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The CARES Act and Nonprofits

On Friday, March 27, 2020, President Trump signed into law the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act). Below is a summary of some key provisions of that Act affecting our nonprofit clients.

Emergency Grants and Loans

There are several provisions in the CARES Act intended to provide immediate financial support for nonprofits struggling to maintain their payroll and facilities. These include:

- **Paycheck Protection Program (PPP):** Certain 501(c)(3) or 501(c)(19) nonprofits (in operation as of February 15, 2020, and having 500 or fewer full- and part-time employees) may apply for Small Business Association (SBA) loans of up to \$10 million (or, if less, a formula amount essentially equal to 2.5 times the nonprofit's average monthly payroll costs). Nonprofits in certain industries may have more than 500 employees if they meet the SBA's size standards for those industries. These loans, which are available from SBA-certified lenders, can be forgiven (effectively converting them into grants) if used for qualified purposes, including payroll costs, rent payments or mortgage interest, and utility payments during an 8-week period after they are originated. The loan forgiveness amount will be reduced if, between February 15 and June 30, 2020, the organization reduces its average number of full-time equivalent employees as compared to certain past periods or if the employer reduces the pay of employees earning less than \$100,000 annually by more than 25 percent of their total pay. Employers that re-hire and restore the pay of these affected employees by June 30 will be eligible for loan forgiveness.
 - Demand for these loans will be high, so apply soon. You can call your bank or find SBA-approved lenders in your area through SBA's online Lender Match tool.
 - For more detail on these SBA loans, please see [The CARES Act: Summary of Select Provisions Related to Small Businesses](#)
- **Emergency Economic Injury Disaster Loans (EIDLs):** Separately, the CARES Act provides \$10 billion for the SBA to issue emergency EIDL loans through December 31, 2020 and expands eligibility and loosens requirements for those loans. Under this program, nonprofits with fewer than 500 employees may receive loans to be used to pay fixed debts, payroll, accounts payable and certain other expenses attributable to the impact of the COVID-19 disaster.
 - Qualifying borrowers may receive a \$10,000 advance payment in as little as three days. This amount is not subject to repayment if the loan application is





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denied. For more information, see [The CARES Act: Summary of Select Provisions Related to Small Businesses](#).

- Unlike with the Paycheck Protection Program loans mentioned above, other types of nonprofits in addition to 501(c)(3) or 501(c)(19) organizations (such as 501(c)(4) social welfare organizations) may take advantage of these EIDLs.
- Apply as soon as possible directly to the SBA through its [website](#) for a COVID-19 EIDL.
- **Assistance for Mid-Sized Businesses:** The CARES Act authorizes the Treasury Department to make \$454 billion available as loans, loan guarantees, and investments for eligible businesses, states, and municipalities. Within this amount, the Act directs the Treasury Secretary to “endeavor to seek the implementation of a program or facility ... that provides financing to banks and other lenders that make direct loans to eligible businesses including, to the extent practicable, nonprofit organizations, with between 500 and 10,000 employees.” This provision does not define the term “nonprofit organizations.” It is likely, therefore, that other types of nonprofits in addition to 501(c)(3) organizations and 501(c)(19) veterans organization will be included in the program, but the parameters of the program will not be clear until the Treasury Department issues further guidance. These loans would bear interest at no more than a 2 percent annualized interest rate, with no principal or interest due for at least the first 6 months. Nonprofits applying for these loans must make a good-faith certification that: (1) the uncertainty of economic conditions makes the loan request necessary to support the nonprofit’s ongoing operations; (2) the loan funds received will be used to retain 90 percent of the nonprofit’s workforce at full compensation and benefits until September 30, 2020; and (3) the nonprofit intends to restore at least 90 percent of its workforce that existed as of February 1, 2020, and to restore all compensation and benefits to its workers no later than 4 months after the termination date of the COVID-19 public health emergency declared by the Department of Health and Human Services on January 31, 2020.
- **Special Support for Institutions of Higher Education:** The Act expands availability and permissible use of various types of educational grant and loan programs, including student loans and work-study programs, and waives certain institutional matching requirements for nonprofit institutions of higher education.

Relief for Nonprofit Employers

- **Employee Retention Payroll Tax Credit:** Nonprofits may receive a refundable payroll tax credit of up to \$5,000 per employee for wages and health benefits paid after March 12, 2020 and before the end of the year. Nonprofits are eligible for this credit if their operations were fully or partially suspended due to a COVID-19-related governmental order or if their gross receipts for a calendar quarter were less than 50





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percent of their gross receipts for the same quarter in 2019. Employers with more than 100 full-time employees may only claim the credit for wages paid to employees who are not working due to these circumstances (i.e., furloughed employees). Employers with 100 or fewer employees may claim the credit for wages paid to employees who are or are not working. Employers receiving Payroll Protection Program loans are not eligible for these credits.

- **Advances for Refundable Portion of Paid Leave Tax Credits:** The CARES Act now provides for advances of the refundable portion of tax credits for paid leave provided under the Families First Coronavirus Response Act, subject to applicable regulations and guidance.
- **Reimbursement for Half of Self-Insured Nonprofits' Unemployment Benefit Costs:** Funding will be provided to state governments to reimburse nonprofits that self-insure for unemployment claims for half the costs of unemployment benefits their laid-off employees receive through the end of the year. Absent additional relief from the federal or state government, self-insured nonprofits will still be required to pay the other half of those costs.

Charitable Giving Incentives

- **Universal Charitable Deduction:** Traditionally, the charitable income tax deduction has been available only to those who itemize their income tax deductions. This limitation was exacerbated by the Tax Cuts and Jobs Act, which raised the standard deduction significantly, thus making the charitable deduction available to far fewer donors. The CARES Act temporarily provides for an "above-the-line" income tax deduction of up to \$300 for non-itemizers making gifts in 2020 to public charities (other than supporting organizations and donor-advised funds), temporarily restoring the charitable giving tax incentive for millions of Americans.
- **Increase in AGI Limitations:**
 - Normally, individuals can make cash gifts of up to 60% of their adjusted gross income (AGI) in a particular year, with excess gifts rolled over for up to five subsequent years. Corporations are generally limited to deductions of 10% of their taxable income. In certain disaster situations, Congress will pass special legislation temporarily eliminating those limitations for gifts to charities in support of particular disaster relief efforts.
 - The CARES Act takes a somewhat different approach. For charitable gifts made in 2020, individuals may effectively deduct up to 100% of their adjusted gross income for cash gifts to any public charity (not just for disaster relief) other than a supporting organization or donor-advised fund.





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- When the AGI threshold was increased from 50% to 60% in the 2017 Tax Cuts and Jobs Act for cash gifts, under the mechanism chosen at the time by Congress a donor making a mix of cash gifts and gifts of appreciated property in a particular year was often effectively limited to the old 50% AGI threshold. See [The Disappearing 60% Deduction - New Charitable Giving Limits are Not as Generous as They Appear](#) for more information. In the CARES Act, Congress has altered that mechanism in a way that allows donors effectively to “stack” additional cash gifts on top of donations that would otherwise be deductible. This mechanism is considerably more favorable for donors who give appreciated property or who make a combination of gifts to private foundations and public charities.
- Note that a donor must make an affirmative election to take advantage of this “stacking.” Failure to make the election will mean that cash gifts are subject to the pre-CARES Act charitable deduction rules for AGI limits, which (as noted above) could limit individual donors to 50% of their AGI in certain cases.
- Corporations may deduct up to 25% of their taxable income for cash gifts to public charities made in calendar year 2020.
 - The same limitations as noted above for individuals (excluding supporting organization and DAF gifts and requirement of an affirmative election) apply for corporate gifts.
 - In addition, the CARES Act increases the deductibility limit for contributions of food inventory from 15% to 25% of taxable income for C corporations (and of aggregate net income for other taxpayers) for the taxable year.
- Gifts to Donor-Advised Funds and the CARES Act AGI Limitations
 - As noted above, gifts to donor-advised funds are not eligible for the temporarily higher AGI limitations under the CARES Act.
 - Because certain employer-sponsored disaster relief funds, certain scholarship funds, and funds that benefit only a single identified organization are excepted from the legal definition of “donor-advised fund” (even if these funds may colloquially be referred to as DAFs), donors to such funds may nevertheless take advantage of the higher AGI limitations under the CARES Act.
 - Charities that have established DAFs (including so-called “white label” DAFs) should be aware that donors contributing to DAFs that





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do not meet these exceptions will not get the full benefit of this temporary increase in AGI limitations.

Provisions Affecting UBTI Calculations

- **Temporary Suspension of 80% Limitation on Use of Past Net Operating Losses:** The 2017 Tax Cuts and Jobs Act limited the ability of nonprofits to offset current UBTI with past losses, allowing only up to 80% of UBTI to be offset in this way in a given year. For tax years beginning prior to January 1, 2021 (including past tax years), a nonprofit may again offset up to 100% of its UBTI using past losses for qualifying tax years.
- **Temporary Allowance of Net Operating Loss Carrybacks:** The 2017 Tax Cuts and Jobs Act eliminated the ability of nonprofits to carry back net operating losses to prior years. The CARES Act temporarily reinstates this option, allowing losses for years beginning before January 1, 2021 and after December 31, 2017 (i.e., 2018, 2019 and 2020 losses) to be used to offset UBTI for up to 5 previous years.
 - Nonprofits that paid tax on UBTI in the past several years and have unused UBTI losses should consider amending past returns and claiming a refund of unrelated business income tax paid.
 - To the extent losses are carried back to prior tax years that began after January 1, 2018, the UBTI “silo” rules of IRC 512(a)(6) still apply, meaning those losses can only be used to offset income from the same activity that generated the losses. However, to the extent losses are carried back further than that, IRC 512(a)(6) does not apply, and losses can be used to offset any UBTI in those earlier years.

Tax Filing and Payment Delays

- The CARES Act, together with recent grants of relief by Treasury and the IRS (see [IRS Notice 2020-18](#)), have deferred certain tax filing and payment deadlines for nonprofits, including:
 - **Form 990-T:** A Form 990-T due on April 15, 2020 may be filed and UBIT shown as due on the form may be paid as late as July 15, 2020.
 - **Employer Payroll Tax Payments:** Nonprofits (and other employers) may defer payment of the employer share of Social Security taxes for the rest of the year, except to the extent that the nonprofit received a Payroll Protection Program loan which was subsequently forgiven (see above). Half of these taxes must be paid by December 31, 2021 and the other half by December 31, 2022. This provision does not apply to Medicare taxes or the employee share of Social Security taxes.





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Individual Relief that May Affect Nonprofit Employees (And Others)

- **Personal Rebates:** Certain individuals (depending on income levels) may receive up to \$1,200 per adult and \$500 per child as direct, non-taxable payments, which may help alleviate concerns of a nonprofit's employees regarding day-to-day expenses. For more information, see [The CARES Act: Provisions that Affect Individuals and Families](#).
- **Unemployment Insurance Expansion:**
 - If a state decides to waive the normal one-week waiting period (as Massachusetts has), the federal government will pay the cost of the first week of benefits. Unemployment benefits may be increased by as much as \$600 per week for up to four months for certain employees who became unemployed as part of the COVID-19 outbreak. If individuals remain unemployed after state employment benefits are no longer available, the federal government will fund up to 13 weeks of additional unemployment benefits through December 31, 2020.
 - Certain gig workers, contractors, and the self-employed may now receive these benefits as well.
- **Retirement Plan Withdrawal and Loan Flexibility:**
 - Taxpayers may withdraw up to \$100,000 in 2020 from a 401(a) or 403(b) retirement plan or an IRA for certain purposes related to the COVID-19 epidemic without incurring a penalty for early withdrawal. Unless repaid, the withdrawal amounts will generally be included in the taxpayers' gross income and taxed as ordinary income ratably over a three-year period.
 - Eligible participants in 401(a) or 403(b) plans that permit loans may take out loans for certain purposes related to the COVID-19 epidemic up to the lesser of: (1) \$100,000 (normally \$50,000) or (2) 100% (normally 50%) of the present value of their account.
 - Participants with outstanding retirement plan loans will have an additional year to make repayments due between March 27, 2020 and December 31, 2020, future repayments must be appropriately adjusted to reflect the delay in the due date and any interest accruing during the delay, and any such delay must be disregarded for purposes of the requirement that loans be repaid within 5 years.
 - Plan sponsors may implement these provisions immediately, but must adopt plan amendments retroactively permitting implementation. The amendments must be adopted on or before the last day of the first plan year beginning on or after January 1, 2022.





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Additional Resources

- [Complying with Paid Leave Requirements Under the Families First Coronavirus Response Act](#) (April 1)
- [Endowments in the Time of Coronavirus](#) (March 27)
- [UPDATED: Treasury Department Extends April 15 Tax Filing and Payment Deadlines](#) (March 25)
- [Annual Meetings During the COVID-19 Pandemic: Proxy Voting and Use of Communications Equipment](#) (March 25)
- [Direct Impact - Establishing an Emergency COVID-19 Relief Fund](#) (March 20)
- [Managing Contractual Relationships During the COVID-19 Crisis: Force Majeure Clauses and Other Approaches](#) (March 18)

Please visit our [COVID-19 resource page](#) for additional resources related to COVID-19.

Contact Us

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