



How does the CARES Act Help Nonprofits and Higher Education Institutions?

By Andrea Wilson

Nonprofit organizations and higher education institutions have been hard at work trying to help the world navigate the novel coronavirus (COVID-19) pandemic. While trying to maintain focus on their missions, these organizations and institutions face massive uncertainty in the face of COVID-19, including financial turmoil, layoffs, remote work, quarantines, shelter-in-place orders and other measures.

While the programs and initiatives in the Coronavirus Aid, Relief, and Economic Security (CARES) Act are primarily intended to assist businesses, there are many programs that nonprofits and higher education institutions can benefit from. As nonprofits and institutions grapple with both the increasing need for services and prolonged economic instability, the CARES Act provides some reprieve.

It is important for nonprofits and higher education institutions to note that federal agencies are working to develop guidance around how specific provisions of the CARES Act will work in practice. The Small Business Administration (SBA), for example, has up to 15 days following the enactment of the CARES Act to issue regulations. Issuance of regulations and guidance may delay loan approval and disbursement or modify/waive certain loan requirements.

Nonprofit Eligibility for Small Business Disaster Loans

The CARES Act authorized two SBA disaster loan programs—The Paycheck Protection Program (PPP) and the Emergency Economic Injury Disaster Loans (EIDL) program. The PPP program is limited in scope to 501(c)(3) and 501(c)(19) non-profit organizations, while all non-profit organizations are eligible for the emergency EIDL program. Since the COVID-19 EIDL program was approved by the national emergency declaration back on March 13, many nonprofits and higher education institutions have likely already applied for one of these loans. While organizations may be worried this will jeopardize their eligibility under the PPP, both loans are permitted. Organizations may receive an EIDL and loans under other programs, such as the PPP, if the basis for the loans and/or costs being

paid with each loan are different. For example, you can't use both the EIDL and PPP for payroll. In other words, no double dipping or duplicating the benefit.

Paycheck Protection Program

This \$349 billion forgivable loan program, included in the CARES Act, significantly expands which organizations are eligible for Small Business Administration (SBA) loans. For organizations facing financial strain as a result of COVID-19, these loans can help offset a variety of costs.

Who can qualify?

Registered 501(c)(3) charities, 501(c)(19) veterans organizations, and tribal business concerns that either: employ no more than 500 employees (including full-time and part-time workers), or have more than one physical location (with 500 or fewer employees per location) and are assigned a North American Industry Classification System (NAICS) code beginning with 72 may participate in the Paycheck Protection Program. Note that other nonprofit organizations are not eligible for the program.

How much are the loans and what can they be used for?

The maximum amount for these loans is 2.5 times the average total monthly payroll costs for the prior 12-month period, or up to \$10 million, with deferred loan payment of up to one year. The loans may be used for the following:

- Payroll costs
- Employee compensation (excludes compensation in excess of \$100,000 on an annual basis)
- Continuation of healthcare benefits



- Interest payments on mortgages entered into before February 15, 2020 (but not prepayment or payment of principal)
- Rent for a lease entered into before February 15, 2020
- Utilities, including electricity, gas, water, transportation, telephone, or internet
- Interest on any debt incurred before February 15, 2020

Loans would be backed by a 100 percent federal guarantee through December 31, 2020, at which time the guarantee percentage would revert to the standard Section 7(a) loan guarantee.

How do you apply?

The application is available through the Treasury Department [website](#). You will need to complete the PPP loan application and include your payroll information. Once complete, organizations need to submit to an approved lender by June 30, 2020. Although the program is open until the end of June, we encourage you to apply as quickly as you can, as it takes time for lenders to process the loan, and there is an overall funding cap.

When can you apply?

- Starting April 3, 2020, nonprofits, small businesses and sole proprietorships can apply for and receive loans to cover their payroll and other certain expenses through existing SBA lenders.
- Starting April 10, 2020, independent contractors and self-employed individuals can apply for and receive loans to cover their payroll and other certain expenses through existing SBA lenders.

What is required to be eligible?

Borrowers will need to include a *Good-Faith Certification* that:

- The loan is needed to support ongoing operations during the COVID-19 emergency.
- Funds will be used to retain workers and maintain payroll or make mortgage, lease and utility payments.
- You have not and will not receive another loan under this program.
- All the information you provided is true and accurate.

Is there loan forgiveness?

Yes, if you meet certain conditions. The SBA will grant forgiveness up to the total amount borrowers spent of up to eight weeks of payroll costs and mortgage interest, rent, and utility payments between February 15 and June 30, 2020 if the borrower retains its employees and salary levels. Loan forgiveness is prorated for organizations who do not maintain payroll. The CARES Act provides an exception to the reduction if the eligible entity re-hires employees and/or eliminates the reduction in salaries by June 30, 2020. Forgiven amounts do not need to be reported as taxable income. The Treasury Department is anticipating that not more than 25 percent of the forgiven amount may be for non-payroll costs.

Expanded Economic Injury Disaster Loan and Loan Advance

The CARES Act provides \$10 billion for the Economic Injury Disaster Loan (EIDL) Program under Section 7(b) of the Small Business Act. The CARES Act made several changes to the EIDL program, which is available to nonprofits and businesses of all sizes in a declared disaster area. Currently, all 50 states, the District of Columbia, Puerto Rico, Guam and the Northern Mariana Islands have all been declared disaster areas for purposes of the EIDL Program. These loans are processed directly through the SBA.

How much are the loans and what can they be used for?

EIDL funds are available for a maximum amount of \$2 million, carry an interest rate of 3.75 percent, and have a maximum term of 30 years. Loans over \$200,000 must be guaranteed by any owner having a 20 percent or greater interest in the applicant. However, the CARES Act removed the requirement for personal guarantees on loans under \$200,000.

Who can qualify?

The CARES Act expands eligibility for EIDL to include tribal businesses, cooperatives, and employee stock ownership plans (ESOPs) with fewer than 500 employees, or any individual operating as a sole proprietor or independent contractor between January 31, 2020 and December 31, 2020. Private nonprofits are also eligible for EIDLs. Until December 31, 2020, the SBA can approve EIDLs based solely on an applicant's credit score or an alternative appropriate method for determining an applicant's ability to repay.



How do you apply?

To apply for a COVID-19 Economic Injury Disaster Loan, [click here](#).

When can you apply?

You can apply for these loans now. To speed up the process, an applicant may request an expedited disbursement that is to be paid within three days of the request. The advance may not exceed \$10,000 and must be used for authorized costs but is otherwise not repayable if the EIDL is not approved.

What is required to be eligible?

Thanks to the CARES Act, a borrower no longer is required to be turned down for credit elsewhere, which often delayed the EIDL process. Additionally, the CARES Act waived the requirement that businesses be in operation for one year prior to the disaster. Removal of these requirements will expedite the loan process to get SBA disaster dollars into the hands of nonprofits and higher education institutions more quickly.

Is there loan forgiveness?

No.

Department of Treasury Assistance for Nonprofits and Higher Education

Exchange Stabilization Fund (Mid-Size Loan Program)

The CARES Act provides \$454 billion as loans, loan guarantees, and investments for eligible businesses, states, and municipalities. Within the \$454 billion, it was Congress' intent that the Secretary of the Treasury make loans and investments available—to the extent practicable—to mid-size businesses and nonprofits.

Who is eligible?

It is important to note that unlike the PPP, these funds are available to all nonprofit organizations and not limited to 501(c)(3)s. These loans should be at a rate not higher than two percent annualized with no payments for the first six months.

What is required to apply?

If your nonprofit organization would like to benefit from this loan, you must provide a *Good-Faith Certification* that:

- Economic uncertainty requires those terms;
- Funds received will be used to retain 90 percent of the workforce at full compensation and benefit levels before Sept. 30, 2020;
- An intent to restore not less than 90 percent of the workforce prior to Feb. 1, 2020 while restoring all compensation and benefit levels to workers no later than four months after their termination date; and
- Certify that your organization will not outsource or offshore jobs for the term of the loan or two years after completing repayment of the loan; and
- Certify that they will not abrogate collective bargaining rights during this time and will remain neutral in a union organizing effort for the term of the loan.

We expect these loans to be highly competitive, so we would encourage nonprofits to begin preparing now by collecting the necessary documents and completing applications as soon as possible.

Employment Provisions

Organization may be faced with difficult decisions in response to this unprecedented pandemic, including weighing whether to continue to pay workers or make the difficult decision to furlough your employees so they are able to file for unemployment benefits. The employment provisions in the CARES Act are to support employees who lose their jobs due to COVID-19.

Unemployment Reimbursements

All 501(c)(3) organizations have the option of paying unemployment insurance tax or self-insuring. The CARES Act reimburses 501(c)(3) organizations for half of their costs of unemployment benefits provided to laid-off employees. For charities that are tax-exempt from unemployment laws, the organizations are not eligible to receive unemployment benefits. However, organizations can receive this benefit if they voluntarily choose to self-insure.



Unemployment Benefits

COVID-19 is having a significant impact on unemployment throughout the nation, and the nonprofit sector is not exempt. The CARES Act allows employers to claim a new credit against applicable employment taxes in an amount equal to 50 percent of the qualified wages paid after March 12, 2020, and before Jan. 1, 2021, with respect to certain employees, up to a maximum of \$10,000 of wages per employee.

The Act includes a specific section related to nonprofit organizations, which allows organizations to be reimbursed for half of the costs incurred through the end of 2020 to pay unemployment benefits. For this credit, any employer that is a tax-exempt organization described in IRC Section 501(c), is deemed to be an eligible employer with respect to all its operations. However, if your organization receives a loan under the PPP (discussed above), then your organization will not be eligible for this credit.

The Act also provides an additional \$600 per week payment to those receiving unemployment benefits under their respective state laws and Pandemic Unemployment Assistance participants for up to four months. In addition, the Act provides federal funding for thirteen weeks of additional unemployment benefits through the end of 2020.

Tax Provisions

Employee Retention Credit for Employers

The CARES Act provides a refundable payroll tax credit for 50 percent of wages paid to your employees during the COVID-19 crisis if your organization is eligible. Your nonprofit, 501(c) organization is eligible for a partially refundable employee retention credit if:

- operations were fully or partially suspended, due to a COVID-19-related shut-down order, or
- gross receipts declined by more than 50 percent when compared to the same quarter in the prior year.

For organizations with more than 100 full-time employees, wages will be considered “qualified” when they are paid to employees when they are not providing services due to the COVID-19-related circumstances described above. For organizations with 100 or fewer full-time employees, all employee wages qualify for the credit, whether the employer is open for business or subject to a shut-down order. The

credit is provided for the first \$10,000 of compensation, including health benefits, paid to an eligible employee. The credit is provided for wages paid or incurred from March 13, 2020 through December 31, 2020.

Universal Charitable Deductions

The CARES Act also included a temporary universal charitable deduction. This deduction will allow all taxpayers, even those who do not currently itemize their deductions, to claim a charitable deduction for cash donations up to \$300 through December 31, 2020. Recent limitations on charitable donations by individuals were also suspended, for example the 60 percent adjusted gross income limitation. For corporations, the limitation of 10 percent of taxable income was increased to 25 percent.

Delay of Certain Payroll Tax Payments

The CARES Act allows for employers, including tax-exempt organizations, to delay the payment of employer payroll taxes for the 2020 tax year. Fifty percent of employer payroll taxes are due by December 31, 2021. The remaining fifty percent of the employer’s portion of the 2020 payroll tax is due December 31, 2022. However, if your organization receives loan forgiveness of an SBA loan, your organization will not be eligible for a delay.

Minimum Funding Rules for Certain Charities

The CARES Act modifies the minimum funding rules for pension plans sponsored by charitable organizations whose primary purpose is to provide medical care and assistance to mothers and children, to allow for more flexibility in the amount of required payments.

Our team is in the process of putting together an advisory on Frequently Asked Questions about these programs to provide additional clarity about how nonprofits can take advantage of these funds and new provisions. While it’s still difficult to predict the full extent of the impact of COVID-19, we are closely monitoring this rapidly evolving situation, offering guidance to help you through this time of uncertainty.