

CARES Act: Relief for Nonprofit and Tax-Exempt Organizations

Updated as of July 4, 2020

The Coronavirus Aid, Relief, and Economic Security Act (**CARES Act**) provides economic support in multiple forms to nonprofit and tax-exempt organizations facing hardship due to the COVID-19 pandemic. This memorandum describes our understanding of the key features of two Small Business Administration (**SBA**) loan programs, as well as several measures of tax relief for tax-exempt organizations and their employees.

In some cases, if an organization chooses to use one form of relief, it will be ineligible for another. For example, organizations that receive a loan under the Paycheck Protection Program (**PPP**) are ineligible for the refundable payroll tax credit for employee retention.

We expect to update this memorandum from time to time when new statutes are passed or regulations or guidelines are released by Treasury, the Small Business Administration or the Internal Revenue Service (**IRS**). We are collecting and posting related program materials and resources on the Government Support for Business page of our website [here](#), under the “Small Business Relief” tab.

For a quick reference table summarizing the key points in this memo, please see the [Appendix](#).

SBA Loan Programs

The CARES Act establishes the PPP and expands the economic injury disaster loan (**EIDL**) program in response to the COVID-19 crisis. Both programs are available to a broad range of nonprofits. Due to lack of resources, the SBA did not accept any new EIDL applications from applicants other than for-profit agricultural businesses from April 15 to June 14. As of June 15, the SBA is once again accepting new EIDL applications from nonprofits and other small businesses. PPP loans are made by banks and nonbank financial institutions and are guaranteed by the SBA, whereas EIDLs are made directly by the SBA.

- The PPP temporarily expands the pre-CARES Act Small Business Act Section 7(a) loan guarantee program through December 31, 2020, although the SBA’s funding to guarantee new PPP loans extends only through August 8 by statute. The initial \$349 billion in CARES Act funding for the PPP was depleted as of April 16, and Congress increased the aggregate PPP funding by \$310 billion, to a total of \$659 billion, on April 24. Among other things, the PPP expands the scope of entities that are eligible for loans to include certain nonprofits and veterans associations, requires a repayment deferral period, and provides for forgiveness of the loan in an amount equal to payroll costs and certain other expenses during a period of time following loan disbursement. Treasury and the SBA have released a series of interim final rules (the **Rules**), FAQs and other guidance (the **Guidance**), and forms of borrower loan and forgiveness applications. These materials are available on the Treasury’s PPP internet page [here](#).¹

¹ New interim final rules and FAQs are released from time to time. Borrowers generally may rely on laws, rules and guidance available at the time they file their applications and need not update them based on subsequent FAQs.

- As explained more fully below, the Paycheck Protection Program Flexibility Act (**PPP Flexibility Act**), enacted on June 5, 2020, amended the PPP by (1) extending the program through December 31, 2020 (although the SBA's funding to guarantee new PPP loans extends only through August 8 by statute), (2) extending the minimum PPP loan maturity for loans made on or after June 5, 2020 to a minimum of five years, (3) relaxing the conditions for loan forgiveness, and (4) lengthening the payment deferral period.
- The CARES Act temporarily expands the pre-CARES Act EIDL program under Small Business Act Section 7(b)(2), which was already available to certain private nonprofits, through December 31, 2020. Among other things, the expanded EIDL program waives certain borrowing requirements and permits streamlined approval of applications. It also provides for advances available within three days of applying for an EIDL that do not have to be repaid and that are therefore in practice emergency grants, subject to conditions on the use of grant proceeds. Although the initial \$10.5 billion in CARES Act funding for the EIDL program was depleted as of April 16, Congress increased funding by \$10 billion for emergency grants and \$50 billion for EIDLs, for a total of \$70.5 billion, on April 24. Due to limited funding, the SBA was not accepting new EIDL applications from any applicants other than for-profit agricultural businesses from April 15 until June 14, but as of June 15, the SBA is once again accepting new EIDL applications from nonprofits.

An eligible nonprofit may potentially benefit from both a PPP loan and an EIDL, including an EIDL emergency grant, subject to certain conditions.

We discuss in turn the key features and mechanics of each of these two programs for nonprofit borrowers.

PPP Loans

Eligible Nonprofits

Unlike ordinary loans under Small Business Act Section 7(a), PPP loans are available to any nonprofit organization described in section 501(c)(3) of the Internal Revenue Code (**IRC**) and to any veterans organization described in section 501(c)(19) of the IRC (such nonprofits and veterans organizations collectively referred to as **PPP Nonprofits**).²

PPP loans are available to PPP Nonprofits that were in operation on February 15, 2019 and that employ not more than the greater of:

² The SBA has issued Rules providing that (1) hospitals owned by a state or local government that receive less than 50% of their funding from state or local government sources, excluding Medicaid, and (2) faith-based organizations are eligible for PPP loans, in each case notwithstanding pre-CARES Act SBA regulations to the contrary. In addition, the Board of Governors of the Federal Reserve System has exempted PPP loans from the definition of "extension of credit" in section 22(h) of the Federal Reserve Act and the corresponding provisions of the Federal Reserve Board's Regulation O.

- 500 employees³; or
- the number of employees in the **size standard designation** for the industry in which the applicant operates.⁴

Any organization that does not employ more than 500 employees per physical location and that is assigned an NAICS code beginning with 72 (i.e., accommodation and food services businesses) at the time of the loan disbursement is also eligible for a PPP loan. Any individual employed on a full-time, part-time or “other basis” is counted as an employee for purposes of the size determination, but volunteers and independent contractors are not counted towards the employee size limits.

For nonprofit institutions of higher education, student workers generally count as employees for purposes of employee size limits and calculation of payroll costs, unless the student worker’s services are performed as part of a federal Work-Study Program, as defined under Department of Education regulations, or a substantially similar program of a state or local government.⁵

The SBA affiliation rules generally require an applicant to aggregate employees or receipts with entities under common control, including foreign affiliates. In determining whether entities are affiliated, the SBA may consider all connections between an entity and a possible affiliate on a case-by-case basis based on the totality of the circumstances. While the SBA’s affiliation rules are generally designed to apply to for-profit entities organized as corporations or partnerships, rather than to nonprofits, which are generally not owned by shareholders, partners or other corporate owners, a nonprofit or veterans association should consider whether it may be affiliated with other entities, such as through management control or common management.

Application of the SBA affiliation rules is waived for certain categories of borrowers, including (1) those in the accommodation or food service sectors with not more than 500 employees⁶ and (2) certain faith-based organizations.⁷

³ Borrowers may use their average employment over the previous 12 months or from calendar year 2019 to determine their number of employees. Alternatively, borrowers may elect to use the SBA’s usual calculation: average number of employees per pay period in the 12 completed calendar months prior to the date of the loan application (or the average number of employees for each of the pay periods that the business has been operational, if it has not been operational for 12 months). Finally, seasonal businesses may use average monthly payroll for the period February 15 (or March 1), 2019 to June 30, 2019 or, if they have not been in business during that period, average monthly payroll costs for the period January 1, 2020 through February 29, 2020.

⁴ The **size standard designation** is generally stated in terms of employees for either the primary industry of the applicant alone or the primary industry of the applicant and its affiliates, whichever is higher. For nonprofit organizations whose primary industry is listed with a size standard based on annual receipts, the size standards table may not be used to determine eligibility for a PPP loan. The SBA provides a **table** of applicable size standards for various industries, identifying each industry by a NAICS code.

⁵ The Department of Education’s federal work-study programs are described in 34 C.F.R. part 675.

⁶ The affiliation rules also do not apply to businesses operating as franchises or to businesses receiving financial assistance from a Small Business Investment Company, but these exceptions are unlikely to be helpful for nonprofits.

⁷ Under a Rule and accompanying Guidance published by the SBA on April 3, 2020, the affiliation rules do not apply to the relationship of any church, convention or association of churches, or other faith-based organization or entity to any other person, group, organization, or entity that is based on a sincere religious teaching or belief or otherwise constitutes a part of the exercise of religion. This includes any relationship to a parent or subsidiary and other applicable aspects of organizational structure or form. A faith-based organization seeking a PPP loan may rely on a reasonable, good faith interpretation in determining whether its relationship to any other person, group, organization, or entity is exempt from the SBA affiliation rules, and the SBA will not assess, and will not require participating lenders to assess, the reasonableness of the faith-based organization’s determination. If, however, a faith-based organization is affiliated with other organizations solely for non-religious reasons, such as administrative convenience, then the organization would be subject to the affiliation rules.

A PPP Nonprofit must be able to certify in its PPP loan application that economic uncertainty makes the loan necessary to support its ongoing operations⁸ and that it will not use the loan proceeds for unauthorized purposes.

Loan Terms and Size

The maximum loan amount is the lesser of:

- \$10 million; or
- 2.5 times average monthly payroll costs for employees residing in the United States, plus the amount of any EIDL received between January 31, 2020 and April 3, 2020 that is to be refinanced with PPP proceeds, net of any EIDL advance, if applicable.

Borrowers can calculate their average monthly payroll costs using data either (1) from the previous 12 months or (2) from calendar year 2019.⁹

If the applicant has an outstanding EIDL that was not used for payroll costs, it does not affect eligibility for a PPP loan. If the applicant received an EIDL between January 31, 2020 and April 3, 2020 that was used for payroll costs, the applicant's PPP loan **must** be used to refinance that EIDL. A borrower may have both a PPP loan and an EIDL received **after** April 3, 2020, but the proceeds of the two loans should be allocated to different uses. A borrower may not refinance an EIDL using PPP loan proceeds if the borrower received the EIDL loan before January 31, 2020 or after April 3, 2020.

The Rules set key loan terms, which apply to all loans made under the PPP. The loans have a fixed interest rate of 1.0%. No collateral or personal guarantee is required from the borrower. The borrower is also not required to be unable to find credit elsewhere. Prior to enactment of the PPP Flexibility Act, the SBA had set a 2-year maturity for all PPP loans. The PPP Flexibility Act requires that all PPP loans made on or after June 5, 2020 have a maturity of at least 5 years, up to a maximum of 10 years, and the SBA has set PPP loan maturity at 5 years for all PPP loans approved by the SBA on or after that date. PPP loans entered into prior to June 5 will continue to have a 2-year maturity, but the borrower and lender may mutually agree to extend the maturity date to five years.

Authorized Uses of Loan Proceeds

Under the CARES Act and the Rules, PPP loan proceeds can be used for the following permissible purposes:

- Payroll costs, including benefits;¹⁰

⁸ For PPP loans with an original principal amount of less than \$2 million, the SBA will deem this certification to have been made in good faith. In addition, any borrower that repaid its PPP loan in full by May 18, 2020 will be deemed to have made this certification in good faith.

⁹ Nonprofits with seasonal operations may use average monthly payroll costs for the period between February 15 (or March 1), 2019 and June 30, 2019. If the applicant was not in operation during that period, it may use average monthly payroll costs for the period January 1, 2020 through February 29, 2020. A seasonal employer may alternatively elect to determine its maximum loan amount as the average total monthly payments for payroll during any consecutive 12-week period between May 1, 2019 and September 15, 2019.

¹⁰ "Payroll costs" includes (i) salary, wage, commission or similar compensation, (ii) payments with respect to tips, (iii) vacation, parental, family, medical or sick leave, (iv) allowance for dismissal or separation, (v) payments required for group healthcare benefits, including insurance premiums, (vi) payment of any retirement benefit, and (vii) state or local tax imposed on the compensation of employees, and excludes (A) cash compensation of any individual employee in excess of \$100,000 in one year, as prorated for the period between February 15, 2020 and June 30, 2020, (B) any FICA tax or withheld income tax, (C) compensation of any individual whose principal residence is outside the United States, (D) qualified sick leave and family leave wages for which a
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- Payment of interest on any mortgage obligation (principal payments are excluded);
- Rent;
- Utilities;
- Interest on any debt obligations incurred before February 15, 2020; and
- Refinancing an EIDL made between January 31, 2020 and April 3, 2020.

Prior to the PPP Flexibility Act, the Rules required a borrower to use at least 75% of the PPP loan proceeds for payroll costs. But new Rules published by the SBA on June 11 lowered that requirement to 60%, consistent with changes made by the PPP Flexibility Act. The amount of any EIDL that was used for payroll and that is refinanced by the PPP loan will be included as payroll costs.

The SBA will direct any borrower who uses the PPP funds for unauthorized purposes to repay those amounts. If a borrower knowingly uses funds for unauthorized purposes, the SBA may bring an action against the borrower, including for fraud.

Loan Forgiveness

A borrower is eligible for **forgiveness** on a PPP loan in an amount equal to the sum of certain costs incurred or payments made during a defined **covered period**. Prior to the PPP Flexibility Act, the covered period was the eight-week period following loan disbursement. The PPP Flexibility Act lengthened the covered period to the period beginning on the date of loan disbursement and ending on the earlier of (1) the date that is 24 weeks thereafter and (2) December 31, 2020. Borrowers that received a PPP loan prior to the PPP Flexibility Act may elect to retain the eight-week covered period.

Costs that count toward the **loan forgiveness amount** include payroll costs¹¹, payment of interest on any mortgage obligation incurred before February 15, 2020, rent payments under lease agreements in force before February 15, 2020, and utility payments for which service began before February 15, 2020. For purposes of calculating forgivable payroll costs, a borrower may elect an alternative covered period beginning on the first day of the first payroll cycle in the covered period (**alternative payroll covered period**). A nonpayroll cost is eligible for forgiveness if it was (1) paid during the covered period or (2) incurred during the covered period and paid on or before the next regular billing date even if the billing date is after the covered period.

Prior to the PPP Flexibility Act, the Rules allowed only up to 25% of the loan forgiveness amount to be attributable to non-payroll expenses. The PPP Flexibility Act increased that percentage to 40%. The loan forgiveness amount can be up to the full principal amount of the loan and any accrued interest. A borrower will need to document the proceeds used for payroll costs, and other permissible uses, to determine the loan forgiveness amount.

To incentivize the borrower's retention of employees at existing salaries, the loan forgiveness amount is reduced by:

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credit is allowed under the Families First Coronavirus Response Act, and (E) any amounts paid to an independent contractor or sole proprietor. For an independent contractor or sole proprietor, which are separately eligible for PPP loans, payroll consists of wage, commissions, income, or net earnings from self-employment or similar compensation.

¹¹ The Rules provide that payments to furloughed workers, bonuses, and hazard pay are eligible for forgiveness. For sole proprietors and independent contractors who file income taxes using Schedule C of Form 1040, forgiveness is based on owner compensation replacement, calculated by reference to 2019 net profit.

- Multiplying it by a fraction (1) the numerator of which is the average number of monthly full-time equivalent (**FTE**) employees¹² during the covered period and (2) the denominator of which is the average number of FTE employees per month during either of two reference periods, at the election of the borrower: February 15 to June 30, 2019 or January 1 to February 29, 2020¹³; and
- Subtracting the amount of any reduction in total salary or wages of any employee during the covered period that is in excess of 25% of the total salary or wages of the employee between January 1 and March 31, 2020 (taking into account only those employees who earned less than or equal to \$100,000 on an annualized basis for all pay periods in 2019).

To avoid double-counting reductions in headcount and salaries or wages, the salary or wage reduction applies only to the portion of the decline in employee salary and wages that is not attributable to the FTE reduction.

In addition, the amount of loan forgiveness for payroll costs will be reduced by the amount of any emergency grant that a borrower received under the EIDL program if the borrower transfers into or is approved for a PPP loan, since those emergency grants are automatically forgiven, as discussed below.

The borrower is exempt from any reduction in loan forgiveness amount that would otherwise apply in three scenarios:

- In order to incentivize the re-hiring of employees and the reversal of salary reductions, loan forgiveness will be determined without regard to the reduction in the number of FTEs or the reduction in salary or wages of employees, in each case between February 15, 2020 and April 26, 2020, if that reduction is eliminated prior to December 31, 2020.¹⁴ Prior to the PPP Flexibility Act, the reductions had to be eliminated prior to June 30 in order for the borrower to benefit from this rule.
- The loan forgiveness amount will not be reduced for employees that are fired for cause, voluntarily resign or voluntarily request a schedule reduction. If a laid off employee (or an employee whose hours have been reduced) rejects a good faith, written offer to be rehired for the same salary and same number of hours (or to restore the reduction in hours), that employee will also be excluded from the borrower's forgiveness reduction calculation, as long as the borrower maintains records documenting the offer and its rejection and the borrower informs the applicable state unemployment insurance office of the employee's rejection within 30 days of the rejection.
- The PPP Flexibility Act also allows a borrower to avoid a forgiveness amount reduction for a reduction in FTE employees if the borrower is able to document in good faith that (1) the borrower is unable to rehire the laid off employees and is unable to hire similarly qualified employees or (2)

¹² An FTE employee is an employee who works 40 hours or more, on average, each week. To calculate the average number of FTE employees, borrowers must divide the average number of hours paid for each employee per week by 40, capped at 1.0. For example, an employee who was paid 48 hours per week during the covered period would be considered to be one FTE employee. For a part-time employee (i.e., an employee who is paid for less than 40 hours per week), borrowers may choose to calculate the employee's FTE amount in one of two ways. First, the borrower may calculate the average number of hours the part-time employee was paid per week during the covered period as a proportion of 40 hours (i.e., an employee who works 30 hours a week would be an FTE employee of 0.75). Second, for administrative convenience, borrowers may elect to treat all part-time employees as FTE employees of 0.5. A borrower must select only one method and apply it consistently to all part-time employees.

¹³ For a seasonal employer, a third possible reference period is a consecutive 12-week period between May 1 and September 15, 2019.

¹⁴ It should be noted that *any* re-hiring or salary restoration before or during the covered period, even if related to reductions made after April 26, will benefit the borrower because the calculation of the loan forgiveness amount for the covered period will reflect that additional headcount or salary.

the borrower is unable to return to its pre-February 15, 2020 level of business activity due to direct or indirect compliance¹⁵ with requirements issued by the Secretary of Health and Human Services, the Director of the Centers for Disease Control and Prevention, or the Occupational Safety and Health Administration between March 1, 2020 and December 31, 2020 that are related to the maintenance of standards for sanitation, social distancing or any other worker or customer safety requirement related to COVID-19.

Repayment Deferral

Prior to the PPP Flexibility Act, the CARES Act required lenders to defer all loan repayments – both principal and interest – for between six months and a year (during which time interest would accrue). The PPP Flexibility Act significantly lengthened the deferral period. For a borrower that applies for forgiveness, repayment of principal and interest is deferred until the date on which the SBA remits the forgiveness amount to the lender. Since the PPP Flexibility Act gives a borrower up to 10 months following the last day of its covered period to apply for forgiveness, and the maximum lender determination and SBA remittance periods total up to 60 plus 90 days¹⁶, the deferral period can be relatively long. If a borrower does not apply for forgiveness within 10 months after the last day of its forgiveness covered period, the deferral period terminates at the end of those 10 months.

Application Process for a PPP Loan

PPP loans are provided by financial institutions and guaranteed by the SBA. All existing SBA-certified lenders have been given delegated authority by the SBA to make loans. Federally insured depository institutions and credit unions, as well as Farm Credit System institutions and certain other non-bank lenders also are eligible to participate in the PPP. As of June 12, 2020, the SBA has issued a revised PPP loan borrower application form that conforms to the PPP Flexibility Act ([SBA Form 2483](#)),¹⁷ and all borrowers must provide the information requested in the form application. Lenders may use their own online systems and a form they establish that asks for the same information.

Application Process for Loan Forgiveness

To apply for loan forgiveness, a borrower must complete and submit a loan forgiveness application ([SBA Form 3508](#)¹⁸ or an equivalent application from its lender) to its lender. Alternatively, certain borrowers that are not subject to a reduction in their forgiveness amount¹⁹ may use the shorter [SBA Form 3508EZ](#).

¹⁵ Indirect compliance includes compliance with state and local government shutdown orders that are based in part on guidance from the three federal agencies.

¹⁶ After the borrower submits its loan forgiveness application to its lender, the lender is expected to perform a good faith review of the borrower's calculations and supporting documents and issue a decision to the SBA within 60 days. The SBA then has up to 90 days to remit the appropriate forgiveness amount to the lender. The lender is responsible for notifying the borrower of remittance by the SBA of the loan forgiveness amount (or that the SBA has determined that no amount of the loan is eligible for forgiveness) and the date on which the borrower's first payment is due, if applicable.

¹⁷ Borrowers that submitted PPP loan applications before June 12, 2020 are not required to submit a new applications.

¹⁸ The original version of this application was revised on June 16, 2020 to conform to amendments made by the PPP Flexibility Act.

¹⁹ SBA Form 3508EZ can be used if the borrower:

- is a self-employed individual, independent contractor, or sole proprietor who had no employees at the time of the PPP loan application and did not include any employee salaries in the computation of average monthly payroll in the borrower application form (SBA Form 2483); or

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The two forms generally require the same types of information, documentation and certifications, except that SBA Form 3508EZ does not require information related to forgiveness amount reductions and requires an additional certification as to eligibility to use the simplified form.

A borrower may submit a loan forgiveness application any time on or before the maturity date of the loan – including before the end of the covered period – if the borrower has used all of the loan proceeds for which the borrower is requesting forgiveness. If the borrower does not apply for forgiveness within 10 months of the end of the covered period, the PPP loan is no longer deferred and the borrower must begin paying principal and interest.

A borrower must submit the following documentation with its loan forgiveness application:

- Documentation verifying the eligible payroll costs consisting of each of the following:
 - Bank account statements or third-party payroll service provider reports documenting the amount of cash compensation paid to employees;
 - Tax forms (or equivalent third-party payroll service provider reports) for the periods that overlap with the covered period or the alternative payroll covered period, including (1) payroll tax filings reported, or that will be reported, to the IRS (typically, Form 941) and (2) state quarterly business and individual employee wage reporting and unemployment insurance tax filings reported, or that will be reported, to the relevant state; and
 - Payment receipts, cancelled checks, or account statements documenting the amount of any employer contributions to employee health insurance and retirement plans that the borrower included in its forgiveness amount; and
- Documentation verifying the existence of eligible non-payroll-related obligations or services prior to February 15, 2020 and eligible payments made or incurred during the covered period, including business mortgage interest payments, business rent or lease payments, and business utility payments; and
- For borrowers applying on SBA Form 3508 only, documentation showing the average number of FTE employees per month during borrower's elected reference period for determining reductions in FTE employees, as discussed above, which may include payroll tax filings reported, or that will be reported, to the IRS (typically, Form 941) and state quarterly business and individual employee wage reporting and unemployment insurance tax filings reported, or that will be reported, to the relevant state. Documents submitted may cover periods longer than the specific time period.

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- did not reduce annual salary or hourly wages of any employee by more than 25% during the covered period or the alternative payroll covered period compared to the period between January 1, 2020 and March 31, 2020 (taking into account only employees who earned \$100,000 or less on an annualized basis), and the borrower either:
 - did not reduce the number of employees or the average paid hours of employees between January 1, 2020 and the end of the covered period (other than (1) reductions arising from an inability to rehire individuals who were employees on February 15, 2020, if the borrower is unable to hire similarly qualified employees on or before December 31, 2020 and (2) reductions in an employee's hours that the borrower offered to restore and the employee refused); or
 - was unable to operate during the covered period at the same level of business activity as before February 15, 2020 due to compliance with requirements established or guidance issued between March 1, 2020 and December 31, 2020 by the Secretary of Health and Human Services, the Director of the Centers for Disease Control and Prevention, or the Occupational Safety and Health Administration, related to the maintenance of standards of sanitation, social distancing, or any other work or customer safety requirement related to COVID-19.

In addition, a borrower is required to maintain but not submit all records relating to the borrower's PPP loan, including (1) documents submitted with its loan application, (2) documents supporting the borrower's certifications as to necessity of the loan request and its eligibility for a PPP loan, (3) documents supporting the borrower's loan forgiveness application, (4) documents demonstrating material compliance with PPP requirements, (5) documentation regarding any employee job offers and refusals, refusals to accept restoration of reductions in hours, firings for cause, voluntary resignations, written requests by any employee for reductions in work schedule, and any inability to hire similarly qualified employees for unfilled positions on or before December 31, 2020, and (6) documents supporting the borrower's certifications in its loan forgiveness application, described below. Borrowers using SBA Form 3508 must also maintain supporting documentation relating to each individual employee listed in its application.

All documents must be retained for a period of six years after the date on which the loan is forgiven or repaid in full.

A borrower must make the following certifications, among others, in its application for forgiveness:

- That the dollar amount of forgiveness requested:
 - was used to pay costs that are eligible for forgiveness;
 - includes payroll costs equal to at least 60% of the loan forgiveness amount;
 - if a 24-week covered period applies, does not exceed 2.5 months' worth of 2019 compensation for any owner-employee or self-employed individual/general partner, capped at \$20,833 per individual;
 - if the Borrower has elected an eight-week covered period, does not exceed eight weeks' worth of 2019 compensation for any owner-employee or self-employed individual/general partner, capped at \$15,385 per individual; and
 - **[Form 3508 Only]** includes all applicable reductions due to decreases in the number of FTE employees and salary/hourly wage reductions.
- The borrower understands that, if the funds are knowingly used for unauthorized purposes, the federal government may pursue recovery of loan amounts and/or civil or criminal fraud charges.
- **[Form 3508EZ Only]** The borrower is eligible to use SBA Form 3508EZ.
- The borrower has accurately verified the payments for the eligible payroll and non-payroll costs for which the borrower is requesting forgiveness.
- The borrower submitted to its PPP lender the required documentation verifying payroll and non-payroll costs, as well as verifying the existence of eligible non-payroll-related obligations or services.
- The information provided in the loan forgiveness application and the information provided in all supporting documents and forms is true and correct in all material respects, with an acknowledgment that making a false statement to obtain forgiveness of an SBA-guaranteed loan is a criminal offense.
- The tax documents the borrower has submitted to the lender are consistent with those the borrower has submitted/will submit to the IRS and/or state tax or workforce agency. The borrower understands, acknowledges, and agrees that the lender can share the tax information with SBA's authorized representatives.
- The borrower understands, acknowledges, and agrees that the SBA may request additional information for the purposes of evaluating the borrower's eligibility for the PPP loan and for loan forgiveness, and that the borrower's failure to provide information requested by the SBA may

result in a determination that the borrower was ineligible for the PPP loan or a denial of the borrower's loan forgiveness application.

- **[Form 3508 Only]** If applicable, that the borrower was unable to operate at its pre-February 15, 2020 level of business activity due to compliance with requirements established or guidance issued between March 1, 2020 and December 31, 2020 by the Secretary of Health and Human Services, the Director of the Centers for Disease Control and Prevention, or the Occupational Safety and Health Administration, related to the maintenance of standards of sanitation, social distancing, or any other work or customer safety requirement related to COVID-19.

Lenders must make a determination on any such application within 60 days²⁰, and the SBA must remit the appropriate forgiveness amount, if any, to the lender within 90 days following that determination.²¹

Economic Injury Disaster Loans and Emergency Grants

Eligible Nonprofits

Consistent with pre-CARES Act loans under Small Business Act Section 7(b)(2), EIDLs are available to private nonprofit organizations, which include any non-governmental agency or entity that currently has: (1) an effective ruling letter from the IRS granting tax exemption under sections 501(c), (d), or (e) of the IRC or (2) satisfactory evidence that such organization is a nonprofit from the state in which the non-revenue producing organization or entity is organized or doing business under state law (an **EIDL Nonprofit**). EIDLs are therefore potentially available to more types of nonprofits than PPP loans.

In contrast to the PPP program, there are no size restrictions for an EIDL Nonprofit that may apply for an EIDL.

The SBA has posted on its website a streamlined loan application for a COVID-19 EIDL on which the applicant must certify that the following are true:

- Applicant is not engaged in any illegal activity (as defined by Federal guidelines);
- No principal of the Applicant with a 50 percent or greater ownership interest is more than sixty (60) days delinquent on child support obligations;
- Applicant does not present live performances of a prurient sexual nature or derive directly or indirectly more than de minimis gross revenue through the sale of products or services, or the presentation of any depictions or displays, of a prurient sexual nature;
- Applicant does not derive more than one-third of gross annual revenue from legal gambling activities;
- Applicant is not in the business of lobbying; and
- Applicant cannot be a state, local, or municipal government entity and cannot be a member of Congress.

²⁰ The lender's determination may take the form of an approval (in whole or in part), a denial, or (if directed by the SBA) a denial without prejudice due to a pending SBA review of the loan for which forgiveness is sought. The SBA may undertake a review of a PPP loan of any size at any time in its discretion. For instance, it may review borrower eligibility, the loan amount, or the loan forgiveness amount claimed by the borrower.

²¹ Remittance of the forgiveness amount to the lender by the SBA is subject to any SBA review of the loan or loan application. The SBA may direct the lender to deny the loan forgiveness application in whole or in part, or it may seek repayment of the outstanding PPP loan balance or pursue other remedies.

SBA guidance clarifies that faith-based organizations are eligible for EIDLs regardless of whether they provide services and notwithstanding pre-CARES Act SBA regulations that would make certain faith-based organizations ineligible.

EIDL Nonprofits must also: (1) be located in an area affected by a disaster, which in the case of COVID-19 currently includes all U.S. states, Washington, D.C. and U.S. territories; (2) have suffered a substantial economic injury as a result of such disaster; and (3) were in operation on January 31, 2020.

A “substantial economic injury” means an economic harm to a business concern that results in the inability of the business concern to meet its obligations as they come due, pay its ordinary and necessary operating expenses, or to market, produce or provide a product or service ordinarily marketed, produced or provided by the business concern. Compared to the certification in the PPP application that the loan request is necessary to support the ongoing operations of the applicant, the substantial economic injury standard seems to focus more on economic harm to the applicant as opposed to workforce reduction.

Loan and Emergency Grant Size and Terms

SBA guidance sets the interest rate for all EIDLs to EIDL Nonprofits at 2.75%. The term and amount of the EIDL will be determined on a case-by-case basis based on the borrower’s ability to repay and may have a maturity of up to 30 years. The maximum loan amount for an EIDL is \$2 million. A borrower may request an increase in the loan amount if the borrower can show that the increase is essential for its business to continue and is based on events occurring after the SBA approved the original loan that were beyond the borrower’s control.

The SBA generally will not require the pledge of collateral to secure an EIDL of \$25,000 or less, but a borrower may be required to provide collateral such as a lien on damaged or replacement property, a security interest in personal/business property, or both for loans in greater amounts. The SBA has discretion to vary collateral requirements based on a borrower’s ability to repay but may decline or cancel an EIDL if a borrower refuses to pledge requested collateral.

For EIDLs in response to the COVID-19 crisis, the CARES Act waives (1) the requirement to provide a personal guaranty for advances and loans of up to \$200,000 and (2) the requirement that an applicant be unable to obtain credit elsewhere. In addition, the SBA changed the terms of new EIDLs to allow for one-year deferments.

Under the CARES Act, an EIDL Nonprofit that applies for an EIDL in response to COVID-19 may request an **advance** on the EIDL loan (also referred to as an **emergency grant**) in an amount up to \$10,000 (\$1,000 per employee) to be received within three days after the SBA receives its application. Before receiving the emergency grant, the EIDL Nonprofit must certify to the SBA under penalty of perjury that it is an eligible EIDL Nonprofit. The emergency grant does not need to be repaid by the borrower, even if the EIDL is ultimately not obtained.

Authorized Uses of Loan and Emergency Grant Proceeds and Forgiveness

Under existing SBA regulations, EIDL proceeds may be used for (1) working capital necessary to carry on operations until resumption of normal operations and (2) expenditures necessary to alleviate the specific economic injury, but may not be used to exceed that which the organization could have provided had the injury not occurred.²² As compared to PPP loan proceeds, EIDL proceeds may be used for a broader

²² EIDL proceeds may **not** be used to: (1) refinance indebtedness incurred prior to the disaster event; (2) make payments on loans owned by another federal agency (including the SBA); (3) pay, directly or indirectly, any obligations resulting from a federal, state or local tax penalty as a result of negligence or fraud, or any non-tax criminal fine, civil fine, or penalty for non-compliance with a law, regulation, or order of a federal, state, regional, or local agency or similar matter; (4) repair physical damage; or (5) pay dividends or (cont.)

range of purposes. For example, if an EIDL Nonprofit is unable to pay amounts due to a supplier due to revenue losses caused by the COVID-19 pandemic, it may use EIDL proceeds for the payment of those amounts due.

The CARES Act specifies that proceeds from an EIDL emergency grant may be used for any of the allowable uses for EIDLs described above, which expressly include:

- providing paid sick leave to employees unable to work due to the direct effect of COVID-19;
- maintaining payroll to retain employees during business disruptions or substantial slowdowns;
- meeting increased costs to obtain materials unavailable from the applicant's original source due to interrupted supply chains;
- making rent or mortgage payments; and
- repaying obligations that cannot be met due to revenue losses.

Emergency grants are not required to be repaid, even if the applicant does not subsequently receive an EIDL. As noted above in the discussion of forgiveness of PPP loans, however, the emergency grant amount will reduce the loan forgiveness amount for payroll expenses on a PPP loan, if applicable.

Application Process

EIDLs and emergency grants related to COVID-19 are provided directly by the SBA. The streamlined COVID-19 EIDL application is available on the SBA website ([here](#)). The CARES Act allows the SBA to approve an applicant based solely on credit score without requiring the applicant to submit a tax return or use alternative appropriate methods to determine an applicant's ability to repay.

Tax Provisions

The CARES Act includes provisions that may be beneficial to both tax-exempt organizations and their employees. The IRS has also released Notices 2020-18 and 2020-23, which provide relief to certain taxpayers allowing them to delay both the filing and payment of certain taxes. We discuss in turn relief for tax-exempt organizations, relief for their employees, and relief for those tax-exempt organizations that pay tax on unrelated business income.

Tax Relief for Tax-exempt Organizations

Refundable Payroll Tax Credit for Employee Retention

In order to incentivize businesses to retain employees during these difficult times, certain employers are entitled to a refundable credit of the employer portion of social security taxes equal to 50% of up to \$10,000 in eligible wages (including allocable health plan expenses) per employee for taxes incurred from March 13, 2020 to December 31, 2020. Eligible employers include:

- An employer whose operations were fully or partially suspended during a calendar quarter by the government due to coronavirus; or

(cont.)

other disbursements to owners, partners, officers or stockholders, except for reasonable remuneration directly related to their performance of services for the business.

- An employer whose gross receipts for any quarter during the applicable period are less than 50% of gross receipts for that quarter in the previous year. The period ends the first calendar period after a calendar period where the employer's gross receipts are greater than 80% of gross receipts in that quarter in the previous year.

If the employer has more than 100 employees, the credit applies only to wages paid to furloughed employees. On the other hand, if the employer has 100 employees or fewer, then the credit applies whether or not the employee is actively working during the relevant period.

The IRS has clarified that allocable health expenses are taken into account even if no wages are paid. However, as above, employers that have more than 100 employees can count only the portion of allocable health expenses that correspond to the time that the employees are not working.

There is no credit, however, for wages paid for emergency sick and family leave under the Families First Coronavirus Act. Moreover, employers who take a PPP loan are not eligible for this credit. Employers who repay their PPP loans by May 18, 2020 are eligible. In contrast, employers who take EIDLs are eligible.

Delay of Tax Payments and Tax Filings

In addition to a refundable credit, the CARES Act allows employers and self-employed individuals to delay the payment of the employer portion of social security payroll taxes (or the equivalent portion of self-employment taxes) for the period between March 27, 2020 and December 31, 2020. The taxes are due in two installments: 50% is due on December 31, 2021 and the remaining 50% is due on December 31, 2022.

Additionally, IRS Notice 2020-23 allows tax-exempt organizations filing Forms 990 and 990-EZ on or after April 1, 2020 and before July 15, 2020 to delay the filing of such Forms until July 15, 2020. IRS Notice 2020-35 provided the same delay for tax-exempt organizations filing Forms 990-N on or after March 30, 2020 and before July 15, 2020.

Charitable Donations

Under current tax laws, corporate taxpayers generally cannot deduct more than 10% of taxable income for charitable donations. Similarly, an individual's charitable donations deduction is generally limited to 50% of Adjusted Gross Income (**AGI**) for contributions to specified charities, and 30% to all others. Under the CARES Act, the ceiling for both corporations and individuals is increased: corporations can deduct up to 25% of taxable income, and individuals can deduct up to 50% of AGI for all contributions.

In addition to increased ceilings for charitable donations, there is a \$300 above-the-line deduction for charitable donations. Generally, taxpayers who do not itemize deductions on their tax returns (i.e., those who take the standard deduction) are not able to deduct charitable donations. The CARES Act allows a \$300 deduction for charitable donations (even for taxpayers who do not itemize deductions).

Finally, under IRS Notice 2020-46, if an employer makes a donation to certain charitable organizations in exchange for an employee's sick, vacation or personal days, the money is not included in the employee's taxable income. In order to be eligible for this exception, the donation must be made before January 1, 2021, to a governmental agency or 501(c)(3) organization, and for the purposes of COVID-19 relief. The employer may be able to take a taxable deduction as a charitable donation or as a business expense if they meet the relevant requirements.

Relief Relevant for Employees of Tax-Exempt Organizations²³

Stimulus Checks

In order to assist with the economic ramifications of COVID-19, many individuals are entitled to a \$1,200 stimulus check (\$2,400 for married filing jointly) and receive an additional \$500 per qualifying child under 17. Individuals who are claimed as dependents on someone else's tax return are not eligible for a stimulus check. The check amount begins to phase out by 5% for amounts earned over \$75,000 for individuals (\$112,500 for heads of household; \$150,000 for married filing jointly). In other words, for every \$100 an individual earns over \$75,000, their check decreases by \$5. TurboTax has a calculator ([here](#)) to calculate the amount of the check.

If an individual has filed his or her 2019 tax return, the IRS will look at 2019 AGI. Otherwise, the IRS will use 2018 AGI. If an individual receives money based on 2018 AGI, but is ineligible (in whole or part) based on 2019 AGI, he or she does not need to return any portion of the check amount after filing the 2019 return. Therefore, an individual may want to delay filing his or her 2019 return if 2019 AGI is greater than 2018 AGI. Conversely, if 2019 AGI is less than 2018 AGI, he or she may wish to consider immediately filing the 2019 tax returns electronically to maximize the chance that the 2019 information is in the IRS system before the IRS determines the amount of the check.

If an individual's status changes between 2019 (or 2018, see above) and 2020, he or she may be entitled to additional money and will not have to pay any money back to the IRS. For example, if an individual earns less money or has another child in 2020, then he or she is able to claim a credit on the 2020 tax return. If, however, he or she earns more money or an eligible child turns 17, repayment of the difference is not required.

An individual is generally eligible only if the individual provides a social security number; an ITIN is not enough. Moreover, taxpayers who are married filing jointly are also generally only eligible if both of them have social security numbers. Finally, a child is generally only eligible (for the additional \$500 per child) if the child has a social security number. But an individual does not need to be a citizen to receive a stimulus check, as non-citizens are eligible if they are "resident aliens" (as defined by Section 7701(b) of the IRC).

Taxpayers who do not have to file tax returns (e.g., low-income individuals) can still receive a stimulus check. These individuals must first inform the IRS of their address and direct deposit information (which can be done [here](#)). However, non-filers who receive certain governmental benefits (including Social Security retirement, Social Security Disability Insurance (**SSDI**), survivor benefits, Supplemental Security Income (**SSI**), Railroad Retirement benefits, and VA benefits) do not need to provide their information (other than information about eligible dependents²⁴) as the IRS already has their information. On the other hand, taxpayers who need to file a tax return but have not yet filed their 2018 return must file their 2018 return before the end of 2020 in order to receive a stimulus check.

Delay of Tax Return Filing and Tax Payments Otherwise Due Before July 15

Under the IRS Notices, any income tax return and payment due on or after April 1, 2020 and before July 15, 2020 is now delayed until July 15, 2020. This relief includes both taxes due from income earned in

²³ In addition to the relief discussed in this memo, employees that take sick or family leave due to COVID-19 may also be eligible for paid leave under the Families First Coronavirus Response Act.

²⁴ The IRS has set deadlines that have already passed to update information about dependents. The non-filer may still be able to file a tax return in 2020 in order to claim the additional money owed due to eligible dependents.

2019 and estimated payments for 2020 that are due on April 15, 2020 and June 15, 2020. There is no requirement that the taxpayer have been actually affected by COVID-19, rather all taxpayers are eligible for this relief. See [here](#) for a list of relevant IRS Q&As on this topic, including a Q&A listing relevant IRS form numbers that are eligible for a filing and payment delay.

Special Rules for Certain Retirement Funds including IRAs, 401(k) Plans, and 403(b) Annuities

Many retirement plans, including IRAs, 401(k) plans, and 403(b) annuities, have a 10% penalty for early withdrawals. In order to assist people affected by the COVID-19 crisis, the CARES Act allows people to make coronavirus related distributions (up to \$100,000) without any penalty. The amount included in taxable income is spread out over a 3-year period (2020, 2021 and 2022). If a plan is eligible for tax-free rollover treatment, then the individual can choose to repay the distribution in a later year, and he or she will not be required to pay tax on the repaid amount.²⁵ If, for example, the individual repays the full amount in 2022, he or she needs to file an amended tax return for 2020 and 2021 in order to claim the refund.

In order to qualify as a coronavirus related distribution, the distribution must be made in 2020 and be made to an individual:

- who is diagnosed with COVID-19;
- whose spouse or dependent is diagnosed with COVID-19; or
- who suffers negative financial impact as a result of COVID-19

The term negative financial impact is quite broad and includes circumstances in which the individual, spouse or a member of the individual's household (defined as anyone who lives in the same principal place of residence) (1) is quarantined, furloughed or laid off, (2) is unable to work due to childcare, (3) has his or her hours reduced, (4) suffers a reduction in pay (or self-employment income), (5) closes or reduces the hours of a business, or (6) has a job offer rescinded or delay in job start date.

The distribution qualifies as long as the individual meets the above definition and the distribution is made during 2020. There is no need to show that the individual actually needed the money nor is there a requirement that the amount of the distribution somehow correlate to the individual's needs.

In addition to the removal of the early withdrawal penalty, the CARES Act also increases the loan limits and delays certain payments from qualified employer plans. These provisions only apply to an individual affected by COVID-19 (as described in the previous paragraph). Generally, individuals may borrow the lesser of \$50,000 or 50% of their vested balance. The CARES Act increases the limit to the lesser of \$100,000 and 100% of their vested balance. This applies to loans made between March 27, 2020 and September 23, 2020. Besides the increased loan limits, repayments of loans from a qualified employer plan due between March 27, 2020 and December 31, 2020 are delayed by one year.

Finally, the CARES Act waives required minimum distributions (**RMDs**) from certain retirement accounts, including IRAs and specified defined contribution plans such as 401(k)s and 403(b)s. The value of many retirement accounts may be worth significantly less than it was a year ago. The waiver allows people to avoid taking a large portion out of their account at deflated values. The waiver applies to minimum distributions payable in 2020, including 2019 distributions not made by April 1, 2020. In IRS Notice 2020-51, the IRS extended this provision to allow people who already took their RMDs from an IRA in the

²⁵ Retirement plans are not required to accept repayments of distributions.

beginning of 2020 to repay the RMDs by August 31, 2020. The Notice also allows certain RMDs to be rolled into eligible retirement plans until August 31, 2020.

Certain Employer Payment of Student Loan Payments are Excluded from Taxable Income

Under current tax laws, employer payments of an employee's student loan obligations are generally taxable income. However, the CARES Act provides that employer payments (whether to the employee or to the lender) between March 27, 2020 and December 31, 2020 are excluded from taxable income.

Relief Relevant for Tax-Exempt Organizations Paying UBTI Tax

The CARES Act includes other provisions that may be relevant for tax-exempt organizations that pay tax on unrelated business income. These include the ability to deduct additional net operating losses, the ability to accelerate the recovery of alternative minimum tax credits, and the relaxation of the business interest deduction limitation of section 163(j). The rules may differ for state business income tax purposes. New York, for example, enacted legislation on April 3 providing that the relaxation of the limitation on business interest deductions does not apply for New York tax purposes.

Additionally, under the IRS Notices, tax-exempt organizations that are required to file 990-T (for unrelated business income) on or after April 1, 2020 and before July 15, 2020 can delay the filing until July 15, 2020 (including estimated payments submitted with Form 990-W).

Finally, under IRS Notice 2020-32, expenses that are covered by a forgiven loan PPP loan are not deductible.²⁶

If you have any questions regarding the matters covered in this publication, please contact any of the lawyers listed below or your usual Davis Polk contact.

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²⁶ A bill has been introduced in the Senate, S. 3612, that would reverse the effects of Notice 2020-32 and would allow the deduction of expenses covered by a forgiven PPP loan.

Paycheck Protection Program: Key Terms for Nonprofits

<p>Eligible Nonprofits</p>	<p>Tax Status: Any 501(c)(3) nonprofit or 501(c)(19) veterans association that is exempted from federal taxation.</p> <p>Size: No more than the greater of: (1) 500 employees; or (2) the number of employees in the NAICS size standard designation for the industry in which the applicant operates. An employee means <u>any</u> individual employed on a full-time, part-time or other basis, but not independent contractors and volunteers or student workers participating in a federal work-study program.</p> <p>Affiliation Rules: Aggregate employees with entities under common control, including foreign affiliates, such as through management control or common management. Waived for certain categories of borrowers, including certain faith-based organizations and accommodation or food service sectors with not more than 500 employees per physical location.</p>
<p>Loan Terms and Size</p>	<p>Maximum Amount: The lesser of (1) \$10 million or (2) 2.5 times average monthly payroll costs for U.S. employees, plus the amount of any EIDL received between January 31, 2020 and April 3, 2020 that is to be refinanced with PPP proceeds, net of any EIDL advance, if applicable.</p> <p>Interest Rate and Maturity: 1.0%. Maturity of five years for loans on or after June 5. For loans before June 5, maturity of 2 years, unless mutual agreement to extend.</p> <p>Deferral and Other Terms: All payments are deferred until (1) the lender receives the borrower’s forgiveness payment from SBA or (2) 10 months following the end of the borrower’s forgiveness covered period, if the borrower does not apply for forgiveness. No collateral or personal guarantee is required. Borrower is also not required to be unable to find credit elsewhere.</p>
<p>Authorized Uses of Loan Proceeds and Loan Forgiveness</p>	<p>Permitted Uses: (1) payroll costs, including benefits; (2) interest on any mortgage; (3) rent; (4) utilities; (5) interest on any debt obligations incurred before February 15, 2020; and (6) refinancing an EIDL made between January 31, 2020 and April 3, 2020. At least 60% of the PPP loan proceeds for payroll costs.</p> <p>Payroll Costs: Includes salaries, most benefits and state/local taxes. Excludes cash compensation >\$100,000 per employee, FICA tax or withheld income tax, qualified sick leave and family leave wages for which a credit is allowed under the Families First Coronavirus Response Act, and compensation for non-U.S. residents, independent contractors and sole proprietors.</p> <p>Forgiveness: PPP loan may be forgiven in the amount of costs of (1) payroll costs, including benefits; (2) interest on any mortgage in place before February 15, 2020; (3) rent, under lease agreements in force before February 15, 2020; and (4) utilities, for which service began before February 15, 2020, for 24 weeks from when loan funds are first disbursed. At least 60% must be for payroll costs. May be reduced if borrower has fired employees or reduced salaries. Reductions in employees and salaries made between February 15, 2020 and April 26, 2020 are not taken into account in calculation of the forgiveness amount if those reductions are reversed by December 31, 2020. Reductions in employees are not taken into account if (1) the borrower is able to document that it is unable to rehire the same or similarly qualified employees, subject to certain conditions, (2) the employer offers a job back to an employee who had been laid off but the employee refuses, or (3) the borrower is unable to return to pre-February 15, 2020 levels of business activity as a result of complying with certain government-imposed restrictions related to COVID-19.</p>
<p>Applications</p>	<p>Loan Applications: Applicants apply to a bank or other SBA-approved lender using SBA Form 2483 or a lender equivalent).</p> <p>Forgiveness Applications: Borrowers complete and submit a loan forgiveness application using SBA Form 3508 or a lender equivalent. Certain borrowers that are not subject to a reduction in their forgiveness amount may use the shorter SBA Form 3508EZ.</p> <p>Forgiveness Documentation: A borrower must submit documentation (1) verifying payroll costs, including bank statements, payroll tax filings, account statements, or equivalent payroll service provider reports, (2) verifying existence of the obligations/services prior to February 15, 2020 and eligible payments for purposes of calculating non-payroll costs; and (3) if applicable, documentation showing average FTE employees during the applicable reference period.</p>

Economic Injury Disaster Loans and Emergency Grants: Key Terms for Nonprofits*

Eligible Nonprofits **Tax Status:** An eligible private nonprofit organization is a non-governmental organization that currently has (1) an effective tax exemption under sections 501(c), (d), or (e) of the IRC, or (2) satisfactory evidence that the organization is a nonprofit from the state in which the non-revenue producing organization or entity is organized or doing business under state law.
Size: No size restrictions.
Eligibility: (1) located in all U.S. states, D.C., and U.S. territories; (2) suffered a substantial economic injury; and (3) were in operation on January 31, 2020. Faith-based organizations are eligible for EIDLs.

Loan and Emergency Grant Size and Terms **EIDL**
Maximum Amount: \$2 million. A borrower may request an increase in the loan amount if the borrower can show that the increase is essential for its business to continue and is based on events occurring after the SBA approved the original loan that were beyond the borrower’s control.
Interest Rate and Maturity: 2.75%, with a maturity up to 30 years.
Personal Guaranty and Other Terms: No personal guarantee for an EIDL loan or advance of \$200,000 or less. A borrower is not required to be unable to obtain credit elsewhere. Collateral may be required for loans greater than \$25,000. Repayments of the loan may be deferred up to 1 year.

EIDL Emergency Grant
Maximum Amount: \$10,000 (\$1,000 per employee); can be received within three days after SBA receives the application.
Certification: Must certify to SBA under penalty of perjury that the borrower is an eligible EIDL nonprofit.
Forgiveness: The amount of the grant does not need to be repaid even if the applicant does not subsequently receive an EIDL, but will reduce the loan forgiveness amount for payroll expenses on a PPP loan if the applicant subsequently transfers into the PPP.

Allowable Uses of Loan and Emergency Grant Proceeds and Forgiveness **EIDL**
Permitted Uses: (1) working capital necessary to carry on operations until resumption of normal operations and (2) expenditures necessary to alleviate the specific economic injury, but may not be used to exceed that which the organization could have provided had the injury not occurred.

EIDL Emergency Grant
Permitted Uses: Any permitted use for an EIDL, expressly including (1) providing paid sick leave to employees unable to work due to the direct effect of COVID-19; (2) maintaining payroll to retain employees during business disruptions or substantial slowdowns; (3) meeting increased costs to obtain materials unavailable from the applicant’s original source due to interrupted supply chains; (4) making rent or mortgage payments; and (5) repaying obligations that cannot be met due to revenue losses.

Application Process **Lenders:** Apply directly to SBA.
Application Form: Available on SBA website ([here](#)).
Required Documents: SBA can approve an applicant based solely on credit score without requiring the applicant to submit a tax return or use alternative appropriate methods to determine an applicant’s ability to repay.

Tax Provisions: Key Terms for Nonprofits and Their Employees

<p>Refundable Payroll Tax Credit for Employee Retention</p>	<p>Refundable Credit: Eligible employers are entitled to a refundable credit of the employer portion of social security taxes equal to 50% of up to \$10,000 in eligible wages (including allocable health plan expenses) per employee for taxes incurred from March 13, 2020 to December 31, 2020.</p> <p>Eligibility: Employers who take a PPP loan are not eligible, but employers who take EIDLs are eligible.</p> <p>Limits: For employers with more than 100 employees, the credit applies only to wages paid to furloughed employees. No credit for wages paid for emergency sick and family leave under Families First Coronavirus Act.</p>
<p>Delay of Tax Payments and Tax Filings</p>	<p>Social Security Payroll Tax: Employers may delay the payment of the employer portion for the period between March 27, 2020 and December 31, 2020. The taxes will be due half on 12/31/21 and half on 12/31/2022.</p> <p>Forms 990-T and 990-PF: Forms 990-T (and estimated payments on Form 9-W) and 990-PF and taxes otherwise due thereon between March 31 and July 15 are now due on July 15.</p> <p>Forms 990 and 990-EZ: Forms 990 and 990-EZ otherwise due thereon between March 31 and July 15 are now due on July 15.</p> <p>Form 990-N: Form 990-N: Forms 990-N otherwise due thereon between March 30 and July 15 are now due on July 15.</p> <p>Individual Income Tax: Any income tax return and payment due thereon between March 31 and July 15, 2020 (including estimated taxes) is now delayed until July 15, 2020.</p>
<p>Charitable Donations</p>	<p>Increased Ceilings: Corporations can deduct up to 25% of taxable income and individuals can deduct up to 50% of Adjusted Gross Income for all contributions.</p> <p>Increased above-the-line deductions: \$300 deduction for charitable donations even for taxpayers who do not itemize deductions.</p> <p>Employer Leave-Based Donation Payments: Certain employer donations in exchange for an employee’s sick, vacation, or personal days are not included in taxable income for the employee.</p>
<p>Stimulus Checks for Individuals</p>	<p>Amount: \$1,200 per person who earns less than \$75,000 and are not claimed as dependents on someone else’s tax return; for individuals who earn more than \$75,000, \$5 will be deducted from the stimulus check for every \$100 over \$75,000; an additional \$500 per qualifying child under 17.</p> <p>Eligibility: An individual is generally only eligible if he/she provides a social security number; an ITIN is not enough. Non-citizens are eligible if they are “resident aliens.” For taxpayers who do not have to file tax returns, they must first inform the IRS of their address and direct deposit information (unless they are recipients of certain governmental benefits, e.g., SSI and SSDI).</p>
<p>Retirement Funds including IRAs, 401(k) Plans, and 403(b) Annuities</p>	<p>Early Withdrawal: No penalty for people who make coronavirus related distributions (up to \$100,000).</p> <p>Qualified Distribution: Must be made in 2020 to an individual (1) who is diagnosed with COVID-19; (2) whose spouse or dependent is diagnosed with COVID-19; or (3) who suffers negative financial impact as a result of COVID-19.</p> <p>Loan from Qualified Employer Plans: For loans made between March 27, 2020 and September 23, 2020, individuals affected by Coronavirus may borrow the lesser of \$100,000 and 100% of their vested balance. Repayments of these loans are delayed by one year.</p> <p>Required Minimum Distributions: No required minimum distributions payable in 2020 from certain retirement accounts, including IRAs, 401(k)s, and 403(b)s.</p>
<p>Student Loan</p>	<p>Employer Payments: Employer payments (whether to the employee or to the lender) of an employee’s student loan obligations between March 27, 2020 and December 31, 2020 are excluded from the employee’s taxable income.</p>
<p>Tax-Exempt Organizations Paying UBTI Tax</p>	<p>UBTI Tax: Tax-exempt organizations may be able to deduct additional net operating losses, accelerate the recovery of alternative minimum tax credits, and to enjoy a relaxation of the business interest deduction limitation of section 163(j).</p> <p>990-T: Filings of 990-T (for unrelated business income) otherwise due thereon between March 31 and July 15 are now due on July 15.</p>