



## **Testimony to the United States House of Representatives Committee on Ways and Means Subcommittee on Oversight**

**Written Statement of  
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July 27, 2023**

### ***The Employee Retention Tax Credit Experience: Confusion, Delays, and Fraud***

Chairman Schweikert, Ranking Member Pascrell, and Members of the Subcommittee,

Thank you for the opportunity to share our perspective regarding the Employee Retention Tax Credit and its use and implementation in the New Jersey nonprofit community.

The New Jersey Center for Nonprofits, founded in 1982, is the statewide network, champion, and service organization for our state's charitable nonprofit community, including 400 nonprofit members and broader regular engagement with more than 5,000 charitable organizations in the state through subscriptions, trainings/conferences, and other programs. We are ourselves a nonprofit and a 501(c)(3) publicly supported charity, and we are part of the National Council of Nonprofits network.

New Jersey's charitable nonprofits play an integral role in strengthening our state's social, economic, and community fabric. Nonprofit organizations are vital contributors to the economic well-being of the state. There are more than 40,000 501(c)(3) organizations in New Jersey<sup>1</sup>, employing an estimated 330,000 people<sup>2</sup>—nearly 10% of the state's private workforce. The programs, services, and economic benefits provided by nonprofits are critical factors in making New Jersey a thriving place to live and work.

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<sup>1</sup> Internal Revenue Service Business Master File of New Jersey Exempt Organizations, as of March 2023

<sup>2</sup> Johns Hopkins University, Center for Civil Society, Nonprofit Employment Data Dashboard, <http://ccss.jhu.edu/2020-np-employment-report-dashboard/> and data from interactive website <http://ccss.jhu.edu/nonprofit-works/>

It's hard to overstate the essential role that New Jersey's nonprofits have played in COVID-19 pandemic response and recovery, providing life-saving care, social services, education, mental health counseling, job assistance and training, spiritual comfort, healing and inspiration, and countless other critical functions.

Even before the pandemic hit, nonprofits were facing ongoing challenges of meeting steadily rising demand for services with resources that had not kept pace. The prolonged public health and economic crises exacerbated these challenges to an unthinkable degree. The impact of cancelled programs, drops in donations, exponential increases in demand, and staffing shortages stretched thousands of organizations to the breaking point at a time when communities were turning to them in record numbers.

In this context, government support has been absolutely critical for nonprofits to continue to serve the people and communities that need them. In an [annual survey of New Jersey nonprofits](#) conducted by our organization in 2021,<sup>3</sup> two-thirds of respondents reported receiving COVID-19 relief from the government such as Paycheck Protection Program (PPP) forgivable loans, Small Business Administration Economic Injury Disaster Loans, the Employee Retention Tax Credit (ERTC), and others from federal and state government. Eighty-two percent of these said that this aid was either important or indispensable to their ability to maintain staffing and programs.

The Employee Retention Tax Credit is important in this context. With the potential for up to \$26,000 per employee depending on circumstances, it offered crucial economic relief for employers who kept their employees on the payroll even amidst devastating economic declines and program interruptions. Nationwide, surveys by the National Council of Nonprofits<sup>4</sup> and Nonprofit Finance Fund<sup>5</sup> indicated that at least 13-15% of nonprofits participated in the ERTC. We are certain that the ERTC helped hundreds, and perhaps thousands, of nonprofits in New Jersey retain staff that they otherwise would have had to lay off, amounting to potentially thousands of saved jobs.

Our own organization applied for the ERTC for the 3<sup>rd</sup> quarter of 2021 by filing an amended Form 941 in June of 2022. For our application, we were able to get assistance from an accounting firm to analyze whether and for which quarters we might be eligible for the credit, and we worked through our payroll service to electronically file an amended Form

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<sup>3</sup> Center for Non-Profits (now New Jersey Center for Nonprofits), *New Jersey Non-Profits: Trends and Outlook*, February 2021, available at <https://njnonprofits.org/wp-content/uploads/2021/10/2021AnnualSurveyRpt.pdf>.

<sup>4</sup> National Council of Nonprofits, *The Scope and Impact of Nonprofit Workforce Shortages*, December 13, 2021, <https://www.councilofnonprofits.org/sites/default/files/media/documents/2023/december-2021-nonprofit-workforce-shortage.pdf>

<sup>5</sup> Nonprofit Finance Fund, *2022 State of the Nonprofit Sector Survey*, full results downloaded from <https://nff.org/learn/survey>

941. We received the credit in the form of a refund check approximately 8 weeks after our amended 941 was submitted.

Ours is an example of where the process worked well. But even for us it wasn't completely smooth, and unfortunately, there are many instances in which nonprofits have been unable to gain the relief through this important program. Our statement centers on two of the focus areas of today's hearing: confusion and complexity surrounding the program's eligibility requirements and application procedures, and the proliferation of unscrupulous third-party providers that siphon much-needed resources away from nonprofit missions and community programs.

### **Confusion regarding eligibility and application requirements**

It is worth noting that prior to the COVID-19 crisis, employee retention tax credits enacted by government in response to other disasters routinely took the form of corporate income tax incentives, effectively and unfairly excluding nonprofits from essential relief. Similarly, some initial drafts of the Paycheck Protection Program originally excluded nonprofit employers from eligibility as well. We are grateful to Congress for heeding the pleas of charitable nonprofits across the country and providing access to these relief programs – in the case of ERTC, structuring it as a payroll tax credit, thereby allowing nonprofits to participate. However, the sheer complexity of the program, repeated changes to guidance, and in some cases, lack of understanding of how nonprofits operate, created or exacerbated confusion and difficulty accessing the program.

During 2020 and 2021, eligibility criteria or implementation guidelines for the ERTC changed no fewer than four times. This included both positive changes such as broader eligibility and expanded benefits as part of the Taxpayer Certainty and Disaster Tax Relief Act and the American Rescue Plan Act, and negative changes such as Congress' decision to end the program one quarter early in 2021, after many organizations had budgeted financially for the credit. We recognize that the government was facing the extraordinary challenges of responding swiftly to an unparalleled crisis, but the many fluctuations translated into delays and confusion for legal and accounting professionals and nonprofits alike.

The written statement of the National Council of Nonprofits contains a more detailed description of these changes, but several stand out. First was that originally, it was impermissible for employers to receive both the PPP forgivable loans and the ERTC. This was later changed, of course, but by this time, thousands of nonprofits nationwide had already chosen to apply for the more generous benefits under the PPP, and many did not realize that the ERTC might be an option. On top of that, the definitions of "full or partial suspension" of services and gross receipts reductions under the ERTC were also

confusing and, in some cases, difficult to apply in a nonprofit context. Next, financial and payroll records had to be analyzed on a quarter-by-quarter basis to determine the feasibility of applying for ERTC.

Under the best of circumstances, this system would be challenging for many nonprofits, the overwhelming majority of which are small organizations with budgets of \$500,000 or less and employing fewer than 10 employees. But all of this was happening during an unprecedented pandemic that tested the resource and psychological limits for thousands of nonprofits, who simply didn't have the spare dollars or human capacity to try to figure out if they were eligible while responding to extreme crises in their communities.

For nonprofits, the result was widespread confusion and missed opportunities for relief that persist to this day. For every organization like ours that successfully navigated the process and received the ERTC, there are hundreds or thousands of others that are unaware or have determined that applying is just too burdensome or expensive.

### **Unscrupulous Third-Party Vendors**

Unfortunately, this leads to the next huge area of concern: the proliferation of unscrupulous third parties who are preying on employers and capitalizing on the confusion and complexity of the system.

Our organization regularly shares educational information or hosts webinars and training sessions to inform nonprofits about the ERTC. Yet we still regularly receive communications from organizations who aren't aware of the credit; believe the application window has passed; are daunted by the complexity of the eligibility requirements; or who mistakenly think that nonprofits aren't eligible at all.

Unfortunately, despite ongoing educational efforts by the government, by reputable accountants and attorneys, and by organizations like ours across the country, the sheer magnitude and complexity of the system has also resulted in the proliferation of unscrupulous third-party providers who aggressively solicit employers, sometimes encouraging ineligible employers to apply for the credit, or charging exorbitant fees of 15%, 25% or more of the amount of the benefit. I personally receive dozens of these communications every month. One vendor actually took to contacting our member nonprofits and falsely implying that it was working with the New Jersey Center for Nonprofits to provide ERTC application services. This prompted us to issue another cautionary communication about unscrupulous vendors and reminding nonprofits to work with reputable accountants and payroll services that will charge modest fees.

This explosion of third-party vendors and predatory practices is siphoning much-needed ERTC resources away from small businesses and nonprofit programs for the community. Every dollar diverted to the pockets of these aggressive opportunists makes it harder for nonprofits to serve the community, and runs counter to Congress' intent for the program. As one of our members put it, "The ambulance chasing has to stop."

### **Nonprofit Education Efforts and the ERTC**

Numerous organizations like ours across the country have engaged in repeated and ongoing efforts to educate nonprofits about the ERTC, and encourage them to explore the program and to apply if eligible. At the New Jersey Center for Nonprofits, for example:

- We partnered with accounting firms to present two webinars in 2021 and 2022 focused on the ERTC, including updated eligibility requirements, definitions, application procedures and more. These webinars were offered live with ample Q&A time, with recordings made available afterward.
- We sent multiple emails to our subscriber list of 5,000 to share updates about changes to the ERTC requirements and connect nonprofits with fact sheets and information from the IRS, the National Council of Nonprofits, and other experts. Viral redistribution expands the reach of these communications.
- We provide nonprofits with one-on-one information and referral via email and phone through our Nonprofit HelpDesk service.
- We continue to remind nonprofits regularly through various communications channels that there is still an opportunity to apply for the credit, and we have also cautioned nonprofits to be wary about solicitations from unscrupulous third-party actors.

We have no doubt that these and other outreach efforts helped eligible organizations that might not otherwise have done so to receive much-needed ERTC relief. However, even with comprehensive and multifaceted efforts by many organizations and experts nationwide, many charitable nonprofits still don't realize that the ERTC might be available to them. This underscores the need for ongoing communications and education from trusted sources in and outside of government to be sure the program reaches employers as Congress intended.

### **Recommendations**

We would again like to stress that the ERTC has been a vital part of a critical comprehensive relief package that made it possible for nonprofits to keep their employees and continue their programs and services for the community under unfathomable circumstances. For many organizations, the ERTC and other aid were a lifeline that prevented them from having to close permanently.

But clearly there are lessons to be learned from the ERTC implementation that can be applied to future crises. In that spirit, and as partners with the government in serving the public good, we respectfully offer the following suggestions:

- Ensure that from the outset, relief programs are structured to ensure equitable access for charitable nonprofits, including rural, grassroots and those led by and serving historically marginalized communities and ensure that implementation requirements adequately reflect the realities of nonprofit operations.
- Simplify the eligibility and application process so that smaller and mid-sized nonprofits will not be deterred from participating. Not only will this maximize efficiency and direct more relief to community organizations and businesses, but it will also discourage the proliferation of predatory scam artists who have taken advantage of the complexities of the current program.
- Provide ample resources for outreach, education, training, and application submissions, keeping in mind that especially in times of extreme crisis, many nonprofits are immersed in service delivery and putting their communities and constituents first, leaving little time to analyze or navigate complicated systems.
- To the greatest extent possible, put safeguards into place to protect against predators and scam artists. Restricting or prohibiting commission-based fee structures and protecting nonprofits and small businesses from harassment-level campaigns and practices would make a big difference.

Past experience has shown that severe crises and the financial downturns that accompany them tend to hit nonprofits immediately, while economic recovery reaches the nonprofit community much later than other sectors. Nonprofits in New Jersey and across the country are still grappling with severe labor shortages that undermine their ability to meet continually escalating needs. Providing necessary tools and resources, including programs like the ERTC, will help to ensure that our communities can continue to access nonprofits for vital programs and services, now and in the future.

Thank you for your consideration and for the opportunity to share our views.

Respectfully submitted,

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### **About the New Jersey Center for Nonprofits**

*[New Jersey Center for Nonprofits](#) is a statewide network, champion and go-to resource for and about New Jersey's nonprofit community. Founded in 1982, the Center exists to build the power of New Jersey's nonprofit community to improve the quality of life for all people of our state. We provide professional education, advocacy, resources, training and information to strengthen nonprofits and help them thrive in their work for the people, communities, and causes they serve. The Center is a New Jersey nonprofit organization and a 501(c)(3) publicly supported charity.*

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