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LiUNA!

April 23, 2020

TO ALL LIUNA AFFILIATES IN THE UNITED STATES

Re: CARES Relief for Labor Organizations and Fringe Benefit Funds

Dear Brothers and Sisters:

Our District Councils, Local Unions, Regional Organizing Funds, and Fringe Benefit Funds (training, LECETs, pension, and health and welfare) are not immune to the economic hardship caused by COVID-19. The question has arisen of the extent to which they are entitled to stimulus monies established under the Coronavirus Aid, Relief, and Economic Security Act (CARES). The analysis varies as explained below, first by the CARES program and then by type of entity (tax status). This letter deals only with the issue whether labor-related entities are disqualified from CARES programs. Even where we are not disqualified as a labor-based entity, each program has its own additional requirements, which are described more fully in the resources identified at the end of this letter.

CARES Programs

The **Paycheck Protection Program (PPP)** offers forgivable bank loans, guaranteed by the Small Business Administration (SBA), to help eligible employers keep employees on their payroll. If the organization uses the loan proceeds to pay for employee compensation, including benefits and certain other qualifying costs, for eight weeks after loan proceeds begin flowing, and does not reduce pre-pandemic levels of employment and compensation, repayment will not be required. That forgiveness is lessened insofar as an employer makes such reductions. The maximum amount of the PPP loan is 2.5 times the average monthly payroll in 2019 (excluding annualized costs of over $100,000 for an individual employee) with a cap of $10 million. At least 75% of the loan must be used for payroll. We anticipate, and hope, that many of our signatory employers having 500 or fewer employees will seek PPP loans to keep our members fully employed at this time.

The **Employee Retention Payroll Tax Credit** is a tax credit equal to 6.2% of wages (the employer's portion of Social Security), for qualifying employers. Eligibility for the tax credit is determined quarterly. The maximum amount of the

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tax credit is $5,000 per employee annually. Employers qualify for this tax credit if they (1) suffer a full or partial suspension of operations due to orders from a governmental authority limiting commerce, travel or group meetings due to COVID-19 or (2) suffer more than a 50% decline in gross receipts as compared to the same quarter in 2019. We do not yet have guidance on what qualifies as a full or partial suspension of operations. Qualifying organizations with not more than 100 full-time employees may take the credit based on wages paid to all employees. By contrast, organizations with more than 100 employees may take the credit only for wages paid to employees who are not providing services due to COVID-19.

The CARES Act establishes a **Federal Payroll Tax Deferral** for eligible employers. Qualifying employers can delay paying the employer portion of the Social Security payroll tax for taxes due March 27 through December 31, 2020. Employers must pay 50% of the deferred amount by December 31, 2021, and the remainder by December 31, 2022. Employers taking advantage of the deferral still need to report the amount of the payroll taxes on IRS Form 941, and they can use the form to actually take the credit by reducing their quarterly payments of employment taxes accordingly.

CARES expands the longstanding SBA's **Economic Injury Disaster Loan (EIDL) Program** to meet COVID-19 issues. These loans, made directly by the SBA, with no private lender involvement, carry a favorable 2.75% rate of interest and can be used to pay payroll, as well as other bills. These loans are available only to employers that have suffered a "substantial economic injury" as a result of the pandemic. Existing regulations define substantial economic injury as an injury leaving an organization unable to meet its obligations or to pay its ordinary and necessary operating expenses. One highly desirable feature of an EIDL loan is the availability of an immediate $10,000 grant that can be used for payroll, rent or mortgage payments that cannot otherwise be met because of a COVID-19 caused revenue loss. These grants do not need to be repaid even if the applicant is ultimately denied the loan.

District Councils, Local Unions and Regional Organizing Funds

Almost all labor organizations rely on Section 501(c)(5) of the federal tax code for their tax-exempt status. Section 501(c)(5) organizations, including District Councils, Local Unions and Regional Organizing Funds, are ineligible for PPP loans. We are aware that some affiliates have an interest in PPP loans and might otherwise qualify. However, the CARES Act specifically excludes 501(c)(5) organizations from the program. Labor organizations are eligible for each of the other three programs described above, the Employee Payroll Retention Tax Credit, the Federal Payroll Tax Deferral and the Economic Injury Disaster Loan (EIDL) Program. Eligibility does not mean entitlement; we caution that each of these programs has its own requirements.

LECETs

LECETs are generally organized as 501(c)(5)'s. The foregoing discussion concerning labor organizations therefore applies them. That is, they are ineligible for PPP loans but eligible for each of the other three programs described above, the Employee Payroll Retention Tax Credit, the Federal Payroll Tax Deferral and the Economic Injury Disaster Loan (EIDL) Program. Eligibility does not mean entitlement; we caution that each of these programs has its own requirements.

Health and Welfare Funds and Pension Funds

Health and safety funds, and pension funds rely on Section 501(c)(9) for tax exemption. CARES excludes 501(c)(9) organizations from PPP eligibility. However, they are eligible for each of the other three programs described above, the Employee Payroll Retention Tax Credit, the Federal Payroll Tax Deferral and the Economic Injury Disaster Loan (EIDL) Program. Eligibility does not mean entitlement; we caution that each of these programs has its own requirements.

Training Funds

Training funds are slightly more complicated. Some base their tax-exempt status on Section 501(c)(3) as educational organizations, rather than on 501(c)(5). These 501(c)(3) training funds qualify for PPP loans if they satisfy the other conditions for such loans. They are also eligible for each of the other three programs described above, the Employee Payroll Retention Tax Credit, the Federal Payroll Tax Deferral and the Economic Injury Disaster Loan (EIDL) Program.

However, training funds organized as Section 501(c)(5) labor organizations, as many are, are treated as like other Section 501(c)(5)'s. That is, they are ineligible for PPP loans but eligible for each of the other three programs described above, the Employee Payroll Retention Tax Credit, the Federal Payroll Tax Deferral and the Economic Injury Disaster Loan (EIDL) Program. Eligibility does not mean entitlement; we caution that each of these programs has its own requirements.

On April 16, 2020, the Small Business Administration announced that funds had been exhausted for both the Paycheck Protection Program and the Economic Injury Disaster Loan Program and that no further applications would be taken for either. Congressional leadership is considering replenishing the funding of both programs at this time. We expect that in excess of an additional $300 billion will be authorized this week to replenish the PPP funding.

An earlier description of the CARES Act programs appears in my letter of April 7, 2020, which can be found here. The North America's Building Trades Unions description of CARES monies available to labor organizations can be found here. The North America's Building Trades Unions description of FFCRA and CARES monies available to eligible, 501(c)(3) training funds can be found here.

With kind regards, I am

Fraternally yours,

Terry O'Sullivan

TERRY O'SULLIVAN
General President

/mmt

cc: All Regional Offices in the United States
LIUNA Training and Education Fund
Laborers' Health and Safety Fund of North America
The Laborers-Employers Cooperation and Education Trust