

What Tax-Exempt Organizations Need to Know About the U.S. CARES Act

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On March 27, 2020 the Coronavirus Aid, Relief, and Economic Security (CARES) Act was signed into law by the President. The CARES Act includes several provisions that may be beneficial to tax-exempt organizations, including three loan programs that certain types of tax-exempt organizations may be able to take advantage of: the Paycheck Protection Program, the Economic Injury Disaster Loan & Emergency Grants Program and the Mid-Sized Loan Program. In addition, two tax credits may be available to certain tax-exempt organizations: an employee retention payroll tax credit and a reimbursement for self-funded tax-exempt organizations in connection with unemployment benefits. The CARES Act also creates additional incentives for charitable giving by providing for certain expanded charitable deductions to donors. The Goodwin team is continuing to monitor guidance and developments relating to the CARES Act and is available to assist.

PAYCHECK PROTECTION PROGRAM

The CARES Act has modified and expanded the Small Business Administration (SBA) 7(a) loan guarantee program, a core piece of the legislation providing \$349 billion to small businesses (including certain tax-exempt organizations) through federally backed loans available through June 30, 2020, called the Paycheck Protection Program (PPP). The PPP is intended to assist employers, including certain types of tax-exempt organizations, in maintaining their payroll levels.

Terms and Eligibility

A 501(c)(3) or 501(c)(19) tax-exempt organization that was in operation on February 15, 2020, and that, together with its affiliates, has 500 or fewer total employees, including full time and part time employees (or, if applicable, has less than the higher size standard in number of employees established by the administration for the industry in which the organization operates) is eligible to apply for a loan of up to the lesser of (i) \$10 million and (ii) 2.5 times the organization's average monthly payroll costs of US employees during the one-year period prior to the loan date (or 2.5 times the organization's average monthly payroll costs during January 1, 2020, to February 29, 2020, if the organization was not operating between February 15, 2019, to June 30, 2019). Loans are available for up to a maximum of two-year terms and interest rates are, per an Interim Final Rule issued by the SBA on April 2, 2020, 1%. There are no loan fees or prepayment penalties and no collateral or personal guarantee requirements. The organization must in good faith certify that the loan is necessary due to uncertain economic conditions, that it will use the funds for the permitted purposes and that it is not receiving duplicative funds for the same purposes.

Forgiveness

An important feature of PPP is that these loans are eligible for forgiveness (by application to your lender) of up to the amount spent by the borrower on payroll costs and certain other purposes during an eight-week period beginning on the origination date of the loan. Forgivable amounts include eligible payroll costs, rent payments, or mortgage interest payments; however, not all permitted uses of the loans will be forgivable. The amount forgiven can be reduced if the organization reduces headcount (as compared to the same period in the prior year, or the January 1, 2020, through February 29, 2020, period) or reduces the pay of their existing employees by more than 25% as compared to those same periods. If an organization re-hires employees within a certain period (or remedies the reduced salaries or wages), it will not be penalized.

How to Apply

PPP loans are available through SBA and Treasury approved financial institution, so organizations should work with their existing lending or deposit banks when possible to expeditiously process applications. As of March 31, 2020, [application instructions](#) and a [sample application](#) are available through the SBA website.

EXPANDED ECONOMIC INJURY DISASTER LOAN & EMERGENCY GRANTS PROGRAM

The CARES Act expands another SBA loan program, the Economic Injury Disaster Loan Program (EIDL), broadening eligibility for the program, waiving certain requirements and making an additional \$10 billion available for certain tax-exempt organizations that have suffered a substantial economic injury as a result of COVID-19 and if the organization is “unable to meet its obligations as they mature or pay its ordinary and necessary operating expenses.”

Terms and Eligibility

Certain tax-exempt organizations may be eligible to take advantage of these loans, which are available in amounts up to \$2 million and will, for eligible tax-exempt organizations, have an interest rate of 2.75% and terms of up to 30 years. The EIDL Application requires that an applicant be a “private nonprofit organization that is a non-governmental agency or entity that currently has an effective ruling letter from the IRS, granting tax exemption under sections 501(c), (d), or (e) of the Internal Revenue Code of 1954, or satisfactory evidence from the State that the non-revenue producing organization or entity is a non-profit one organized or doing business under State law, or a faith-based organization.” For EIDLs made prior to December 31, 2020, applicants need to have been in operation on Jan 31, 2020 and there is no requirement that the applicant show it could not have otherwise received a loan or prove its ability to repay the loan. Additionally, for EIDLs made before December 31, 2020, there is no requirement for a personal guarantee for loans under \$200,000. EIDLs can be used for working capital necessary to carry the business until resumption of normal operations, spend necessary to alleviate the specific economic injury (but not in excess of what the business could have provided had the injury not occurred), maintaining payroll, providing paid sick leave to employees unable to work due to the direct effect of COVID-19, making rent or mortgage payments, meeting increased supply costs and repaying other obligations that cannot be met due to COVID-19. While certain tax-exempt organizations may apply for and receive both PPP loans and EIDL, both loans cannot be used for the same purpose in the same period and any EIDL used for payroll must be refinanced with any subsequently incurred PPP loan.

How to Apply

Eligible tax-exempt organizations may apply directly on with the SBA at a [local SBA office](#) or [online](#).

Emergency Grants Program

EIDL applicants may also apply for an emergency EIDL advance of \$10,000, which will be provided within three days of the loan application, provided the applicant certifies that it is an “eligible entity” under penalty of perjury. Applicants that receive the advance will not be required to repay the advance if they are later denied the full EIDL, but the EIDL itself is not eligible for forgiveness. If an applicant receives an EIDL advance but is approved for a PPP loan instead, the advance amount will be subtracted from the amount of the PPP loan that is eligible for forgiveness under the PPP.

MID-SIZE LOAN PROGRAM

The CARES Act also creates a Mid-Size Loan Program which allocates \$454 billion to “nonprofit organizations” and business with over 500 employees and less than 10,000 employees. “Nonprofit organizations” may be eligible to use the loans for the purposes of restoring 90% of their February 1, 2020, workforce and retaining

90% of their workforce at full wages and benefits through September 30, 2020. The term “nonprofit organization” is not defined for the purposes of the program, so the scope of tax-exempt organizations that may benefit from this program is to be determined. The Secretary of the Treasury is expected to publish procedures and requirements soon. There is no loan forgiveness for this program.

EXPANDED CHARITABLE DEDUCTIONS

In order to incentivize individual charitable giving and to help encourage direct financial relief to tax-exempt organizations, the CARES Act has created a new “above the line deduction” for taxpayers who do not itemize their deductions of up to \$300 for cash charitable contributions to certain charitable organizations beginning in 2020. For taxpayers who itemize their deductions, the CARES Act increases the annual cap on deductions for cash contributions made in 2020 to certain charitable organizations from 60% to 100% of adjusted gross income. These changes do not apply to cash contributions made to private non-operating foundations, supporting organizations or donor-advised funds.

The CARES Act also increased the annual limit on deductions for cash contributions made by corporations to charitable organizations in 2020 from 10% to 25% of taxable income. Again, these changes do not apply to cash contributions made to private non-operating foundations, supporting organizations or donor-advised funds.

The CARES Act also increased the annual limit on deductions for charitable contributions of eligible food inventory in 2020 from 15% to 25%.

EMPLOYEE RETENTION PAYROLL TAX CREDIT

The CARES Act created a quarterly employee retention payroll refundable tax credit for retaining employees during the COVID-19 challenging economic times for which tax-exempt organizations may be eligible. The credit is applied dollar-for-dollar (subject to the limitations noted) for up to 50% of “qualified wages” (defined differently depending on the number of employees) up to a cap of \$10,000 per employee, paid between March 13, 2020, and December 31, 2020: if (1) its operations were suspended in full or in part due to a COVID-19 governmental order limiting commerce, travel or group meetings; (2) its revenue declined by more than 50% when compared to the same quarter in a prior year (taking into account the organization’s operations as a whole) and (3) the organization has not received a PPP loan. The credit is limited to the amount of employment taxes on wages paid for the calendar quarter and is reduced by any other credits claimed for employer payroll taxes to prevent double benefits.

SELF-FUNDED TAX-EXEMPT ORGANIZATIONS AND UNEMPLOYMENT

The CARES Act provides that tax-exempt organizations that have chosen to reimburse the state for unemployment benefits paid to former employees may be reimbursed for one-half of the amounts paid into a state unemployment trust fund between March 13, 2020, and December 31, 2020.

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Please visit Goodwin’s [Coronavirus Knowledge Center](#), where firm lawyers from across the globe are issuing new guidance and insights to help clients fully understand and assess the ramifications of COVID-19 and navigate the potential effects of the outbreak on their businesses.

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