



CORONAVIRUS SPECIAL REPORT

Updated guidance, additional information, and other COVID-19 related information from the week of April 20, 2020, for:

NONPROFIT ENTITIES

Key developments across federal departments and agencies of interest from this week include:

Department of Treasury

- On April 23, 2020, the Department of Treasury [released](#) an updated Frequently Asked Questions (FAQ) document for the Paycheck Protection Program.

Federal Reserve

- On April 16, 2020, the Fed released two reports related to the [Main Street New Loan Facility](#) (MSNLF) and the [Main Street Expanded Loan Facility](#) (MSELF), as required by Section 13(3) of the Federal Reserve Act. The MSNLF's term sheet can be found [here](#), and the MSELF term sheet can be found [here](#). Additional guidance is expected before the program is up and running.

Internal Revenue Service (IRS)

- On April 17, 2020, the IRS [released](#) a new Frequently Asked Questions (FAQ) page regarding COVID-19-related tax credits for required paid family leave provided by small and mid-sized businesses.

Updated guidance, additional information, and other COVID-19 related information from the week of April 13, 2020, for:

NONPROFIT ENTITIES

Key developments across federal departments and agencies of interest from this week include:

Department of Commerce

- On April 13, 2020, the Department of Commerce’s National Institute of Standards and Technology (NIST) launched a process for \$50 million in grants to help manufacturers respond to the COVID-19 pandemic. The full press release can be found [here](#).

Department of Homeland Security

- On April 2, 2020, the Federal Emergency Management Agency released guidance for private nonprofit organizations, which can be found [here](#).

Department of Labor

- On April 13, 2020, the Department of Labor announced the OSHA interim enforcement response plan to protect workers during the Coronavirus Pandemic. During the outbreak, OSHA area office will use their inspection resources to fulfill mission-critical functions and to protect workers. The full plan can be found [here](#).

Department of Treasury

- On April 11, 2020, WSW staff prepared a Coronavirus report outlining eligibility for the Main Street Lending Program (MSLP). Our report can be found [here](#). *The Wall Street Journal* also published a helpful article on the subject, which can be found [here](#).
- However, it appears that the implementation of the CARES Act led to the exclusion of several entities, including nonprofits. Speaker Nancy Pelosi’s “Dear Colleague” letter, from April 14, 2020, outlining an interest to reform the process in a “CARES 2” bill can be found [here](#).

**Updated guidance, additional information, and other COVID-19 related information from
the week of April 5, 2020, for:**

NONPROFIT ENTITIES

Key developments across federal departments and agencies of interest from this week include:

Centers for Disease Control and Prevention

- On April 9, 2020, the Centers for Diseases Control and Prevention released guidance for essential workers and their employers. The full guidance can be found [here](#).

Department of Labor

- On April 6, 2020, the Department of Labor provided additional guidance on the unemployment insurance program. More specifically, the guidance underscored instructions to State Workforce Administrators on implementing the Pandemic Unemployment Insurance under the CARES Act. The full directive can be found [here](#).
- On April 10, the Department of Labor released a *Federal Register* [notice](#) making regulatory and perambulatory changes to the April 6 notice surrounding paid leave.
- The National Restaurant Association also [provided](#) helpful context to this rule.

Department of Treasury

- On April 9, 2020, the Department of Treasury, in conjunction with the Federal Reserve, approved the establishment of a Main Street Business Lending Program and a Municipal Liquidity Fund. These funds will be able to provide up to \$2.3 trillion in financing. The full press release announcing the program can be found [here](#).

Small Business Administration

- On April 8, 2020, the Small Business Administration updated their original Frequently Asked Questions (FAQs) surrounding the Paycheck Protection Program (PPP) Loans. The full FAQ can be found [here](#).
- On April 6, 2020, the Small Business Administration released their streamlined Emergency Injury Disaster Loan (EIDL) application. WSW staff also prepared a [document](#) outlining the provisions of the program, its interaction with the PPP. In the

same document, we also provided a quick rundown of the Employee Retention Tax Credit.

- On April 4, 2020, the Small Business Administration issued additional guidance on faith-based organizations receiving both PPP and EIDL, underscoring that they do qualify. The FAQ governing this can be found [here](#).

**Updated guidance, additional information, and other COVID-19 related information from
the week of March 30, 2020, for:**

NONPROFIT ENTITIES

Key developments across federal departments and agencies of interest from this week include:

- On April 3, 2020, the Small Business Administration released an interim final rule with further guidance on the Paycheck Protection Program. It provides both additional context and a Q&A section for small business owners to determine whether they qualify and what next steps they should take. The temporary final rule can be found [here](#).
- On April 3, 2020, the Small Business Administration released notice through the *Federal Register* that an Economic Injury Disaster Loan (EIDL) declaration has been issued for each State and Territory of the U.S. The notice can be found [here](#).
- On April 2, 2020, the Small Business Administration released an updated Paycheck Protection Program application. The application can be found [here](#).
- On April 1, 2020, the U.S. Chamber of Commerce released three new guides on:
 - [The Economic Injury Disaster Loan](#)
 - [The Employee Retention Tax Credit](#)
 - [Further Small Business Guidance](#)
- On April 1, 2020, the Department of Labor's Wage and Hour Division outlined temporary guidance on the protections and relief provided by the Emergency Paid Sick Leave Act and Emergency Family and Medical Leave Expansion Act. The rule can be found [here](#).

Provisions included in “PHASE ONE” COVID-19 response package, [H.R. 6074](#), the Coronavirus Preparedness and Response Supplemental Appropriations bill, for:

NONPROFIT ENTITIES

Signed into law on March 6, 2020

Related Legislative and Regulatory Guidance Documents:

[House Appropriations Committee Summary](#)

[Department of Labor – COVID-19 and FMLA Questions and Answers](#)

[Department of Labor – COVID-19 and the American Workplace](#)

Key provisions across federal departments and agencies of interest to nonprofit entities as follows:

- Financial Services and General Government Small Business Disaster Loans – Allows \$1 billion in loan subsidies to be made available to help small businesses, small agricultural cooperatives, small aquaculture producers, and **nonprofit organizations** which have been impacted by financial losses as a result of the coronavirus outbreak. This funding could enable the Small Business Administration to provide an estimated \$7 billion in loans to these entities. In addition, provides \$20 million to administer these loans.

**Provisions included in “PHASE TWO” COVID-19 response package,
H.R. 6201, Families First Coronavirus Response Act, for:**

NONPROFIT ENTITIES

Signed into law on March 18, 2020

Related Legislative and Regulatory Guidance Documents:

[House Energy and Commerce and Ways and Means Committee Summary](#)

[Department of Labor – COVID-19 and FMLA Questions and Answers](#)

[Department of Labor – COVID-19 and the American Workplace](#)

Key provisions in support of nonprofits organizations and employees across federal departments and agencies as follows:

Effective Date: April 1, 2020

Family and Medical Leave, Paid Sick Leave

[FACT SHEET: Families First Coronavirus Response Act: Employer Paid Leave Requirements](#)

Emergency Family and Medical Leave Expansion Act:

Provides employees of employers with fewer than 500 employees and government employers, who have been on the job for at least 30 days, with the right take up to 12 weeks of job-protected leave under the Family and Medical Leave Act to be used for any of the following reasons:

- To adhere to a requirement or recommendation to quarantine due to exposure to or symptoms of coronavirus;
- To care for an at-risk family member who is adhering to a requirement or recommendation to quarantine due to exposure to or symptoms of coronavirus; and
- To care for a child of an employee if the child’s school or place of care has been closed, or the child-care provider is unavailable, due to a coronavirus.

After the two weeks of paid leave, employees will receive a benefit from their employers that will be no less than two-thirds of the employee’s usual pay.

Emergency Paid Sick Leave Act:

Requires employers with fewer than 500 employees and government employers to provide employees two weeks of paid sick leave, paid at the employee’s regular rate, to quarantine or seek a diagnosis or preventive care for coronavirus; or paid at two-thirds the employee’s regular rate to care for a family member for such purposes or to care for a child whose school has closed, or child care provider is unavailable, due to the coronavirus.

- Full-time employees are entitled to 2 weeks (80 hours) and part-time employees are entitled to the typical number of hours that they work in a typical two-week period.
- Employees who work under a multiemployer collective agreement and whose employers pay into a multiemployer plan are provided with leave.

The Act, and the requirements under the Act, expire on December 31, 2020.

Unemployment Insurance (UI) Benefits

[Department of Labor Unemployment Insurance Program Letter No. 13-20](#)

[Model Language for Employer Notification to Employees of the Availability of Unemployment Compensation](#)

Emergency Unemployment Insurance Stabilization and Access Act of 2020: Provides \$1 billion in 2020 for emergency grants to states for activities related to processing and paying unemployment insurance (UI) benefits, under certain conditions. \$500 million would be used to provide immediate additional funding to all states for staffing, technology, systems, and other administrative costs, so long as they met basic requirements about ensuring access to earned benefits for eligible workers. Those requirements are:

- Require employers to provide notification of potential UI eligibility to laid-off workers
- Ensure that workers have at least two ways (for example, online and phone) to apply for benefits
- Notify applicants when an application is received and being processed and if the application cannot be processed, provide information to the applicant about how to ensure successful processing.

Tax Credits for Paid Leave

[IRS Notice IR-2020-57](#)

[IRS Coronavirus Tax Relief Resources](#)

Tax Credits for Paid Sick And Paid Family and Medical Leave:

Provides a refundable tax credit equal to 100 percent of qualified paid sick leave wages paid by an employer for each calendar quarter. The tax credit is allowed against the tax imposed by section 3111(a) (the employer portion of Social Security taxes). Qualified sick leave wages are wages required to be paid by the Emergency Paid Sick Leave Act.

Makes a distinction between qualified sick leave wages paid with respect to employees who must self-isolate, obtain a diagnosis, or comply with a self-isolation recommendation with respect to coronavirus. For amounts paid to those employees, the amount of qualified sick leave wages taken into account for each employee is capped at \$511 per day.

For amounts paid to employees caring for a family member or for a child whose school or place of care has been closed, the amount of qualified sick leave wages taken into account for each employee is capped at \$200 per day. The aggregate number of days taken into account per employee may not exceed the excess of 10 over the aggregate number of days taken into account for all preceding calendar quarters.

If the credit exceeds the employer's total liability under section 3111(a) for all employees for any calendar quarter, the excess credit is refundable to the employer. Employers may elect to not have the credit apply. To prevent a double benefit, no deduction is allowed for the amount of the credit. In addition, no credit is allowed with respect to wages for which a credit is allowed under section 45S.

The section applies only to wages paid with respect to the period beginning on a date selected by the Secretary of the Treasury (or the Secretary's delegate) which is during the 15-day period beginning on the date of the enactment of this Act, and ending on December 31, 2020.

Payroll Credit for Required Paid Family Leave:

Provides a refundable tax credit equal to 100% of qualified family leave wages paid by an employer for each calendar quarter.

The tax credit is allowed against the tax imposed by section 3111(a) (the employer portion of Social Security taxes). Qualified family leave wages are wages required to be paid by the Emergency Family and Medical Leave Expansion Act.

The amount of qualified family leave wages taken into account for each employee is capped at \$200 per day and \$10,000 for all calendar quarters. If the credit exceeds the employer's total liability under section 3111(a) for all employees for any calendar quarter, the excess credit is refundable to the employer.

Employers may elect to not have the credit apply. To prevent a double benefit, no deduction is allowed for the amount of the credit. In addition, no credit is allowed with respect to wages for which a credit is allowed under section 45S.

Provisions included in “PHASE THREE” COVID-19 response package, [H.R. 748, the Coronavirus Aid, Relief, and Economic Security \(CARES\) Act](#), for:

NONPROFIT ENTITIES

Signed into law on March 27, 2020

Related Documents:

[Senate Small Business Committee one-pager](#)

[Senate Small Business Committee section-by-section summary](#)

[SBA Coronavirus: Small Business Guidance & Loan Resources](#)

NOTE: Relevant agencies will release guidance on accessing benefits only after the bill is signed into law. Timing for the guidance will vary depending on the provision.

Key provisions across federal departments and agencies of interest to nonprofit entities as follows:

Changes to “Phase Two” package, Families First Coronavirus Response Act (FFCRA)

- Paid FMLA leave under FFCRA is capped at \$200 per day and \$10k in aggregate.
- Paid sick leave under the FFCRA is capped at \$511 per day and \$5,110 in aggregate; this amount drops to \$200 per day and \$2000 in aggregate for sick leave taken to care for a family member or because of a school closure.
- Workers who are laid off after March 1 but then rehired are eligible for paid FMLA leave.
- Employers can keep money they would have deposited for payroll taxes in anticipation of refunds from the Treasury for paid sick and paid FMLA leave provided to employees, including amounts that would have been refunded.

Loan Programs

Small Business “Paycheck Protection Program”

[Department of Treasury Guidance on Paycheck Protection Program](#)

[Paycheck Protection Program application form](#)

- New \$349 billion lending program, modeled on existing SBA 7(a) program, with 100% government guarantee (as opposed to 75% guarantee for 7(a) loans).
- **Eligibility:**
 - Small businesses as defined by SBA size standards (generally up to 500 employees, but up to 1,500 employees depending on the sector, with certain sectors based on revenue).
 - Businesses in the Accommodation and Food Services Sector (NAICS Code 72) are eligible with up to 500 employees at each location.

- 501(c)(3) nonprofits with fewer than 500 employees.
- Sole proprietors, the self-employed, and independent contractors.
- **Regulatory Streamlining:**
 - SBA's standard "Credit Elsewhere Test," which determines whether the borrower can obtain some or all the requested loan funds from alternative sources without causing undue hardship, is waived.
 - All FDIC-backed lenders (as approved by Treasury and SBA) can provide loans
 - No personal guarantee or collateral required.
 - Lenders defer fees, principal, and interest for between 6 and 12 months.
- **Maximum Loans:** Generally, monthly payroll costs for 2 ½ months, not to exceed \$10 million. Payroll costs exclude compensation paid to individuals, including the self-employed, above \$100,000 a year.
- **Requirements:** The employer certifies loan will be used to retain workers, maintain payroll, make mortgage or lease payments, and pay utilities.
- **Loan Forgiveness:** The borrower shall have a portion of their loan forgiven in the amount equal to their payroll costs (not including costs for compensation above \$100,000 annually), interest payments on mortgages, rent payments, and utility payments between February 15 and June 30, 2020. Loan forgiveness will be reduced if the borrower reduces employment by a ratio similar to their reduction in employment or if borrower reduces salaries and wages by more than 25%.
- \$17 billion for SBA to cover six months of payments for businesses with current SBA loans

Changes to SBA's Economic Injury Disaster Loans (EIDLs)

- Loans can be made based solely on credit scores.
- Loans below \$200,000 can be approved without a personal guarantee.
- Borrowers can receive \$10,000 cash advances that are forgiven if spent on paid leave, maintaining payroll, increased costs due to supply chain disruption, mortgage or lease payments, or repaying obligations that cannot be met due to revenue losses.
- **Loans available to all nonprofits, including 501(c)(6)s.**

Loan Programs and Credit Facilities:

- \$500 billion for loans and loan subsidies and support for Federal Reserve credit facilities.
- **Eligibility:** Air carriers and other businesses not otherwise receiving adequate relief under other provisions of the bill.
- **Breakdown:**
 - (1) \$25 billion in loans and loan guarantees for air carriers, air maintenance and ticket agents.
 - (2) \$4 billion in loans and loan guarantees for cargo air carriers.

- (3) \$17 billion in loans and loan guarantees for businesses critical to maintaining national security.
- (4) \$454 billion for loans, loan guarantees and investments in support of facilities established by the Federal Reserve to support lending to eligible businesses, nonprofits, states, or municipalities.
 - Via the Federal Reserve, the \$454 billion could be leveraged significantly, potentially providing up to \$4 trillion in financial support.
- Allows Federal Reserve to purchase corporate, state, and municipal bonds.
- Defines “United States businesses” as businesses “that are created or organized in the United States or under the laws of the United States and that have significant operations in and a majority of its employees based in the United States.”
- **Restrictions for Loans Under 1, 2, and 3 listed above:** Loans must be secured, for a term of not more than 5 years, and while the loan is outstanding plus an additional 1 year, prevents stock repurchases and dividend payments and requires borrowers to maintain existing employment level as of March 24, 2020. Requires the Secretary to obtain warrants or senior debt instruments to enable the government to share in any gains. Secretary will not exercise voting power. Secretary can also conduct audits.
- Under 1, 2, or 3, imposes limits on executive compensation for borrowers.
 - For one year after the date on which the loan or loan guarantee is no longer outstanding, no officer or employee whose total compensation exceeded \$425,000 in 2019 can receive a pay increase from 2019 levels or severance pay exceeding twice max compensation received in 2019. Additionally, officers or employees whose compensation exceeded \$3 million in 2019 may not receive compensation in excess of sum of \$3 million and 50% of the excess more than \$3 million that such employee received in 2019.
- **Restrictions Under Federal Reserve:** Loans through the Federal Reserve generally (though with possible exceptions) prevent the borrower from repurchasing stock and dividend payments while the loan is outstanding plus an additional year. The Treasury Secretary would be permitted to waive this requirement if it determines such waiver is necessary to protect the interests of the federal government, although he would be required to testify before Senate Banking and House Financial Services regarding the reasons for the waiver.
- In addition to whatever other loan facilities might be created, the Treasury Secretary will “endeavor to seek the implementation” of a Middle Market loan facility for banks to provide loans to businesses and eligible nonprofits with 500-10,000 employees. **Mid-sized nonprofits are expressly eligible, though it remains unclear whether small nonprofits are.**
 - Interest rate will be no more than 2% with no principle or interest paid for the first 6 months.

- Funds must be used to retain 90% of workforce at full wages and benefits through September 30, 2020 and intends to restore 90% of workforce on hand on February 1, 2020.
- No buybacks or dividend payments through the life of the loan.
- No outsourcing or offshoring of jobs for the life of the loan and 2 years thereafter.
- Recipient will not abrogate collective bargaining for term of the loan and two years. Will also remain neutral in union organizing activities.
- (NOTE: this could be one of many loan facilities created and no borrower is required to use this particular facility.)
- Federal Reserve authorized to create a Main Street Lending Facility for small and mid-sized businesses
- Requires Treasury Secretary to publicly report detailed information on each authorized transaction within 72 hours.
- Permits the Exchange Stabilization Fund to be used to guarantee money market mutual funds

Business Tax Provisions

- Employee retention credit for employers subject to closure due to COVID-19 (permits fully refundable 50% tax credit applicable to the employer's share of payroll taxes on wages up to \$10,000 per employee; widely available with special rules for small employers). **For tax-exempt organizations, the entity's *entire* operations must be accounted when determining eligibility.**
- Delay of payment of employer payroll taxes (defer payment of the employer share of the Social Security tax due between now and January 1, 2021 to December 31, 2021 (50% due) and December 31, 2020 (remaining due)).
- Modifications for net operating losses (for 2018, 2019, 2020, loss can be carried back 5 years, temporarily suspends 80% limitation; extends to pass-throughs, sole proprietors).
- Accelerates ability of companies to recover AMT credits.
- Modification of limitation on business interest (for 2019, 2020, increases 30% limitation to 50%).
- Technical amendment regarding qualified improvement property.
- Temporary exception from excise tax for alcohol used to produce hand sanitizer (for 2020).
- For corporations, the CARES Act raises the annual limit for corporate charitable deductions from 10% to 25%, and food donations from 15% to 25%.

Pension and Employee Benefit Requirements

- Delay any required minimum pension contributions due in 2020 until January 1, 2021 (plus interest).

- Allow the Department of Labor to delay employee benefit related deadlines because of a public health emergency the same as declared national disasters or terroristic military actions.
- For benefit restrictions, allow a plan sponsor to use the adjusted funding target attainment percentage for the last plan year ending before January 1, 2020 for plan years including calendar year 2020

Banking Relief, Mortgage Forbearance, and Credit Reporting

- Regulatory relief from accounting standards for loan modifications related to COVID-19 made by banks.
- Temporary relief from CECL standards.
- During the covered period, a borrower with a Federally backed mortgage loan experiencing a financial hardship due, directly or indirectly, to the COVID-19 emergency may request forbearance on the Federally backed mortgage loan, regardless of delinquency status.
- Covered period is 60 days (2 months) and allowable extensions of up to 4 periods of 30 days each (4 months).
- Requires that furnishers to credit reporting agencies who agree to account forbearance, or agree to modified payments with respect to an obligation or account of a consumer that has been impacted by COVID-19, report such obligation or account as “current” or as the status reported prior to the accommodation during the period of accommodation unless the consumer becomes current.
 - Applies only to accounts for which the consumer has fulfilled requirements pursuant to the forbearance or modified payment agreement.
 - Such credit protection is available beginning January 31, 2020 and ends at the later of 120 days after enactment or 120 days after the date the national emergency declaration related to the coronavirus is terminated.

Payments & Relief for Individuals

- Direct payments to taxpayers equal to \$1,200 per individual (\$2,400 joint return) plus \$500 per child. The payments are phased out for incomes above \$75,000 or \$150,000 for a joint return. Above those two figures, the payment decreases until it stops altogether for single people earning \$99,000, married people who have no children who earn \$198,000, or a family with two children if its income surpassed \$218,000
- Penalty-free COVID-19-related distributions up to \$100,000 and loan amount increases and modifications to individuals from tax-favored retirement plans. Waiver of required minimum distributions from retirement plans and IRAs for 2020.
- Tax exclusion for people who are receiving student loan repayment from their employer.

- Creates a universal or non-itemized tax deduction, which applies to all taxpayers, for charitable contributions of up to \$300. The incentive applies to cash contributions made in 2020 and can be claimed on next year's tax forms.

Unemployment Programs

- Extend unemployment insurance by 13 weeks and include a four-month enhancement of benefits
- Unemployment compensation is available for those not eligible for regular UI, including those who may have exhausted benefits.
- An individual must provide certification that he or she is able and available to work, but is unemployed or underemployed due to:
 - Coronavirus diagnosis or presentation of symptoms and seeking medical attention.
 - A household member with coronavirus diagnosis.
 - Caring for a family member who has been diagnosed.
 - School or daycare closures and the individual is the primary child caregiver.
 - Workplace lock-down.
 - Advice from a health care provider to self-quarantine.
 - The individual was about to start a job that is no longer available because of coronavirus.
 - The individual is now the breadwinner of a household because someone has died from coronavirus.
 - The individual had to quit because of a circumstance resulting from coronavirus.
 - The individual's place of work is closed because of coronavirus.
- These provisions do not apply to an individual who can telework with pay.
- These provisions do not cover someone getting paid sick or paid family leave.
- The unemployment provisions run from January 27 to December 31, 2020.
- Receipt of assistance under the unemployment provisions shall not exceed 39 weeks unless otherwise extended.
- No one week waiting period.
- The federal government will pick up 100% of the cost.
- Upon agreement between a state, an additional \$600 per worker per week unemployment compensation payment is available.
- This compensation is 100% covered by the federal government.
- The additional payment sunsets on July 31.
- The federal government will pick up the cost for any states that waive the one-week waiting period. This sunsets on December 31, 2020.
- ***Self-Funded Nonprofits:***

- Nonprofits typically fall into three categories of UI. One of those categories is self-insuring, which is where charitable nonprofits elect to provide their own coverage instead of paying state unemployment taxes (SUTA). However, nonprofits who take this option must reimburse the state unemployment insurance trust funds for benefits terminated or laid off employees claim
- The CARES Act only reimburses self-insured nonprofits for half of the costs of benefits provided to their laid-off employees
- The Council of Nonprofits has proposed that state governments temporarily waive requirements that self-insured nonprofits repay state UI trust funds for claims arising as a result of coronavirus-related reasons.

Work Sharing Programs

- States that have an existing short-term compensation program can get 100% federal reimbursement for their costs related to that program.
- States that enact a short-term compensation program after enactment will also be eligible for reimbursement.
- States without a law can enter into an agreement with the Department of Labor to begin providing short-term compensation payments.
- Employers participating in a short-term compensation program will pay half the cost to the state.
- \$100 million in grants are made available for states to develop short-term compensation programs, and the Secretary of Labor will develop model legislation.