as well as to governments that hire them to deliver services and to the tens of millions of people who depend on nonprofits to provide those services.

Inspectors General need to take affirmative steps – up front, now – to ensure that all governments using federal funds to hire nonprofits are paying nonprofits promptly. Otherwise, simply waiting until the end of audit processes to see whether payments were made timely will be far too late, almost guaranteeing that nonprofits on which communities rely will go under.

### **Department of Labor – Unemployment Insurance**

Last week, 31 national nonprofits sent a [joint letter](#) to the Secretary of Labor expressing great concern regarding guidance the Department had issued interpreting an aspect of the CARES Act in a way contrary to what Congress indicated. That interpretation would force:

self-insured nonprofits [to] pay hundreds of thousands of dollars upfront at a time when financial resources are constrained due to declines in charitable giving, delays in contract payments, cancelations of fundraising events, closures of businesses, and decreases in other sources of revenue. This guidance denies the flexibility that states and nonprofits need and imposes an undue burden and hardship on self-insured nonprofits.

For nonprofits already suffering financial distress due to this economic crisis, the cost caused by this guidance may be too much to bear and could even contribute to bankruptcies. During an unprecedented time when more people are relying on nonprofits for basic needs and services, nonprofits themselves are facing a skyrocketing number of unforeseen unemployment claims. Essentially, the DOL guidance asks self-insured entities to choose

between funding current operations or covering one hundred percent of UI payments for every employee furloughed or laid off due to COVID-19.

This is not what Congress intended. Indeed, in CARES Act Section 2103(a), Congress instructed the Labor Department to “issue clarifying guidance to allow States to interpret their State unemployment compensation laws in a manner that **would provide maximum flexibility** to reimbursing employers as it relates to timely payment and assessment of penalties and interest pursuant to such State laws.” (emphasis added) The guidance is the opposite of congressionally instructed flexibility.

The interpretation is forcing self-insured nonprofits to pay 100 percent of unemployment expenses into their states up front, and then wait until beleaguered state unemployment offices pay back 50 percent. At a time when Congress is providing loans to help organizations stay open, and charitable donations are plummeting, the Labor Department is pressing nonprofits to pay out money they do not have, which will only add to unemployment and less services to the public.

This issue concerns oversight of the federal government’s “Coronavirus response.” However, if the Committee believes the issue is beyond its purview, then we ask that you refer the matter to the Department of Labor’s Inspector General.

## Department of Treasury & Small Business Administration – PPP & EIDL

### A. Suggestions – Accountability

- [Paycheck Protection Program](#)

Nonprofits that have applied for or are thinking about applying for a Paycheck Protection Program (PPP) loan are not only dizzy and unsettled from the roiling barrage of changing and too often inconsistent 16 sets of Interim Final Rules (14 from SBA) and 48 answers to the [SBA’s Frequently Asked Questions](#) (as of May 27), but also nervous about what the changes mean to them.

We appreciate, deeply, the heroic efforts by Congress and the Administration to stand up a massive new program almost instantaneously. But that speed does not mitigate the legitimate concerns that people have that the official guidance they are receiving is often after the fact, inconsistent, and still a moving target – creating anxiety that actions taken earlier will be judged three months or three years from now, applying new official rules retroactively and exposing innocent people to unfair liability. Among the many concerns is that someone applying a truly last Final Rule will fail to look at what set of standards were in place in the Interim Final Rule in place when the loan documents were signed in April or May.

Faith-based and charitable organizations are working on the front lines in every community across America to fight the coronavirus, provide support and relief to its many victims, and help prepare for the reopening of our economy. They are providing childcare services so health care workers and first responders can do their jobs, feeding the millions of newly unemployed persons and their families, and delivering other critical physical, spiritual, and mental health services and support. *Many more nonprofits would be rehiring or even expanding their workforces to address mounting needs if they had the resources to do so.* **Nonprofits that have taken out loans or might need to do so deserve to know that they are safe from all of the moving parts, especially when those parts have been inconsistent internally and are inconsistent with the CARES Act.**



One example fully explains the challenge of arbitrary rulemaking in this difficult environment. The first Interim Final Rule on the PPP issued by SBA and the Treasury Department tried to impose via regulation a 75%/25% rule for loan forgiveness. The CARES Act expressly lists allowable uses of covered loans, identifying payroll, salaries, and benefits costs, as well as four types of other costs: interest on mortgage obligations, rent, utilities, and interest on other pre-existing debt obligations. The statute makes no value or business judgment as to which costs are to be given priority. This makes perfect sense because of the very wide range of services and businesses eligible to apply for the PPP. Despite these statutory and economic realities, SBA and Treasury announced that borrowers spending more than 25 percent of loan proceeds on rent, mortgage, utilities, and interest payments on pre-existing debt will be penalized by not receiving the loan forgiveness guaranteed by Congress.

The 75%/25% rule has been controversial since its announcement. In its recent [Flash Report on Implementation of the Paycheck Protection Program Requirements](#), the SBA's Inspector General urged recognition that many small businesses have more operational expenses than employee costs. The IG found, "Our review of data from round one [of PPP loans] found that tens of thousands of borrowers would not meet the 75-percent payroll cost threshold and would therefore have to repay the amount of nonpayroll costs in excess of 25 percent in less than 2 years." Congress agrees. Today (May 28), by a vote of 417 to 1, the House of Representatives passed H.R. 7010, the Paycheck Protection Program Flexibility Act, that rejected the arbitrary formula criticized by the SBA IG and borrowers, and replaced it with a more manageable standard.

- [Economic Injury Disaster Loans](#)

Many organizations applying for Economic Injury Disaster Loans discovered that SBA was awarding much smaller loans than promised (\$25,000 instead of loans up to \$2 million) and that the EIDL emergency advance was changed from a flat \$10,000 to only \$1,000 per employee with a maximum of \$10,000. These alterations to the program were made without advance notice from SBA. Now that the EIDL funds have been replenished by the interim funding bill signed by the President on April 24, we ask that SBA take affirmative steps to restore EIDL payouts to the levels authorized by the CARES Act.

## **B. Suggestions – Transparency**

The nonprofit community has made repeated requests for data from the SBA that should be within its easy grasp about the experience of charitable nonprofits in seeking loans under the Paycheck Protection Program. See our [Comments in Response to SBA Notice of Interim Final Rules "Business Loan Program Temporary Changes; Paycheck Protection Program."](#) We understand that Members of Congress also have asked for this data. But the SBA has released nothing on point.

The SBA regularly provides updates on lender size, approved loans, and approved dollars. It has released state specific data and information based on generic industries for Round One and Round Two (through May 28) under the program. To date, SBA has steadfastly refused to release any information on efforts of nonprofits to secure PPP loans. As a matter of transparency, SBA should release data showing, on both a state-specific and national basis, the number of charitable organizations that have sought PPP loans, the dollar amounts sought, the rates that loans have been issued and declined, the duration of the application and approval process, along with comparisons of this data to the experience of similarly sized for-profit businesses.

The data should be readily available and accessible because the very first item on SBA's PPP Borrower Application Form is a series of boxes for the borrower to check, including a box designated "501(c)(3) nonprofit." The SBA has released information using North American Industry Classification System (NAICS) subsectors, such as construction, retail trade, and "other services," but not about nonprofits.

The data are imperative to inform policymakers about the efficacy of the program, evaluate the equitable treatment of nonprofits in the administration of the program, ensure the well-being of the organizations the program is intended to help, and promote transparency at all levels and in all branches of government. The lack of transparency and refusal to disclose this readily available information is troubling, raising significant concerns that the data show systemic failings that adversely affect charitable nonprofits and the people they serve.

### **Conclusion**

Thank you again for inviting me to provide insights and suggestions on behalf of the nonprofit sector. Please let me know if the National Council of Nonprofits or I can be of further service.

Tim Delaney  
President & CEO  
National Council of Nonprofits

Submitted May 28, 2020,  
as requested