

FAQ on non-profit provisions in the CARES Act.

SBA 7(a) Loans:

Where can I apply for the Paycheck Protection Program? Which banks offer 7(a) loans?

You can apply for the Paycheck Protection Program (PPP) at any lending institution that is approved to participate in the program through the existing U.S. Small Business Administration (SBA) 7(a) lending program and additional lenders approved by the Department of Treasury. This could be the bank you already use, or a nearby bank. There are thousands of banks that already participate in the SBA's lending programs, including most big banks and numerous community banks. You do not have to visit any government institution to apply for the program. You can call your bank or find SBA-approved lenders in your area through SBA's online Lender Match tool. You can call your local Small Business Development Center or Women's Business Center and they will provide free assistance and guide you to lenders. Also, the Act provides for more banks to become 7(a) lenders, so inquire with your lender if they plan to become a 7(a) lender.

Are these loans available to nonprofits and churches?

Yes. The legislation expands loan eligibility to 501(c)(3) nonprofit organizations that are tax exempt under section 501(a), have been in existence on March 1, 2020 or earlier, and have 500 or fewer employees.

My church is not a 501(c)(3) because we were grandfathered in as a "church" by the State. Will that pose a problem for us applying for the new 7(a) program?

There were no provisions under the law for non-501(c)(3); Senator Scott's office will continue to work on finding avenues for relief.

What is the covered period of the loan?

The covered period during which expenses can be forgiven extends from February 15, 2020 to June 30, 2020. Borrowers can choose which 8 weeks they want to count towards the covered period, which can start as early as February 15, 2020.

Which expenses will be forgiven under the loan?

Loan proceeds that are used for payroll costs, existing interest payments on mortgage, leases, rent, and utilities will all be forgiven and principal amounts will be reimbursed to lenders through SBA. Payroll costs include employee salaries (up to an annual rate of pay of \$100,000), hourly wages and cash tips, paid sick or medical leave, and group health insurance premiums.

When is the application deadline for the Paycheck Protection Program?

Applicants are eligible to apply for the PPP loan until June 30th, 2020.

On the face of the loan/promissory note, will the terms about possible forgiveness be spelled out?

The forgiveness conditions are now law; they will be widely available through the SBA.

What's the maximum amount that I can request?

The amount eligible to borrow is 250 percent of their average monthly payroll expenses, up to a total of \$10 million. This amount is intended to cover 8 weeks of payroll expenses and any additional amounts for making payments towards debt obligations. This 8 week period may be applied to any time frame between February 15, 2020 and June 30, 2020. Seasonal business expenses will be measured using a 12-week period beginning February 15, 2019, or March 1, 2019, whichever the seasonal employer chooses.

Is there anything in the bill that can give us a forbearance on loans we've already taken out?

Yes, in Section 1112, the program package requires the SBA to pay the principal, interest, and any associated fees owed on a previous SBA loan, including 7(a), 504,

microloan, or Community Advantage, for a 6 month period starting on the next payment due.

Separately, the bill allows recipients of the paycheck protection program loan to use loan proceeds for interest on other debt obligations incurred previously to Feb. 15, 2020. Use of loans for this purpose will not be forgiven.

Unemployment Insurance:

Do workers who do not ordinarily qualify for unemployment insurance (UI) benefits, such as church employees, qualify during the ongoing COVID-19 emergency?

Yes; the CARES Act creates a new Pandemic Unemployment Assistance (PUA) program that will run through the remainder of calendar year 2020, which will include workers typically not eligible for UI benefits, such as most church employees. Employees will be eligible for up to 39 weeks of benefits, which will be calculated based on the state's benefit formula, with a \$600 add-on payment every week for the first four months of the program, ending on July 31st.

For how large a benefit will these workers qualify?

States generally calculate benefits as a percentage of average weekly earnings during a designated based period. In South Carolina, for instance, covered employees can receive 50% of average weekly earnings for up to 20 weeks, with a minimum weekly benefit of \$42 and a maximum of \$326. Workers not traditionally covered under a state's UI system will most likely have base period earnings subjected to the same calculation used for covered employees, with federal statute requiring a weekly benefit for these workers of at least 50% of the state's average weekly UI benefit. To clarify, these traditionally non-covered workers will be eligible for the \$600 weekly add-on payments for up to four months.

Will the updates to the UI system be administered by the state or the federal government?

UI functions as a federal-state partnership, with states administering programs within federally set parameters, but with relative flexibility. Since traditional eligibility rules and a number of UI-related policies vary from state to state, and a number of the provisions in the CARES Act require agreements between state governments and the Department of Labor, you should direct more specific questions regarding state impact, effective dates, and the like to your state workforce agency. While the CARES Act provides

robust federal funding for the additions and enhancements to the UI system, including by financing state administrative spending devoted to implementing these new programs and programmatic changes, state will maintain administrative oversight of the program. In South Carolina, the SC Department of Employment and Workforce (SCDEW) administers the state UI system. You can find more information at scdew.gov.

When will the changes to UI take effect?

While the Department of Labor has indicated its intention to implement the CARES Act on an expedited basis and has been engaged in discussions with state workforce agencies and other entities along these lines for some time, many of the UI-related provisions in the legislation are technically voluntary and rely upon agreements between the federal government and state governmental agencies to begin implementation. I advise directing questions on implementation status to your state workforce agency, as well as periodically reviewing the Department of Labor's webpage for guidance documents and other updates.

Will workers already laid off prior to enactment or implementation qualify for the expanded UI program under the CARES Act?

Yes; page 90 of the CARES Act directs the Secretary of Labor to "establish a process" for providing unemployment assistance to eligible individuals for weeks beginning on or after January 27, 2020, the date that the Secretary of Health and Human Services declared a public health emergency with regards to COVID-19. While DOL has not yet clarified how this process will function, it should provide for retroactive coverage for individuals who lost their jobs prior to CARES Act enactment, including for workers not traditionally eligible for UI benefits.

Paid Leave Mandates:

Do the new paid leave mandates from the Families First Coronavirus Response Act (FFCRA) exempt nonprofits?

No. The FFCRA creates two new mandates related to paid leave for employees: a) the Emergency Paid Sick Leave Act (PSLA), which requires up to two weeks of fully paid leave for any one of a number of COVID-19-related causes; and b) the Emergency Family and Medical Leave Expansion Act (EFMLA), which requires up to twelve weeks of leave (the first two weeks unpaid, the latter ten paid at 2/3 of the regular rate of pay) for leave related to the public health emergency, including to care for a child whose school or childcare facility has closed. Payments are capped and reimbursed by the

federal government through advance refundable payroll tax credits. Neither mandate exempts nonprofit employers.

If I have fewer than 50 employees, am I exempted from these new mandates?

Not necessarily. Employers with fewer than 50 employees may be exempt from providing PSLA leave to an employee whose child's school is closed or whose childcare provider is closed or unavailable, but only if "the imposition of such requirements would jeopardize the viability of the business as a going concern." DOL has indicated that it plans to issue regulations, most likely in April, to establish criteria for this "viability" exemption. In the meantime, employers with fewer than 50 employees who believe that they qualify should document their determination; they need not send any materials to DOL. Companies should note that this exemption does not apply for the other COVID-19-related causes that require PSLA leave; employers should consult DOL-produced guidance documents for more information.

Employers with fewer than 50 employees may also be exempt from providing EFMLA leave, under the same "viability" standard applicable for certain types of PSLA leave. Again, employers who believe that they qualify should review relevant DOL guidance documents and, if applicable, document their determination that they should be exempt, based on available criteria.

When do these new mandates take effect?

The FFCRA's new mandates take effect on April 1, 2020 and last for the remainder of calendar year 2020, after which point they expire. On March 24, the Wage & Hour Division of DOL published a Field Assistance Bulletin announcing that the Department would not take enforcement action against employers for violations of the FFCRA through April 17, 2020. That said, the Department has conditioned its non-enforcement policy on good-faith attempts at compliance by employers.

Other provisions

What changes were made to charitable deductions?

The bill includes two changes to charitable giving deductions that Senator Scott specifically championed. The bill allows a partial above the line deduction for charitable contributions, which will encourage Americans to contribute additionally to charitable organizations in 2020 by permitting them to deduct up to \$300 of cash contributions whether they itemize their deductions or not.

The bill also modifies limitations on charitable contributions during 2020. The provision increases the limitations on deductions for charitable contributions by individuals who itemize, as well as corporations. For individuals, the 50-percent of adjusted gross income limitation is suspended for 2020. For corporations, the 10-percent limitation is increased to 25 percent of taxable income. This provision also increases the limitation on deductions for contributions of food inventory from 15 percent to 25 percent.

Are non-profits eligible for the new payroll tax credit?

Yes. Non-profits are explicitly included in this program. The bill establishes an employee retention credit for employers subject to closure due to COVID-19. The provision provides a refundable payroll tax credit for 50 percent of wages paid by employers to employees during the COVID-19 crisis. The credit is available to employers whose (1) operations were fully or partially suspended, due to a COVID-19-related shutdown order, or (2) gross receipts declined by more than 50 percent when compared to the same quarter in the prior year. The credit is based on qualified wages paid to the employee. For employers with greater than 100 full-time employees, qualified wages are wages paid to employees when they are not providing services due to the COVID-19-related circumstances described above. For eligible employers with 100 or fewer full-time employees, all employee wages qualify for the credit, whether the employer is open for business or subject to a shut-down order. The credit is provided for the first \$10,000 of compensation, including health benefits, paid to an eligible employee. The credit is provided for wages paid or incurred from March 13, 2020 through December 31, 2020.

What changes were made to the Social Security tax?

The bill allows employers and self-employed individuals to defer payment of the employer share of the Social Security tax they otherwise are responsible for paying to the federal government with respect to their employees. Employers generally are responsible for paying a 6.2-percent Social Security tax on employee wages. The provision requires that the deferred employment tax be paid over the following two years, with half of the amount required to be paid by December 31, 2021 and the other half by December 31, 2022. The Social Security Trust Funds will be held harmless under this provision. This is a benefit to non-profits as well, as they currently match the Social Security and Medicare withholding from their compensation to their employees.

