

Nonprofit Guide to the CARES Act

April 7, 2020

Nonprofit organizations can take advantage of many of the relief options offered by the US Coronavirus Aid, Relief, and Economic Security (CARES) Act, a \$2 trillion emergency relief in response to the novel coronavirus pandemic signed into law on March 27. Although many provisions focus on the private sector, certain provisions are also applicable to nonprofit and tax-exempt organizations, including certain loans and tax credits. This Cooley alert highlights some of the provisions of the CARES Act that are most important for our nonprofit and tax-exempt clients, including how to apply for the Paycheck Protection Program (PPP). As detailed below, nonprofits may apply for the PPP starting April 3, but since those loans are administered through banks, *a nonprofit should contact its bank* to see when that particular bank will start accepting applications. A nonprofit is permitted to apply through any lender, but in order to handle the volume of requests, some banks are not accepting applications from new customers.

Note that on April 2, the Small Business Administration (SBA) released a revised PPP application form and a final interim rule on the PPP. Any nonprofit planning to apply for PPP should use the revised application form released. Many elements of the final interim rule do not apply to nonprofit organizations since they deal with private company ownership and nonprofits do not have owners.

Paycheck Protection Program

One of the core pieces of the CARES Act is the creation of the PPP, which will be administered by the SBA under the umbrella of its 7(a) business loan regime. PPP loans will be made by participating commercial lenders and credit unions through June 30, 2020, and will be 100% guaranteed by the SBA.

This alert provides a basic overview of key features of the PPP. For a more detailed FAQ, please refer to Cooley's alert on [Small Business Administration programs under the CARES Act](#) and the [PPP information sheet](#) on the Treasury Department website.

PPP eligibility

The PPP is available only to nonprofits that:

1. Were in operation on February 15, 2020
2. Are registered 501(c)(3) charities or 501(c)(19) veterans organizations and
3. Have fewer than 500 employees (which includes full and part-time employees and employees of "affiliates") or meet the SBA employee-based size standards for the industry in which they operate.

Eligible borrowers must make a good faith certification that the loan is necessary due to the uncertainty of current economic conditions caused by the novel coronavirus; they will use the funds to retain workers and maintain payroll, lease and utility payments; and are not receiving duplicative funds for the same uses from another SBA program.

Importantly, unlike traditional SBA 7(a) loans, no personal guarantee will be required to receive funds, no collateral needs to be pledged, and there is no requirement that the organization show that it cannot obtain credit elsewhere.

PPP loans

PPP loans can be for up to 250% of the organization's average monthly payroll costs from the prior year, up to a maximum loan of \$10,000,000. Payroll costs will be capped at \$100,000 annualized for each employee (i.e., for

any employee whose salary is \$100,000 or more, only \$8,333 per month can be included in the calculation of average monthly payroll costs).

PPP loans are to be used for eligible payroll costs, health care benefits, mortgage interest, rent, and utilities payments. Loans have a 1% fixed interest rate. All interest payments are deferred for six months (interest, however, will continue to accrue over this period). The loan matures in two years and there is no prepayment penalty.

PPP loan forgiveness

PPP loans are eligible for 100% loan forgiveness so long as the loan proceeds are used to cover eligible payroll costs over the eight-week period after the loan is made and employee and compensation levels are maintained.

Recipients are required to provide documentation verifying the number of full-time equivalent employees on payroll as well as the dollar amounts of payroll costs, mortgage interest payments, rent payments and utilities for the eight week period following the loan. Due to likely high subscription, no more than 25% of the forgiven amount may be for non-payroll costs.

The amount of loan forgiveness may be reduced if the organization reduces the number of employees as compared to the prior year or if the organization reduces the pay of any employee by more than 25% as of the last calendar quarter. Organizations that re-hire workers previously laid off as a result of the novel coronavirus crisis by June 30, 2020, will not be penalized for having a reduced payroll for the beginning of the relevant period.

The CARES Act specifically provides that amounts forgiven under the PPP are excluded from gross income, meaning it is statutorily excluded from Unrelated Business Taxable Income. However, it is not clear yet how the loan forgiveness should be treated for purposes of Form 990 reporting.

How to apply for a PPP loan

We recommend that eligible nonprofits contact their bank as soon as possible to see if they are participating in the SBA loan program. Lenders have been able to process loan applications since April 3, 2020 and the finite amount of funding has created a sense of urgency to get applications in.

A nonprofit is permitted to apply for the PPP through any lender, but due to the volume of requests, some banks are not accepting applications from new customers. A nonprofit should first reach out to its existing bank to see if that bank is qualified with the SBA to process SBA loans and is taking part in the PPP loan program. If not, the bank should be able to direct the nonprofit to another bank that is participating, or the nonprofit can check the list of existing participating lenders on the SBA website for the district in which the organization is located.

In addition to contacting potential lenders, eligible nonprofits should review [the final version of the PPP application form](#) and begin to organize the necessary payroll information and documentation. Note that lenders will also require documentation to establish nonprofit status and eligibility, so nonprofits should be prepared to include their IRS Determination Letter and most recent IRS Form 990 in their application materials.

Economic injury disaster loans

The CARES Act expands access to the SBA's Economic Injury Disaster Loans (EIDLs) to include private nonprofit organizations with 500 or fewer employees. Private nonprofit organizations include those that are tax-exempt under sections 501(c), (d), or (e) of the Internal Revenue Code. Eligible nonprofit organizations that suffer substantial economic injury as a result of a disaster or emergency, which now includes the novel coronavirus, can apply for a loan under this program between January 31, 2020, and December 31, 2020.

No personal guarantee is required for EIDLs under \$200,000, and the loan can be made solely upon the applicant's credit score. EIDLs are intended to pay for expenses that could have been met had the disaster not occurred, including payroll and other operating expenses. For nonprofit organizations seeking an immediate influx of funds, borrowers may receive a \$10,000 emergency advance within three days after applying for an

EIDL grant. If the application is denied, the applicant is not required to repay the \$10,000 advance. Emergency advance funds can be used for payroll costs, increased material costs, rent or mortgage payments, or repaying obligations that cannot be met because of revenue losses. The loans are for up to 30 years and the interest rate for nonprofit organizations is 2.75%. Principal and interest may be deferred for up to four years, but unlike PPP 7(a) loans, the CARES Act does not provide for forgiveness for EIDLs. Eligible nonprofits may apply for both PPP loans and EIDLs, so long as both loans are not used for the same purpose or otherwise duplicative. Eligible nonprofits can apply for an EIDL at their local SBA District Office [or online](#).

CESA treasury loan program

Under the Coronavirus Economic Stabilization Act of 2020 (CESA), the Treasury secretary is authorized to implement a special facility through the Federal Reserve to provide financing to banks and other lenders that make direct loans to businesses. These loans are targeted specifically at mid-sized businesses and nonprofits with between 500 and 10,000 employees. Loans would bear interest at an annualized rate no greater than 2%, and no principal or interest would be due for at least six months or such longer period as the Treasury secretary may determine. Nonprofits accepting the mid-size business loans must certify that "uncertainty of economic conditions" as of the date of the application makes the loan necessary to support ongoing operations and that funds must be used to retain at least 90% of their staff at full compensation and benefits until September 30. We are awaiting more guidance from the Treasury secretary on how and when these loans will be made available.

Nonprofit unemployment reimbursements

Charitable nonprofits have the ability to either self-insure (i.e., reimburse a state for unemployment benefits paid to a former employee) or pay state unemployment taxes (SUTA) like other businesses. The CARES Act provides that nonprofits that have chosen to self-insure may be reimbursed for one-half of the amounts paid into a state unemployment trust fund for laid off employees between March 13, 2020, and December 31, 2020.

Employee retention payroll tax credits

The CARES Act established a refundable payroll tax credit of up to \$5,000 per employee on the payroll when certain conditions are met. The credit is available to employers whose (1) operations were fully or partially suspended, due to a shutdown order related to the novel coronavirus or (2) revenues declined by more than 50% when compared to the same quarter in the prior year. For nonprofit organizations, the entity's whole operations must be taken into account when determining the decline in revenues. The credit is provided for wages paid or incurred from March 13, 2020, through December 31, 2020. Importantly, 501(c)(3) and 501(c)(19) organizations receiving PPP loans would not be eligible for these payroll tax credits.

Delay of payment of payroll taxes

The CARES Act permits payment of the employer's share of payroll taxes from March 27, 2020, through the end of 2020 to be delayed, with half of such amount due December 31, 2021, and the other half due December 31, 2022. This ability to delay payment applies to any employer, including all nonprofit organizations, but does not apply if an organization obtained a loan and has such loan forgiven under the PPP.

Charitable giving incentive

The CARES Act creates a new above-the-line deduction (universal or non-itemizer deduction that applies to all taxpayers) for total charitable contributions of up to \$300. This incentive applies to contributions made in 2020 and would be claimed on tax forms next year. The CARES Act also lifts the limitations on charitable contributions by individuals who itemize deductions, from 60% of adjusted gross income to 100% and for corporations by increasing the limitation from 10% to 25% of taxable income.

We will be posting additional guidance on the CARES Act and other topics related to the novel coronavirus that are relevant to nonprofits as more information becomes available.

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