

MEMORANDUM

TO: Nonprofit Partners
FROM: Pepperdine Caruso School of Law Community Justice Clinic
DATE: March 31, 2020
RE: COVID-19: Federal Resources for Emergency Financial Aid and Unemployment Guidance

This memo offers a brief orientation on programs available for nonprofits under the federal government's new emergency measures in response to COVID-19.¹ The first section addresses emergency loans, grants, and tax relief programs for qualifying organizations. The second section is guidance for employees who lose their positions during the crisis.

This is not legal advice. Unless we agree in writing, the Community Justice Clinic is not your lawyer for these matters. These are basic descriptions to orient organizations to these programs, and this guidance is subject to change as federal and state governments implement the programs. Individual entities will have specific issues and problems to navigate in their applications and processes, and they should seek careful counsel about specific questions and potential problems, especially as the government implements these programs quickly.

I. Federal Resources for Nonprofits:

Sections A and B address loan and grant programs available for nonprofits with fewer than 500 employees. Then Sections C and D address some tax provisions that will affect payroll for employees and contributions from donors. Nonprofits may apply for both loan programs and avail themselves of all these provisions if they qualify.

¹ These are useful summaries of the programs with helpful links: Small Business Administration, *Coronavirus (COVID-19): Small Business Guidance & Loan Resources* (accessed March 26, 2020), <https://www.sba.gov/page/coronavirus-covid-19-small-business-guidance-loan-resources>; Tim Delaney, *How Nonprofits Can Utilize the New Federal Laws Dealing with COVID-19*, NONPROFIT QUARTERLY (March 26, 2020), <https://nonprofitquarterly.org/how-nonprofits-can-utilize-the-new-federal-laws-dealing-with-covid-19/>; National Council of Nonprofits, *Initial Analysis of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act)* (S. 748) (accessed March 26, 2020), <https://www.councilofnonprofits.org/trends-policy-issues/initial-analysis-of-the-coronavirus-aid-relief-and-economic-security-act-cares>.

A. Small Business Administration (SBA) Emergency Small Business Loan Program

This is an expansion of the SBA's 7(a) loan program for small businesses.² The primary purposes for this loan program are to maintain payroll for employees and to assist with debt service. The CARES Act establishes loans available for borrowers with fewer than 500 employees that have been in operation at least since February 15, 2020. The "covered period" is February 15 through June 30, 2020.

The loan program for payroll protection covers "payroll" broadly defined, for the covered period only, up to \$100,000 annualized compensation per employee. Full-time and part-time employees or those hired on other bases may qualify under the payroll protection program.

Notably, these loans will be eligible for forgiveness - essentially converting the loans into grants - for amounts necessary to maintain payroll and debt service during the designated period of the program. The intent is to encourage employers to maintain their workforce. The total amount forgiven may be less if the employer reduces its workforce during the covered period, compared to certain recent periods of full employment. The amount forgiven may be less if employers reduce payroll by more than 25% of an employee's standard compensation. As noted above, payroll protection is limited to compensation of not more than \$100,000 annually per employee. Several other provisions apply for rehires, seasonal, and tipped workers.

For payroll protection, the maximum amount of an Emergency Small Business Loan is \$10 million or the product of this statutory number times 2.5:

the average total monthly payments by the applicant for payroll costs incurred during the 1 year period before the date on which the loan is made, except that, in the case of an applicant that is seasonal employer, as determined by the Administrator, the average total monthly payments for payroll shall be for the period beginning February 15, 2019, or at the election of the eligible recipient, March 1, 2019 and ending June 30, 2019. . . .³

For debt service, the maximum loan is \$10 million or "the outstanding amount of a loan under subsection (b)(2) that was made during the period beginning on January 31, 2020 and ending on the date on which covered loans are made available to be refinanced under the covered loan."⁴

Nonprofits can use the emergency loan funds for these purposes:

1. payroll costs;
2. costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums;
3. employee salaries, commissions, or similar compensations;

² See Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (H.R. 748), <https://assets.documentcloud.org/documents/20059055/final-final-cares-act.pdf>.

³ CARES ACT, §1102.

⁴ *Id.*

4. payments of interest on any mortgage obligation (which shall not include any prepayment of or payment of principal on a mortgage obligation)
5. rent (including rent under a lease agreement);
6. utilities; and
7. interest on any other debt obligations that were incurred before the covered period.

Loan forgiveness applies only to (1) payroll costs, (2) any payment of interest on any covered mortgage obligation, not including any prepayment of or payment of principal on a covered mortgage obligation, (3) any payment on any covered rent obligations, and (4) any covered utility payment.

The CARES Act eliminates lending fees from these loans. The Act also eliminates requirements for personal guarantees or collateral. The Act provides that interest on these loans will not exceed 4%. Loans will have a maximum maturity of 10 years. The Act requires lenders to defer payment for at least 6 months and not more than 1 year.

The SBA does not make loans directly but partners with private lenders to facilitate and guarantee the loans. Once the SBA establishes the program, it will handle initial applications through its website but may direct applicants to participating lenders. Applications will require documentation verifying full-time equivalent employees and pay rates, including federal payroll tax filings; state payroll, income and unemployment insurance filings; checks, statements, receipts, and the like.

B. Economic Injury Disaster Loan (EIDL) Program

The SBA is also administering this standard loan program for small businesses, including nonprofits, during declared disasters. These are loans, typically with a low interest rate around 2%, available for small businesses for operating expenses to help alleviate “economic injury” during natural disasters. The SBA provides this explanation for these loans related to COVID-19:

The SBA will work directly with state Governors to provide targeted, low-interest loans to small businesses and non-profits that have been severely impacted by the Coronavirus (COVID-19). The SBA’s Economic Injury Disaster Loan program provides small businesses with working capital loans of up to \$2 million that can provide vital economic support to small businesses to help overcome the temporary loss of revenue they are experiencing.⁵

The CARES Act expands availability for employers, including nonprofits, with fewer than 500 employees.⁶ It waives current requirements for personal guarantees and for the business to have been in existence for at least one year. It also waives the requirement that the applicant

⁵ <https://www.sba.gov/page/coronavirus-covid-19-small-business-guidance-loan-resources>.

⁶ CARES Act, §1110.

be unable to secure credit elsewhere. These loans do not have the same forgiveness provisions as the 7(a) payroll protection loans described in the previous section.

The CARES Act also provides for emergency grants related to the EIDL program. These are advances up to \$10,000, available almost immediately, and applicants do not have to repay them, although the grants will reduce the loan forgiveness available for the 7(a) loans explained above. Applicants may use these advances for these purposes:

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

The SBA administers these loans itself, and nonprofits may apply directly through the SBA website: <https://disasterloan.sba.gov/ela/>.

C. Deferring Payroll Taxes

The CARES Act permits the deferral of some employer payroll taxes.⁷ In general, with some exceptions, the payment of 50% of payroll taxes for this payroll deferral period will not be due until the “applicable date.” For estimated taxes during the deferral period, 50% of payroll taxes shall not be treated as taxes.

The “deferral period” is the date the CARES Act is enacted until January 1, 2021. The “applicable date” is December 31, 2021 for the 50% counted at payroll taxes for the deferral period; December 31, 2022 is the applicable date for the balance of payroll taxes due after deferral.

This deferral does not apply to employers who have a loan forgiven under the 7(a) Emergency Small Business Loan Program explained above. That is, if an employer uses this loan to cover payroll and has that loan forgiven, the employer may not defer 50% of payroll taxes.⁸

⁷ CARES Act, §2302.

⁸ CARES Act, §2302(a)(3).

D. Increased Tax Deductions for Donations

The CARES Act includes provisions to promote donations to nonprofits from individuals and corporations. These can be advantageous for individuals and corporations looking to weather this year, and they will be useful for fundraising. Nonprofits may consider communicating these to donors to promote fundraising now.

Typically, individual taxpayers who do not itemize deductions may not deduct more than \$300 for their annual taxes for charitable donations, but the CARES Act lifts this limit on charitable contributions made by filers who do not itemize their deductions for this year.⁹

Further, the CARES Act permits deductions for cash contributions to 501(c)(3) organizations without limit so long as the aggregate of the donations do not exceed the taxpayer's contribution base.¹⁰

Corporations may deduct charitable contributions to the extent that their aggregate contributions do not exceed 25% of the taxpayer's taxable income.

These increased limits apply to the 2020 tax year. Nonprofits should confirm these rules and their bookkeeping with their own accountants, and donors should confirm their own liabilities and deductions with counsel or accountants before relying on this brief summary.

II. Guidance for Unemployment Resources in California:

States typically administer unemployment insurance (UI). In California the Employment Development Department (EDD) handles applications and administration for unemployment benefits. Although there are more, the most relevant types of UI now are regular unemployment insurance, disaster unemployment insurance, and specific COVID-19 benefits. Most likely, the EDD will administer federally funded COVID-19 benefits for the U.S. Department of Labor.

For all types of UI, workers who have lost their jobs through no fault of their own (that is, not through being fired for cause or quitting voluntarily) may be eligible for UI and should apply through the EDD website:

https://www.edd.ca.gov/unemployment/File_an_Unemployment_Insurance_Claim.htm.

⁹ CARES Act, §2204

¹⁰ CARES Act, §2205

A. Regular Unemployment Insurance

To be eligible for regular UI, the EDD explains these basic requirements, that a worker must have earned enough wages during the base period to establish a claim, and be -

Totally or partially unemployed,

Unemployed through no fault of your own,

Physically able to work,

Available for work,

Ready and willing to accept work immediately, and

Actively looking for work.¹¹

Weekly benefits range from \$40 to \$450, and the EDD calculates this based on a worker's previous earnings and the formula for specific economic sectors. This will be specific to the worker and the sectors of employment and jobs. Workers should consult the EDD website for many more detailed resources and calculators.

B. Disaster Unemployment Assistance

The EDD also administers Disaster Unemployment Assistance for workers who lose a job or cannot work because of a federally declared disaster. COVID-19 is a declared disaster. For California, the FEMA Disaster Declaration number for COVID-19 is EM-3428.

Eligibility standards for Disaster Unemployment Assistance will be similar to regular UI but with the requirement of showing that the loss of work is due to the disaster. Workers may apply through the EDD here:

https://www.edd.ca.gov/unemployment/Disaster_Unemployment_Assistance.htm.

C. Pandemic Unemployment Assistance

The CARES Act provides for federally funded benefits for workers directly affected by COVID-19, and the California EDD probably will establish mechanisms for applying for these benefits soon. Workers should check there for these benefits.¹²

The Act provides that these benefits will be available for workers who are not eligible for other state UI or who have not exhausted other available benefits. Also, an applicant must certify that the worker is able and available to work but is unable or unavailable to work for these reasons:

¹¹ <https://www.edd.ca.gov/unemployment/eligibility.htm>

¹² <https://www.edd.ca.gov/>

- (a) the individual has been diagnosed with COVID–19 or is experiencing symptoms of COVID–19 and seeking a medical diagnosis;
- (b) a member of the individual’s household has been diagnosed with COVID–19;
- (c) the individual is providing care for a family member or a member of the individual’s household who has been diagnosed with COVID–19;
- (d) a child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency and such school or facility care is required for the individual to work;
- (e) the individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency;
- (f) the individual is unable to reach the place of employment because the individual has been advised by a health care provider to self-quarantine due to concerns related to COVID–19;
- (g) the individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency;
- (h) the individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID–19;
- (i) the individual has to quit his or her job as a direct result of COVID–19;
- (j) the individual’s place of employment is closed as a direct result of the COVID–19 public health emergency; or
- (k) the individual meets any additional criteria established by the Secretary for unemployment assistance under this section. . . .¹³

The CARES Act provides other resources and guidance for the self-employed, part-time workers, or workers without a sufficiently long work history to qualify for other benefits. Workers are not eligible for these benefits if they have “the ability to telework with pay” or if they are receiving paid sick leave or other paid leave benefits.

¹³ CARES Act, §2102