

# Provisions in Federal COVID-19 Legislation Benefiting Nonprofit Organizations

Revised April 13, 2020

Congress, so far, has enacted three pieces of legislation designed to provide funding or other support to fight coronavirus disease 2019 (COVID-19) or to support entities and workers that are adversely affected by the spread of COVID-19 or government responses to the spread of the virus. Some of the provisions included in the Families First Coronavirus Response Act or the CARES Act benefit nonprofit organizations. In some cases, the benefits are limited to organizations with fewer than a specified number of employees, organizations with a number of employees in a specified range, or to specific types of nonprofit organizations, such as section 501(c)(3) organizations.

Benefits include, among others, payroll tax credits for providing sick and family medical leave, cash flow assistance loans that may be forgivable in certain circumstances, employee retention tax credits, delay of payment of employer payroll taxes, and emergency relief and emergency disaster loans. In some cases, the benefits are relatively small, while others may provide significant cash relief for eligible organizations. In addition, the CARES Act provides added incentives for both those who itemize charitable deductions and those who do not itemize charitable contributions in 2020.

To help nonprofit organizations navigate the complex assortment of benefits and ascertain what benefits may be available to them, we have put together this comprehensive table showing the provision or benefit, the eligibility requirements for nonprofit organizations and, where applicable, the consequences of accepting a benefit. We will be updating the table as we learn more about some of the benefits.

We can help your nonprofit organization determine which benefits you may be eligible for and help guide you through the process of seeking benefits.

Provision	Nonprofit Eligibility	Other Eligibility Requirements	Description of Benefit/Provision
<b>Families First Coronavirus Response Act (“FFCRA”) – enacted March 18, 2020</b>			
<p>Paid Sick Leave Payroll Tax Credit [FFCRA § 7001]</p> <p>and</p> <p>Paid Family Leave Payroll Tax Credit [FFCRA § 7003]</p>	<p>Nonprofit organizations with fewer than 500 full-time and part-time employees within the US and its territories and possessions.</p> <p><a href="#">Department of Labor guidance</a> provides a detailed summary of which workers must be taken into account for purposes of the fewer than 500 employee limitation, and when entities should be treated as separate employers and when they should be aggregated.</p> <p>The Department of Labor has authority to exempt businesses with fewer than 50 employees from paying for sick time taken due to school or daycare closures when the imposition of such requirements “would jeopardize the viability of the business as a going concern” and to provide exemptions for employees of emergency responders and healthcare providers.</p> <p>These exemptions are addressed in the Department of Labor guidance and will be addressed in regulations.</p>		<p><u>Paid Sick Leave Payroll Tax Credit</u> FFCRA requires covered employers to provide employees with up to two weeks (80 hours) of paid sick leave for reasons related to COVID-19. This provision provides a refundable credit against payroll taxes (FICA) for 100% of the employer-paid qualified sick leave wages paid pursuant to this requirement for the period from April 1, 2020, through December 31, 2020, subject to specified limitations. The amount of sick leave wages taken into account for purposes of the credit may not exceed \$200 per day for any employee who receives leave to care for family members or other individuals or \$511 per day for sick leave taken for one’s own illness or symptoms. Total amounts are capped under the Emergency Paid Sick Leave Act, The amount of the credit is increased by qualified health plan expenses and the employer share of Medicare taxes that the employer allocates to the qualified sick leave wages. The aggregate number of days taken into account for any employee is limited to 10. (See Appendix A for additional information about paid sick leave requirements.)</p> <p><u>Paid Family Leave Payroll Tax Credit</u> FFCRA requires covered employers to provide employees with ten weeks of paid family leave to care for a child whose school or place of care is closed or child care provider is closed or unavailable due to COVID-19 precautions. This provision provides employers a refundable credit against payroll taxes (FICA) for 100% of qualified family leave wages paid pursuant to this requirement, for the period from April 1, 2020, through December 31, 2020, subject to specified limitations. The amount of wages that can be taken into account for each employee is limited to \$200 per day and \$10,000 in total. The amount of the credit is increased by qualified health plan expenses and the employer share of Medicare taxes that the employer allocates to the qualified sick leave wages. (See Appendix A for additional information about the paid family leave requirements.)</p> <p>A recipient of either credit cannot also claim the Family Medical Leave Act (FMLA) credit under Internal Revenue Code (“Code”) section 45S.</p>

**Note:** This table does not include benefits targeted to hospitals and other health care facilities or benefits for institutions of higher education and their students. It also does not address details on the broad limitations on the application of FFCRA leave provisions to “health care providers,” a term that the Department of Labor has defined broadly in informal guidance.

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FICA Relief [FFCRA § 7005]	Nonprofits.		Wages required to be paid to employees under the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act (see Appendix A) are not considered wages for purposes of FICA. Therefore, the employer does not have to pay the employer's share of FICA taxes on such wages.
<b>CARES Act – enacted March 27, 2020</b>			
Paycheck Protection Program loans [CARES § 1102]	<p>Only section 501(c)(3) organizations and 501(c)(19) veteran's organizations are eligible.</p> <p>Faith-based organizations, including houses of worship are eligible to receive loans. (See Appendix C for additional information.)</p>	<p>Generally, 500 or fewer employees whose principal place of residence is in the US. Certain affiliation rules apply in determining number of employees. Affiliation rules are relaxed for faith-based organizations.</p> <p>Generally, under these rules, affiliation is based on control and control may result from the ability to prevent a quorum or otherwise block action by the board of directors of another organization.</p> <p>A 501(c)(3) organization with over 500 employees may be able to qualify if it meets the requirements for being a "small business concern" in the industry in which it operates.</p> <p>If borrower obtains an Economic Injury Disaster Loan (see below), the outstanding amount of the EIDL will count against the \$10 million limit.</p>	<p>In order to help workers remain employed and enable affected entities to recover from the coronavirus emergency, the SBA will administer loans to provide cash-flow assistance to employers who maintain their payroll during the emergency.</p> <p>SBA is authorized to guarantee covered loans made between February 15, 2019 and June 30, 2020. The guaranteed amount generally is equal to 2.5 times the average monthly payroll costs during the one-year period before the loan is made, with a cap of \$10 million. Special rules apply to seasonal businesses and new businesses. Payroll costs are defined as the sum of all payments for compensation, including salary, wage, cash tips, paid time-off, severance, healthcare benefits and state or local taxes assessed on employee compensation. Payroll costs do not include an employee's cash compensation in excess of \$100,000 per year or compensation paid to independent contractors.</p> <p>Loans can be used for paid sick, medical or family leave; costs relating to continuing of group healthcare benefits; employee compensation (with limits); and rent, utilities and interest on debt obligations that existed as of February 15, 2020.</p> <p>Loans cannot be used for individual employee compensation in excess of \$100,000 per year; compensation of employees whose principal place of business is outside the US; or sick and family leave wages covered by FFCRA (see above).</p> <p>SBA application fees are waived. No collateral or personal guarantee is required for the loan. Applicants are not required to show that credit is unavailable elsewhere or demonstrate repayment ability. SBA guidance released April 2, 2020 indicates that the interest rate will be 1% and loans will mature in two years.</p> <p>Generally, to be eligible an employer must have been operational on February 15, 2020, and either had employees for whom it paid salaries and payroll taxes or paid independent contractors, as reported on a Form 1099-MISC.</p> <p>See Appendix B for additional details on Paycheck Protection Program loans.</p> <p>For additional information, see <a href="#">Updated Guidance on Securing CARES Act Stimulus Funding for Small Businesses</a></p>

Provision	Nonprofit Eligibility	Other Eligibility Requirements	Description of Benefit/Provision
Paycheck loan forgiveness [CARES § 1106]	Recipients of loans under the Paycheck Protection Program.		<p>Loans to employers under the Paycheck Protection Program can be forgiven to the extent that the loan proceeds are used for designated purposes during the eight-week period after the loan is made and the employer maintains its payroll during the covered period, February 15, 2020 to June 30, 2020. Any amount not forgiven is carried forward as an ongoing loan. The amount forgiven is reduced proportionately by any reduction in the number of employees or wages. No penalty is imposed for a payroll deduction at the beginning of the period if the employer eliminates the reduction in employees or salaries by June 30, 2020.</p> <p>See Appendix B for additional details on loan forgiveness.</p>
Economic Injury Disaster Loans (“EIDL”) and grants [CARES § 1110]	<p>“Private nonprofit organizations.”</p> <p>The application form says applicant must be a private non-profit organization that is a non-governmental agency or entity that currently has an effective ruling letter from the IRS granting tax exemption under sections 501(c),(d), or (e) of the Internal Revenue Code or satisfactory evidence from the State that the non-revenue producing organization or entity is a non-profit one organized or doing business under State law, or a faith-based organization.</p> <p>Faith-based organizations, including houses of worship are eligible to receive loans even if they do not have a formal determination letter. (See Appendix C for additional information.)</p>	No more than 49% participation by a foreign business entity, association, trust or cooperative. Must have a place of business in the US and operate primarily in the US (or make a significant contribution to the US economy).	<p>Loans are available for “economic injury” up to \$2 million, with an interest rate of 2.75% for nonprofits. Loan terms are determined on a case-by-case basis, with a maximum of a 30-year term.</p> <p>Loans can be used to pay fixed debts, payroll, accounts payable, employee sick leave and other bills that cannot be paid because of the impact of disaster.</p> <p>Loans may not be used to refinance debts incurred prior to the disaster event, make payments on loans owned by another federal agency, pay tax penalties or non-tax criminal or civil fines, or repair physical damage.</p> <p>A nonprofit can seek an EIDL by applying on the SBA website. It typically takes the SBA three weeks to make a decision, but the number of COVID-19 applications can lead to a backlog.</p> <p>CARES eliminates some of the requirements of the existing EIDL program, including personal guarantees on loans below \$200,000 and the requirement that applicants be unable to find credit elsewhere. SBA is allowed to approve EIDLs during the covered period based on applicant’s credit score or use alternative appropriate methods to determine the applicant’s ability to pay.</p> <p>The eligible entity can request an emergency advance on a loan of up to \$10,000, which SBA must distribute in three days. These emergency loans do not have to be repaid, even if the EIDL is denied.</p> <p>For additional information, see <a href="#">Updated Guidance on Securing CARES Act Stimulus Funding for Small Businesses</a></p>

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Emergency Unemployment Relief for Governmental Entities and Nonprofit Organizations [CARES § 2103]	Nonprofit organizations.		Reduces the amount by which nonprofits are required to reimburse states for benefits paid to their workers who claim unemployment insurance by 50% through December 31, 2020. Instead, these amounts will be transferred to state accounts in the unemployment trust fund from the Federal Unemployment Account.
Above-the-line Deduction for Charitable Contributions [CARES § 2204]	501(c)(3) organizations, other than private foundations, supporting organizations and donor advised funds.		Donors who do not itemize can claim up to \$300 in “above-the-line” deductions to qualified charities on their 2020 tax return.
Modification of Limitation on Charitable Contributions During 2020 [CARES § 2205]	501(c)(3) organizations, other than private foundations, supporting organizations and donor advised funds.		Increases the limit on charitable deductions for individual donors that itemize their taxes from 60% to 100% of modified income. Also increases the charitable deduction for corporations from 10% to 25% and the special limit for food contributions by corporations from 15% to 25% of modified income. These limits apply only to contributions made in 2020.
Employee Retention Credit [CARES § 2301]	Section 501(c)(3) organizations, with respect to all operations.  Other nonprofit organizations that carry on a trade or business with respect to the operations of the trade or business.	Operations must have been fully or partially suspended as result of a government order limiting commerce, travel or group meetings; also provided to employers that have experienced a greater than 50% reduction in quarterly receipts.  This credit is not available to employers that have received loans under the Pension Protection Program.	Provides a refundable payroll tax credit for 50% of wages paid by eligible employers to certain employees after March 12, 2020 and before January 1, 2021. For employers with more than 100 full-time employees, the credit applies to wages paid for time that the employee is not providing services, generally those who are furloughed or face reduced hours because of closure or economic hardship. For employers with 100 or fewer full-time employees, all wages are eligible.  The credit covers wages and compensation, including health benefits, of up to \$10,000 per employee paid by the employer. Credit is not available for wages taken into account for purposes of payroll credits for required paid sick leave or required paid family leave or for wages taken into account for employer credit for paid family and medical leave (Code section 45S).  Treasury is permitted to advance the credits and to waive penalties for employers who do not deposit applicable payroll taxes in anticipation of receiving the credit.
Delay of Payment of Employer Payroll Taxes [CARES § 2302]	Nonprofit organizations.	This benefit is not available to employers that received loans under the Pension Protection Program forgiven.	Employers are permitted to defer the employer portion of FICA taxes through the end of 2020 with deferred amounts due in two equal installments at the ends of 2021 and 2022.

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Single Employer Plan Funding Rules [CARES § 3608]	Nonprofit organizations that sponsor single employer defined benefit plans.		<p><u>Required Contribution Relief</u> ERISA and the Code impose strict funding requirements on defined benefit pension plans. This provision gives sponsors of single-employer pension plans additional time to meet their 2020 funding obligations, including obligations to make quarterly plan contributions. The due date for any contributions otherwise due during 2020 is delayed until January 1, 2021. At that time, contributions due earlier in the year must be paid with interest. This provision does not apply to multiemployer defined benefit plans.</p> <p><u>Distribution Restrictions</u> Single employer defined benefit pension plans are required to impose restrictions on payments of certain types of benefits (e.g., plant shutdown benefits) and certain types of plan distributions (e.g., lump sum payments), as well as plan amendments increasing plan liabilities, based on plan funding levels. Specifically, the restrictions can apply when the plan’s adjusted funding target attainment percentage (“AFTAP”) is below 80% or 60%, depending on the type of restriction. This provision allows plan sponsors to rely on a plan’s AFTAP for its most recent plan year ending before January 1, 2020 to determine whether any applicable benefit or amendment restrictions apply to a plan year that includes part of the 2020 calendar year. This might enable a plan to avoid having to comply with the additional restrictions on benefit payments.</p> <p>For additional information, see <a href="#">The CARES Act of 2020: Key COVID-19 Relief Provisions Impacting Your Employer-Sponsored Benefit Plans.</a></p>
Emergency Relief Lending Program [CARES § 4003]	Nonprofit organizations. Nonprofit component targeted to nonprofit organizations with between 500 and 10,000 employees.	Must certify that (i) funds are needed due to economic uncertainty and to fund ongoing operations, (ii) funds will be used to retain at least 90% of 3/24/2020 workforce at full compensation until 9/30/2020, (iii) borrower intends to restore at least 90% of 2/1/2020 workforce (and compensation and benefits) no later than 4 months after end of emergency, (iv) borrower will not provide senior executive bonuses or enhanced compensation during term of the loan, and (v) borrower will not abrogate collective bargaining agreements during term of loan and 2 years after.	<p>The Treasury is granted authority to develop programs to provide loans to businesses, including nonprofit organizations with between 500 and 10,000 employees through December 31, 2020.</p> <p>The programs can provide direct loans or guarantee private loans, but loans cannot be forgiven. Direct loans would have an interest rate of not more than 2 percent, with no principal or interest payments due for the first 6 months or for such longer period as the Secretary of the Treasury may determine.</p> <p>During the term of the loan and for one additional year, officers who earned over \$425,000 per year in 2019 may not receive compensation greater than what they received in 2019 or a severance package of more than twice their 2019 pay. Additionally, officers or employees who were paid more than \$3 million in 2019 cannot not be paid more than \$3 million plus 50% of the amount that their 2019 compensation exceeded \$3 million.</p>

## APPENDIX A

### EMERGENCY PAID SICK LEAVE ACT

This Act (Sections 5101 to 5111 of FFCRA) requires employers to provide paid sick time to employees who are unable to work or telework due to certain COVID-19-related qualifying reasons. Specifically, full-time employees are entitled to 80 hours (and part-time employees are entitled to a prorated amount) of paid sick time, which is available immediately, if the employee:

- is subject to a governmental quarantine or isolation order,
- has been advised by a health-care provider to self-quarantine,
- is caring for an individual who is subject to governmental or self-quarantine,
- is caring for the employee's child because the child's school or child-care provider is closed, or
- is experiencing a substantially similar circumstance related to COVID-19 as specified by the Department of Health and Human Services, in consultation with the Department of Labor.

Paid sick time under this Act must be provided before requiring employees to use other paid leave that may be available. Part-time employees are entitled to such paid sick time for the average number of hours the part-time employee works during an average two-week period. Paid sick time under the Act may not carry over from one year to the next.

Employers must pay:

- The regular rate of pay up to \$511 per day, and \$5,110 in aggregate, for paid sick time used by an employee who experiences symptoms of COVID-19, is required or advised to self-quarantine or is subject to a governmental quarantine or isolation order; or
- Two-thirds of regular pay up to \$200 per day, and \$2,000 in aggregate, for paid sick time used by an employee to care for (1) the employee's child due to daycare or school closures or (2) another individual subject to governmental or self-quarantine.

### EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT

This Act (Sections 3101 through 3106 of FFCRA) permits an employee to take public health emergency leave through December 31, 2020, to care for the employee's minor son or daughter during a COVID-19 public-health emergency. Employers of fewer than 500 workers must provide up to 12 weeks of leave, up to 10 of which are paid, for an employee who has worked for the employer for at least 30 days and who cannot work or telework because the school or paid child-care provider of that employee's child is closed or unavailable as a result of a public-health emergency. Part-time employees' leave rights are prorated.

Employers are not required to pay employees for the first 10 days of such public health emergency leave. However, an employee may use accrued paid leave or emergency paid sick leave during such time. After the first 10 days, employers must pay at least two-thirds of an employee's regular pay for the number of hours per week the employee normally works. The maximum amount of required compensation for such leave is \$200 per day and \$10,000 in aggregate.

Further, employers generally are required to restore an employee's former position following the use of public health emergency leave unless the employer (1) has fewer than 25 workers and (2) has made reasonable efforts to retain the employee's position but such position no longer exists due to economic conditions caused by such public health emergency, provided the employer takes other steps to try to return the employee to work in another position or within the following year.

In addition, pursuant to a Section 3605 of the CARES Act, employers may be required to provide paid family and medical leave to employees laid off on or after March 1, 2020 and later rehired if the employee had worked for the employer at least 30 days of the 60 days prior to being laid off.

Although existing provisions of the FMLA do not apply to employers with fewer than 50 employees, the emergency leave provisions apply to such employers. Employers with fewer than 25 employees receive some limited relief from the job restoration provisions. The law also allows employers to exempt certain health care providers and emergency responders.

For more information, see our five-part blog series, [SPB IN-DEPTH ANALYSIS – The Families First Coronavirus Response Act](#).

**APPENDIX B**  
**ADDITIONAL INFORMATION ABOUT PAYCHECK PROTECTION PROGRAM LOANS**

Loan Forgiveness	<p>The principal amount of a PPP loan may be forgiven for costs incurred and paid during the 8-week period after the origination of the loan for eligible payroll costs, interest payments on mortgages (not including any principal payment), rent payments, and utility payments. Forgiveness for rent under a lease agreement, mortgage interest, and utility payments are allowed only for those services and contracts which were in place before February 15, 2020. Not more than 25% of the forgiven amount may be for non-payroll costs.</p> <p>Proceeds of the loan that are applied to ineligible expenses (i.e. expenses other than payroll, rent, utility payments mortgage interest payments, or excess compensation (individual employee or 1099 contractor compensation in excess of \$100,000 per year)) are not eligible for forgiveness.</p> <p>The amount of loan forgiveness may be ratably reduced if the employer reduces the number of full-time equivalent employees as compared to either (a) the period February 15, 2019 through June 30, 2019, or (b) the period January 1, 2020 to February 29, 2020, or if the employer reduces the pay of any employee by more than 25% as of the last calendar quarter. Employers who re-hire workers previously laid off as a result of the COVID-19 crisis will not be penalized for having a reduced payroll at the beginning of the relevant period. If, between February 15, 2020 and 30 days after enactment of the CARES Act, there is either a reduction in the number of or wages paid to full-time employees and the employer eliminates the reduction by June 30, 2020, the amount of loan forgiveness will be determined without regard to the reduction. Forgiveness may also include additional wages paid to tipped workers.</p> <p>To apply for forgiveness, the PPP loan borrower must submit to the lender an application that includes (1) documentation verifying the number of full-time employees on payroll and pay rates for an 8-week period (including payroll tax filings reported to the IRS and state income, payroll, and unemployment insurance filings), (2) documentation (including cancelled checks, payment receipts, or other documentation) verifying payments of covered mortgage obligations, covered lease obligations, and covered utility payments, (3) a certification from a company representative that the documentation is true and correct and that the amount requested for forgiveness was used to retain employees and make covered payments (mortgage interest, rent, and utilities), and (4) any other documentation requested by the SBA.</p>
Payment Deferral	<p>PPP loans mature in two years. The PPP loan recipient may defer payment of remaining principal, interest, and fee balances for 6 months after the date of disbursement of the loan.</p>
Obtaining a PPP loan	<p>PPP loans are made by SBA-certified lenders (over 800 financial institutions currently), in all 50 states, through delegated authority from the SBA. In addition, the SBA Administrator and Secretary of the Treasury may further authorize additional lenders to join the program, as needed. SBA-certified lenders simply need to verify that a small business was in operation on February 15, 2020, and paid employee salaries and payroll taxes or paid independent contractors, as reported on Form 1099- MISC, for eligibility in the PPP. Thus, the process should be relatively simple.</p>
Further Guidance	<p>The SBA has published two interim final rules and other guidance on the program.</p>

## APPENDIX C RELIGIOUS ENTITIES

Guidance from the Small Business Administration in the form of Frequently Asked Questions Regarding Participation of Faith-Based Organizations in the Paycheck Protection Program and the Economic Injury Disaster Loan Program clearly states that faith-based organizations are eligible to receive SBA loans regardless of whether they provide secular social services and that specified SBA regulations that exclude some religious entities will not be enforced. Use of loan money received is subject only to the restrictions that apply to all other recipients.

Further, churches and other houses of worship are eligible for PPP and EIDL loans if they satisfy the requirements of IRC 501(c)(3) (and other PPP and EIDL requirements) even if they have not been notified of their tax-exempt status by the IRS. They are not required to apply to the IRS for a determination of tax-exempt status in order to qualify for these loans.

Receipt of a loan will not limit the religious autonomy or legal rights of faith-based organizations but does require compliance with nondiscrimination requirements that apply to all Small Business Association programs. Once the loan is paid or forgiven, these obligations will no longer apply.

The FAQ also provides information about the affiliation rules for faith-based organizations with respect to determining whether an entity qualifies as a small business. Additional details can be found [here](#).

# Our Team

## NONPROFIT ORGANIZATIONS



**George Schutzer**  
Partner, Washington DC  
T +1 202 457 5273  
E [george.schutzer@squirepb.com](mailto:george.schutzer@squirepb.com)



**Stacey Grundman**  
Senior Attorney, Washington DC  
T +1 202 457 6178  
E [stacey.grundman@squirepb.com](mailto:stacey.grundman@squirepb.com)

## SMALL BUSINESS ADMINISTRATION LOANS



**Karen Harbaugh**  
Partner, Washington DC  
T +1 202 457 6485  
E [karen.harbaugh@squirepb.com](mailto:karen.harbaugh@squirepb.com)



**Kirk Beckhorn**  
Partner, Washington, DC  
T +1 202 457 7516  
E [kirk.beckhorn@squirepb.com](mailto:kirk.beckhorn@squirepb.com)

## EMPLOYMENT LAW



**Laura Lawless**  
Partner, Phoenix  
T +1 602 528 4137  
E [laura.lawless@squirepb.com](mailto:laura.lawless@squirepb.com)



**Daniel Pasternak**  
Partner, Phoenix  
T +1 602 528 4187  
E [daniel.pasternak@squirepb.com](mailto:daniel.pasternak@squirepb.com)

## PUBLIC POLICY



**Matthew Cutts**  
Partner, Washington DC  
T +1 202 457 6079  
E [matthew.cutts@squirepb.com](mailto:matthew.cutts@squirepb.com)



**Brandon Roman**  
Senior Associate, Washington DC  
T +1 202 457 5330  
E [brandon.roman@squirepb.com](mailto:brandon.roman@squirepb.com)

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