Paycheck Protection Program for Nonprofit Organizations and Church Leaders

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The Coronavirus Aid, Relief, and Economic Security Act (CARES Act), which became law on March 27, 2020, includes provisions designed to provide loans to keep employees of businesses and certain nonprofit organizations working during the Coronavirus emergency. Independent contractors, self-employed persons are also eligible to apply for loans. This article focuses on nonprofit organizations and churches.

The Small Business Administration (SBA) manages and issues rules regarding the Paycheck Protection Program (the Program.) “SBA will forgive loans if all employees are kept on the payroll for eight weeks and the money is used for payroll, rent, mortgage interest, or utilities.”

Loan amounts are calculated at 2.5 times the average monthly payroll for the calendar year 2019 or 12 months prior to receipt of the loan. Additionally, the loans require no collateral or personal guarantees.

This article does not cover the details of the Economic Injury Disaster Loan (EIDL) which can be used for certain expenses other than those paid for by the Program. A forgivable advance of $10,000 is available for eligible organizations needing immediate funds. For additional EIDL funds, the interest rate is 2.75 percent. If you are also applying for the Paycheck Protection Program, do not use the funds for the same purposes during the same time period.

¹ Licensed in Florida and the District of Columbia. This presentation does not, and is not intended to, constitute legal advice. Contact your attorney to obtain legal advice on a particular matter in the relevant jurisdiction. This article was updated April 9, 2020.
Should You Take the Money?

Many nonprofits refuse government benefits, other than accepting the exemption from paying taxes. We have always warned that government funds come with strings attached. However, the loan benefits are very different from past government bailouts.

The government caused your economic harm through quarantines and mandated shutdowns. The Centers for Disease Control (CDC) issues guidelines, the Coronavirus Task Force announces the guidelines at a news briefing, then governors and local leaders use the guidelines to issue and expand executive orders, and nonprofits suffer losses.

This situation is analogous to the government taking your property for public use. The Fifth Amendment requires “just compensation” for a taking of property. With the Program, compensation comes from a loan that is forgivable when used for certain purposes. Nonprofits have been damaged by the government and deserve to be made whole by the government.

Concerns about whether religious nonprofits will lose their autonomy was addressed by the SBA in a written statement that says “a faith-based organization that takes a loan will retain its independence, autonomy, right of expression, religious character, and authority over its governance.” The nonprofit can still set requirements for its members and employees and does not waive any rights under federal law by taking the loan.

During the term of the loan, the nonprofit must agree not to discriminate on the basis of race, color, religion, sex, handicap, age or national origin in providing any goods, services or accommodations to the general public. The nondiscrimination provisions do not apply to activities within its own faith community. The example used by the SBA is that a nonprofit operating a restaurant or thrift store could not discriminate on the basis of the traits listed above.

The SBA also says that it “recognizes the various protections of religious freedom enshrined in the Constitution and federal law that are not altered or waived by receipt of Federal financial assistance.”

Nonprofit leadership has the responsibility to determine whether to apply for the loan. We contend that the risks inherent in the process are minimal compared to the damages that nonprofits are facing from government actions.

Ultimately, the decision is yours.
Can You Take the Money?

Churches and other houses of worship, integrated auxiliaries of churches, and associations of churches qualify for loans without applying to the IRS for tax-exempt status. Although religious organizations need not apply to the IRS for tax-exempt status, they must meet the requirements of Section 501(c)(3) of the Internal Revenue Code (IRC). The IRC specifies the requirements: “an organization must be organized and operated exclusively for exempt purposes set forth in section 501(c)(3), and none of its earnings may inure to any private shareholder or individual. In addition, it may not be an action organization, i.e., it may not attempt to influence legislation as a substantial part of its activities and it may not participate in any campaign activity for or against political candidates.” For more information on political activity guidelines for churches and nonprofits, see LC.org/churches.

Eligible nonprofits must have been operating on February 15, 2020. They also must have between one and 500 employees or paid independent contractors. Full-time, part-time, and temporary employees count equally. There are few exceptions to the 500-employee rule. If you have more than 500 employees, check with your legal counsel or accountant for clarification on eligibility.
How to Take the Money

Check with your bank or credit union or see the SBA website to search by zip code for an eligible SBA 7(a) lender. Download the SBA approved loan application form, complete it and provide it to your lender.

Completing the Loan Form

Identifying Information

- Check the box beside “501(c)(3) nonprofit.”
- Fill in the nonprofit name and address on the left side of the form.
- Add the EIN (federal employer ID number), phone number, primary contact for this loan application, and their email address on the right side of the form.

Average Monthly Payroll

Calculate annual payroll costs for 2019 or from the previous 12 months, for all U.S. resident employees. Time periods will differ for newer nonprofits.

Payroll costs include:
- Salaries, wages, other compensation
- Group healthcare benefits
- Health insurance costs
- Retirement costs
- Payroll processor costs
- State and local taxes

Payroll costs exclude:
- Emergency leave payments for which credit is allowed under FFCRA
- Cash compensation for any individual that exceeds $100,000
- Payroll costs for anyone with a primary residence outside of the U.S.
- Payments made to any independent contractor
- Employer’s share of federal payroll tax (FICA)

Divide annual payroll costs by 12 to calculate average monthly payroll. Put the result in the Average Monthly Payroll box.

Loan Amount

Multiply the average monthly payroll by 2.5 to get the loan amount. There is only one situation that will change the loan amount.

If your nonprofit has already received an EIDL (Economic Injury Disaster Loan) between January 31, and April 3, 2020, add any outstanding amount of loan to the loan amount less any EIDL COVID-19 emergency advance received. This calculation is only necessary for those with an EIDL before April 3 and will not apply to the majority of nonprofits.

Put the result (typically 2.5 x the average monthly payroll) in the Loan Request box.
**Number of Employees**
Calculate the number of “full-time equivalent employees.” Count the full-time employees, which are those who average 30 or more hours per week. Add the hours worked by all part-time employees and divide by 30 to determine how many “full-time equivalent” employees to add to your actual full-time employees. There is an easy full-time equivalent employee calculator at healthcare.gov that can help.

You can choose to use the average number of employees from either the period of February 15 through June 30, 2019 or from January 1 through February 29, 2020. You will want to choose the lower number, as this is the baseline used to determine whether you have maintained employees at the end of the eight weeks.

Put the result in the “Number of Employees” box.

**Purpose of the Loan**
You may check any or all of the items listed including payroll, lease/mortgage interest and utilities. Also check “Other” if you intend to use funds for interest on any other debt incurred before February 15, 2020.

**Applicant Ownership**
Most nonprofits will leave this section blank, unless they are owned by another nonprofit.

**Questions 1 and 2**
These questions filter out applicants that are going through bankruptcy or have defaulted on a federally-guaranteed loan. If you answer “Yes,” the loan will not be approved.

**Question 3**
This question relates to whether another organization controls the nonprofit. Answer “No” unless the nonprofit is affiliated with or is under common control (such as an interlocking board) with another nonprofit or is part of a larger denomination that controls the nonprofit. If the nonprofit is affiliated with others, list the affiliated nonprofits on a separate Addendum A.

The SBA has suggested language for faith-based non-profit organizations whose affiliation results in them having more than 500 employees only when aggregated with other religious entities. Such nonprofits can still be eligible for the loan if affiliation is for religious reasons. The SBA has indicated it will rely on the nonprofit’s reasonable, good-faith determination regarding its affiliation.

**Question 4**
Skip this question unless the nonprofit received an EIDL between January 31 and April 3, 2020. If “Yes” then create a page with details, label as Addendum B, and submit with application.

**Question 5 and 6**
These questions pertain to criminal activity of an individual applicant or 20 percent owner of a business. Nonprofits should answer “No.”
Question 7
Include employees whose primary residence is in the U.S. in your payroll costs, and answer “Yes.”

Question 8
This question pertains to businesses that are listed in the SBA Franchise Directory. Nonprofits will answer “No.”

Certifications and Authorizations
Whoever signs the application must certify the accuracy of the information provided, attest to having read and understood the loan requirements, agree to comply with the terms and provide documentation to the lender.

They also verify that the nonprofit meets eligibility and size requirements, is not engaged in illegal activity, and agrees to purchase American-made equipment and products when possible. Finally, they certify that the loan is necessary given economic uncertainty.

How to Not Owe the Money

Loan Forgiveness
The funds must be used only for payroll costs, mortgage interest, rent payments under a lease and utility payments incurred and made during the 8-week period from the loan date. Be sure to document the costs, showing that they were owed and paid during that time period.

Although the CARES Act specifies that funds used for the allowable purposes are forgivable, the SBA issued guidance specifying that at least 75 percent of the funds must be used for payroll costs.

The other 25 percent or less may be used for the other allowable purposes, including mortgage interest, rent and utilities, which includes electric, water, gas, transportation, telephone and internet service that was in place before February 15, 2020.

Best Practices
Consider putting the loan money in a separate account. The person who signed the application and made the certifications should sign off on all payments as they are made from that account.

Request Forgiveness
After the 8-week period from the loan date, the nonprofit should provide documentation to the lender showing how the funds were spent. The lender has 60 days to accept or deny the forgiveness. The application should be made well in advance of the end of the six-month deferment period to avoid interest payments.

Decrease in amount forgiven
The amount forgiven will be decreased if the number of employees is decreased. Furthermore, if the pay of any employee who was making less than $100,000 per year is decreased by more than 25 percent after February 15, 2020, the amount forgiven will be decreased by an equal amount.
Additionally, if fewer full-time equivalent employees were kept by April 26, 2020 than were initially reported on the loan form, the forgiven amount may also be decreased. To avoid a decrease in loan forgiveness, the nonprofit is given until June 30 to rehire to the initial number reported.

**Unforgiven Portion**
Any portion of the loan that is not forgiven will carry a one percent interest rate for a term of two years, with no prepayment penalty. Interest on the unforgiven portion will accrue from the date of the loan.

The SBA will likely issue further clarification on the documentation, forms and details of the payback process as it has issued guidance several times since the passage of the CARES Act. The SBA has until April 26 to issue guidance and regulations for loan forgiveness.

**Now What?**

Apply as soon as possible, as funds are limited, and loan applications are processed in the order received. Congress may authorize more funds due to the overwhelming demand for loans.

You can find updates and supporting materials at LC.org/PaycheckProtection as new details are available.

Contract your accountant for assistance if you need help with the loan application or have questions on how the Program applies to your situation.