

Coronavirus

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CARES Act Summary: What It Means for Nonprofits

Loan Eligibility for Nonprofits

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) signed into law on March 27, 2020 provides a \$2 trillion economic stimulus package to offset the hardship that businesses are experiencing in connection with the COVID-19 pandemic. Although the CARES Act focuses on for-profit businesses in the private sector, there are a number of terms that are applicable to nonprofits to provide opportunities for relief, whether through loans, grants, tax credits or other incentives.

PAYCHECK PROTECTION PROGRAM

The Paycheck Protection Program (PPP) under the CARES Act creates an emergency loan program for eligible nonprofits and small businesses to cover costs of payroll, operations and debt service.

Eligibility: 501(c)(3) and 501(c)(19) nonprofits with 500 or fewer employees (counting each full-time or part-time individual) are eligible for a loan. Note that employees of affiliated nonprofits may be counted toward the 500 employee cap, depending on the affiliation rules.

Loan Terms: Loan amounts are 2.5 times the borrower's average monthly payroll costs (up to \$10,000,000), and the funds received can be used to pay payroll and associated costs (including continuation of group health care benefits but not including compensation of annual salaries greater than \$100,000), interest payments on mortgages and other previously incurred debt obligations, rent and utilities.

Loan Forgiveness: Employers that maintain employment levels for the 8 weeks after the origination of the loan would be eligible to have their loans forgiven; provided that the amount of loan forgiveness may be reduced (i) if the employer reduces the number of full-time equivalent employees or (ii) if the employer reduces the pay of any employee by more than 25% as of the last calendar quarter.

Application Process for Borrowers: The U.S. Treasury Department has released preliminary guidance regarding how organizations can apply for



Paycheck Protection Program loans. Application forms can be found here <https://home.treasury.gov/policy-issues/top-priorities/cares-act/assistance-for-small-businesses>.

Based on the current application form released by the U.S. Treasury Department, applicants will need to make certain certifications on the PPP loan application with respect to the number of full-time equivalent employees on payroll, as well as the dollar amounts of payroll costs, covered mortgage interest payments, covered rent payments and covered utilities for the 8 week period following the loan. When making certifications with respect to eligibility, applicants should take care to avoid making false statements and thereby creating legal exposure (e.g., under the False Claims Act or through Inspector General oversight). As part of this effort, nonprofits should maintain a record of their strong due diligence with respect to eligibility, in the event that questions arise concerning eligibility post-application.

The PPP will be administered similarly to other programs part of the U.S. Small Business Administration, so nonprofits and small business can apply through any existing SBA 7(a) lender or through any federally insured depository institution, federally insured credit union and Farm Credit System institution that is participating. We anticipate more specific guidance from the U.S. Treasury Department and the SBA in the coming days, and participating lenders can be expected to provide additional information on their application process as well.

ECONOMIC INJURY DISASTER LOANS

The CARES Act also provides an additional \$10 billion for the SBA's existing Economic Injury Disaster Loans (EIDL) Program and waives certain existing program requirements, so borrowers no longer need to provide a personal guarantee, be in operation for one year prior to disaster (though the borrower needs to have been in operation on January 31, 2020) or be able to obtain credit elsewhere.

Eligibility: The CARES Act has expanded availability of EIDLs to private nonprofit organizations, though unlike the PPP, it is unclear whether nonprofits are limited to 501(c)(3) and 501(c)(19) tax-exempt organizations. Most significantly, nonprofits may apply for an EIDL grant in addition to applying for a loan under the Paycheck Protection Program, provided that the loans are not used for the same purpose.

Loan Terms: Loan amounts can be up to \$2,000,000 and the funds received can be used to pay for fixed debt payments, payroll, accounts payable, and other bills that cannot be paid due to impacts from COVID-19. The interest rate for nonprofits is 2.75%, and applicants can request a \$10,000 emergency advance within 3 days after applying while their disaster loan application is being considered. If the application is denied, the applicant is not required to repay the \$10,000 advance.

Loan Forgiveness: Unlike the PPP, EIDLs would not be eligible for forgiveness.

ECONOMIC STABILIZATION FUND

The CARES Act also established an Economic Stabilization Fund as a loan and loan guarantee program for certain industries to stay afloat through the crisis.

Eligibility: Mid-sized nonprofits and businesses that have between 500 and 10,000 employees are expressly eligible for loans under this provision (e.g., hospitals and universities).

Loan Terms: Loans would be charged an interest rate of no higher than 2%, and no accrual of interest or repayment would be required for the first 6 months. Nonprofits accepting the mid-size business loans must retain at least 90% of their staff at full compensation and benefits until September 30, 2020.

Loan Forgiveness: Unlike the PPP, loans under this fund would not be eligible for forgiveness.



Additional Provisions Applicable to Nonprofits

EMPLOYEE RETENTION PAYROLL TAX CREDITS

If a nonprofit does **not** receive a Paycheck Protection Program Loan, the nonprofit could be eligible for Employee Retention Payroll Tax Credits under the CARES Act. The CARES Act provides for a refundable payroll tax credit of up to \$5,000 for each employee on the payroll, so long as the employer (1) was an ongoing concern at the beginning of 2020 and (2) either experienced a whole or partial shutdown due to COVID-19 or saw a drop in revenue of at least 50% in the first quarter of 2020 compared to the first quarter of 2019. For tax-exempt organizations, the entity's whole operations must be taken into account when determining eligibility.

UNEMPLOYMENT REIMBURSEMENTS

If a nonprofit has voluntarily elected to be self-insured, the CARES Act provides a reimbursement for these nonprofits for one-half of the amounts paid into a state unemployment trust fund between March 13, 2020, and December 31, 2020 for the unemployment benefits claimed by laid-off employees.

CHARITABLE GIVING INCENTIVES FOR DONORS

In addition to providing direct relief to nonprofits, the CARES Act also creates charitable giving incentives for donors in the form of a new above-the-line deduction for total qualified charitable contributions of up to \$300 per eligible individual. The incentive applies to contributions made in 2020 and would be claimed on tax forms next year. The CARES Act also raises the existing cap on annual contributions for those who itemize, from 60% of adjusted gross income to 100%. The annual limit for corporations is raised from 10% to 25%, and charitable contributions of food from corporations would be capped at 25% (up from the current 15% cap).

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