

6 May 2020

Follow @Paul_Hastings



Charitable Organizations: Providing Charitable Assistance in Response to the COVID-19 Pandemic

By Amy Lawrence & Lauren Smith

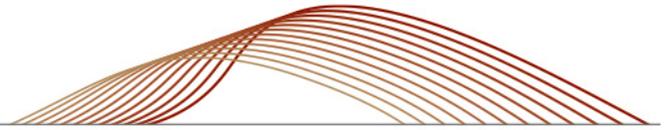
The COVID-19 pandemic has wrought tremendous economic damage: over thirty million Americans have filed for unemployment and it is estimated that one in four small businesses will close their doors permanently. In the face of this economic catastrophe, charitable organizations recognized as exempt under Section 501(c)(3) of the Internal Revenue Code (“Charitable Organizations”) of all stripes are exploring ways to assist affected families, businesses, and communities, even if this type of assistance is not part of their stated charitable purpose.

The Federal tax code recognizes the power of the nonprofit sector to provide critical relief to families, businesses, and communities during a federally-declared disaster. Within certain parameters discussed below, Charitable Organizations are empowered to step up and use their resources to alleviate the fallout from this unprecedented catastrophe without jeopardizing their tax-exempt status.

Providing Charitable Assistance in a Disaster

Most Charitable Organizations likely do not provide disaster relief as part of their ordinary course charitable activities. The IRS has clarified that in the event of a disaster such as the COVID-19 pandemic, an existing recognized charitable organization that does not ordinarily provide disaster relief may do so without obtaining prior permission from the IRS, so long as it reports this new activity on its annual tax return (and it may also wish to report this change in its activities to the IRS Exempt Organizations Determinations Office).

In providing any disaster relief assistance, Charitable Organizations must ensure that disaster relief is provided to a “charitable class” that is broad and indefinite enough that the community as a whole, rather than any pre-selected individuals or families, are benefitted. In a disaster, charitable assistance can be provided to individuals who are economically distressed and unable to meet basic short-term or long-term needs due to the disaster; such aid can take the form of funds, services, low-or-no-interest loans, or goods, depending on the individual’s needs and resources. Disaster relief can also be provided to private businesses.



An example of a sufficiently broad charitable class eligible for aid would include all individuals or all businesses in a given geographical range (city, county, or state) or, subject to the additional restrictions outlined below, all of the employees of a particular employer who are affected by the current or a future disaster.

The IRS has determined that Charitable Organizations can provide aid to businesses without running afoul private benefit rules if doing so furthers at least one of the following charitable purposes:

1. Aiding individual business owners who are financially needy or otherwise distressed;
2. Combatting community deterioration; or
3. Lessening the burdens of government.

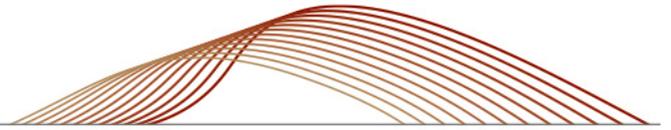
Any relief must be a reasonable means of accomplishing one or more of these purposes and must be provided in a manner that ensures that any benefit to a private interest is incidental to the accomplishment of that purpose.

Charitable Organizations should provide relief based on recipients' demonstrated need, financial or otherwise, as determined by specific and objective written criteria. Further, the relief should be a reasonable means of assisting each recipient in light of the recipient's particular needs and in light of the Charitable Organization's charitable purpose in making the relief payment. Best practice would be for the Charitable Organization to articulate in writing (i) its charitable purpose in providing disaster assistance and (ii) its objective criteria for determining how recipients will be selected and how the amount and type of aid will be determined. The Charitable Organization may also wish to set up a special selection committee to review applications and make determinations of assistance. Charitable Organizations should also have in place a Conflict of Interest Policy (a link to a sample policy suggested by the IRS is contained below) and should follow that Conflict of Interest policy in administering any disaster relief aid to individuals or businesses.

Employer-Sponsored Assistance Programs

Some employers may have employer-sponsored Charitable Organizations through which they provide assistance to employees in emergencies. These Charitable Organizations can also be used to provide relief to employees in the event of a disaster, such as the COVID-19 pandemic, but certain additional requirements must be met to ensure that they are not also providing an impermissible private benefit to the employer.

Public Charities. Charitable Organizations that are employer-sponsored public charities can generally provide the broadest range of assistance to employees. So long as the employer does not exercise excessive control over the Charitable Organization, an employer-sponsored public charity can provide disaster relief (or general relief in emergency hardship situations) to employees, if (i) the class of beneficiaries is large or indefinite (*i.e.*, consists of all employees of the employer who have been impacted by the current or a future disaster), (ii) the recipients are selected based on objective determination of need, and (iii) adequate procedures are in place to ensure that any benefit to the employer is incidental, which is assumed to be the case if the organization's selection committee is comprised of a majority of members who are not in a position to exercise substantial influence over the affairs of the employer. Any disaster relief payments meeting these requirements will not constitute taxable compensation income to the employee.



Private Foundations. Charitable Organizations that are employer-sponsored private foundations can also provide assistance to employees in the event of a disaster, though additional restrictions apply. The three requirements enumerated above for public charities will apply, and in addition, the assistance can only be provided in response to a “qualified disaster” as defined in Section 139 of the Code (which would include the COVID-19 pandemic, as that is a federally-declared disaster) and not in response to a non-qualified disaster or a general emergency situation. Any disaster relief payment made to an employee meeting these requirements will not be taxable compensation income to the employee and will not result in prohibited self-dealing for the private foundation (assuming that the payment would not otherwise constitute self-dealing, such as for example a payment to an officer, director, or trustee of the private foundation).

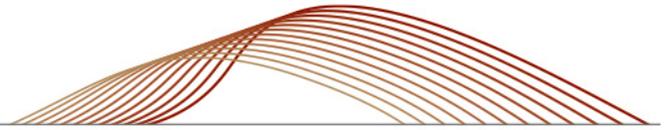
Documentation and Reporting Issues

Charitable Organizations must generally maintain adequate documentation establishing that their funds are administered in a manner that furthers their charitable purpose, including records of:

- A description of assistance provided;
- Costs associated with providing the assistance;
- The purpose of the aid;
- The objective criteria for administering assistance;
- How recipients were selected and how much they received;
- Identifying information for recipients;
- Any relationships between the recipient and the Charitable Organization; and,
- The composition of the selection committee.

Where short-term emergency aid is provided, the documentation rules are more relaxed, and the organization is only expected to maintain records showing the type of assistance provided, its criteria for determining and disbursing aid, the date, place and estimated number of victims assisted (without identifying information), the charitable purpose in providing the aid, and the cost of the aid. This relaxed documentation standard would be applicable to aid such as blankets, meals, heaters, coats, etc. Any longer-term assistance, such as money, should be supported by all of the documentation listed above.

A Charitable Organization that does not ordinarily provide disaster relief assistance as part of its charitable purpose and does so in response to the COVID-19 pandemic should report this change in its activities on its annual tax return for the year. If a public charity carries on disaster relief activities as one of its three largest programs, it must describe the services provided in the Statement of Program Service Accomplishments on IRS Form 990 or 990-EZ. Similarly, if a private foundation carries on disaster relief activities as one of its four largest programs, it must describe the services provided in its summary of direct charitable activities on Form 990-PF. A public charity may also be required to complete *Schedule F* to report any foreign operations and *Schedule I* to report grants and other assistance to individuals. For additional information about the reporting requirements of public charities and private foundations, see the *Life Cycle of a Public Charity* and the *Life Cycle of a Private Foundation* in the links below.



Example

The below example illustrates the type of assistance that a Charitable Organization (that does not generally provide disaster relief) can and cannot provide in response to the COVID-19 pandemic.

Scenario 1: A local parent-teacher association (“PTA”) that is tax-exempt under Code Section 501(c)(3) has set up a fund to provide for basic necessities and income support to households in the school district that have had at least one family member hospitalized due to COVID-19 and have suffered economic hardship as a result. The PTA posts the application for assistance from the fund on its website, community web forums, and social media and works with local community leaders to raise awareness of the resource. Applications are processed anonymously and ask the applicant to substantiate their need, which the PTA reviews in accordance with a written criteria they established to determine how to distribute the assistance. Because the fund is available to a broad and indefinite group of people—any and all households in the school district that may face a COVID-19-related hospitalization—this use of the organization’s resources is **valid**.

Scenario 2: The PTA has heard that the elementary school’s long-serving, beloved janitor Bob has fallen seriously ill with COVID-19 and is currently in the hospital. Everyone knows that Bob takes care of his disabled adult son and relies on his janitor job to supplement his Social Security income. The PTA has some funds left over from the year’s budget and decides to give some money to Bob to help him and his son get through these tough times. Though well intentioned, this is a **problematic** use of the PTA’s resources because the only objective is to assist a particular individual. Note however that the PTA members could choose to make a cash gift to Bob in their personal capacities, but this would not be a tax-deductible contribution to a charitable organization.

This Client Alert does not address all potential considerations that might be applicable to a Charitable Organization that is seeking to provide disaster assistance. Charitable Organizations should consult with their legal advisors regarding their specific circumstances.

Helpful Links

[IRS Publication 3833 – Disaster Relief Payments](#)

[IRS Publication 2194 – Disaster Resource Guide for Individuals and Businesses](#)

[IRS Publication 557 – Tax-Exempt Status for Your Organization](#)

[Sample Conflict of Interest Policy \(Appendix A to Instructions for Form 1023 - Additional Material\)](#)

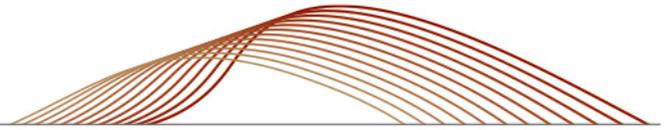
[Life Cycle of a Public Charity](#)

[Life Cycle of a Private Foundation](#)

[Compliance Guide for 501\(c\)\(3\) Public Charities](#)

[Compliance Guide for 501\(c\)\(3\) Private Foundations](#)

✧ ✧ ✧



If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings lawyers:

Los Angeles

Amy L. Lawrence
1.213.683.6139
amylawrence@paulhastings.com

New York

Bill Belitsky
1.212.318.6097
billbelitsky@paulhastings.com

Washington, D.C.

Sarah G. Besnoff
1.202.551.1847
sarahbesnoff@paulhastings.com

Lauren G. Smith
1.212.318.6678
laurensmith@paulhastings.com

Paul Hastings LLP

Stay Current is published solely for the interests of friends and clients of Paul Hastings LLP and should in no way be relied upon or construed as legal advice. The views expressed in this publication reflect those of the authors and not necessarily the views of Paul Hastings. For specific information on recent developments or particular factual situations, the opinion of legal counsel should be sought. These materials may be considered ATTORNEY ADVERTISING in some jurisdictions. Paul Hastings is a limited liability partnership. Copyright © 2020 Paul Hastings LLP.