

*This article presents general guidelines for Georgia nonprofit organizations as of the date written and should not be construed as legal advice. Always consult an attorney to address your particular situation.*

## **How to Get Loans Under The CARES Act: The Paycheck Protection Program**

The CARES Act (Coronavirus Aid, Relief, and Economic Security Act), which passed in the U.S. Congress and is expected to be signed into law, consists of a number of sections. This article is focused on Division A Title I only - the “Keeping American Workers Paid and Employed Act.”

The CARES Act amends the Small Business Act to create a new Paycheck Protection Business Loan Program. For a limited time, the Small Business Administration (SBA) will provide 100% federally-backed loans up to a maximum amount to nonprofit organizations with 500 or fewer employees (and will waive its normal entity affiliation restrictions) to help pay operational costs like payroll, rent, health benefits, insurance premiums, utilities, etc. In addition, some of these loan amounts are forgivable.

The SBA will provide the loans directly or through authorized SBA lenders. These lenders are already preapproved lenders so there should not be a delay in getting the loan process started due to the need to approve lenders. The SBA may add additional lenders.

Here are the details:

### **General Loan Provisions**

- The “Covered Period” is February 15, 2020 – June 30, 2020
- The loan interest rate will not exceed 4%
- The loan may be repaid over a maximum of 10 years
- No subsidy recoupment fee will be associated with the loans
- No prepayment penalty will apply
- No collateral or personal guarantee is permitted to be required for a loan
- Certain SBA fees are waived and no requirement that nonprofit is unable to obtain credit elsewhere
- Nonprofits may receive deferrals of principal and interest payments for a period from 6 months to 1 year
- The SBA will not be able to recover loan funds for nonpayment from any individual, officer, director of an eligible loan unless the individual uses the loan proceeds for unauthorized purposes

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- A loan made under the SBA's Disaster Loan Program on or after January 31, 2020, may be refinanced as part of a covered loan under this new CARES Act program even if the use is outside the purposes permitted under this program

### **Nonprofit Borrower Requirements**

Among the few nonprofit borrower requirements, the nonprofit must include a good-faith certification that:

- The nonprofit must have been operating on February 15, 2020;
- The nonprofit must have had employees or independent contractors on February 15, 2020
- The loan is needed to continue operations during the COVID-19 emergency;
- Funds will be used to keep workers, maintain payroll or make mortgage, lease, and utility payments;
- The applicant does not have any other application pending under this program for the same purpose; and
- From February 15, 2020 until December 31, 2020, the applicant has not received duplicative amounts under this program.

### **Available Loan Amount**

The available loan amount for a single nonprofit is a very specific calculation based upon monthly payroll. The amount is the **LESSER** of:

#### Option 1:

- 2.5 times average total monthly payroll costs incurred in the one-year period before the loan is made<sup>1</sup>;
- PLUS (if it applies) the outstanding loan amount made under the SBA's Disaster Loan Program between January 31, 2020 and the date on which such loan may be refinanced as part of this new CARES program;

OR

#### Option 2:

For businesses that were not in existence during the period from February 15, 2019 to June 30, 2019:

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<sup>1</sup> For seasonal employers, it is the average monthly payroll costs for the 12 weeks beginning on February 15, 2019, or from March 1, 2019 to June 30, 2019.

- 2.5 times the average total monthly payroll payments from January 1, 2020 to February 29, 2020;
- PLUS (if it applies) the outstanding loan amount made under the SBA's Disaster Loan Program between January 31, 2020 and the date on which such loan may be refinanced as part of this new CARES program;

OR

Option 3: \$10 million.

For most if not all of Pro Bono Partnership of Atlanta's clients, Option 1 will apply.

### **How the Loan May be Used**

The loan is contemplated to be used during the Covered Period of February 15, 2020 – June 30, 2020. In addition to uses already allowed under the SBA's Business Loan Program, nonprofits may use the loan for:

- Payroll costs:
  - Including: compensation to employees; paid leave; severance payments; payment of group health benefits (including insurance premiums); retirement benefits; state and local payroll taxes; and compensation to independent contractors up to \$100,000 in one year but prorated for the covered period;
  - Excluding: individual employee compensation above \$100,000 per year but prorated for the covered period; certain federal taxes; compensation to employees who principally reside outside of the US; and sick and family leave wages credited under the Families First Act;
- Group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums;
- Payments of interest on mortgage obligations and/or rent/lease payments;
- Utilities; and
- Interest on any other debt obligations incurred before February 15, 2020.

### **Loan Repayment Deferral**

Nonprofits operating on February 15, 2020 who receive a loan under the CARES program may defer the principal, interest and fees on its CARES program loan for six months to a year.

## Loan Forgiveness

The CARES Act has a loan forgiveness provision. Specifically, the loan debt amounts equal to the following costs incurred and payments made from February 15, 2020 – June 30, 2020 will be forgiven (not to exceed the principal amount of the loan):

- Payroll costs;
- Interest payments on mortgages;
- Rent; and
- Utility payments.

If a nonprofit is obtaining payroll tax credits for paid sick leave or FMLA payments under the Families First Act, the loan forgiveness does not include these costs.

**However, the forgiveness amount will be reduced for any employee cuts or reductions in wages.**

### *How to Calculate Reductions for Employee Cuts*

The reduction formula for fewer employees is:

The maximum available forgiveness explained above	X	Average number of full-time equivalent employees (FTEEs) per month (calculated by the average number of FTEEs for each pay period falling within a month during the covered period)
Average number of FTEEs per month employed from February 15, 2019 to June 30, 2019	OR	Average number of FTEEs per month employed from January 1, 2020 until February 29, 2020

So, for example:

- a. Nonprofit A's total potential forgiveness is \$60,000 (all expenses described above incurred from February 15 – June 30, 2020).
- b. Nonprofit A has 2 pay periods per month and in Pay Period 1 has 10 FTEEs and in Pay Period 2 has 6 FTEEs

FTEEs Pay Period 1 (10)	+	FTEEs Pay Period 2 (6)	10	+	6	16	
							=8
Total Pay Periods per Month (2)			2			2	

- c. For the denominator, Nonprofit A chooses to use the average number of FTEEs employed from February 15 - June 30, 2020, and Nonprofit A's average number of FTEEs is 9.
- d. Then the final calculation is:

$$\frac{\$60,000 \times 8}{9} = \$53,333 \text{ is the new amount eligible for forgiveness}$$

Note that this formula will be used to reduce forgiveness amounts, but cannot be used to increase them.

### ***How to Calculate Reduction of Wages***

If the nonprofit reduces an employee's wages during the covered period (February 15 – June 30, 2020) by more than 25% of the employee's wages that were paid in the most recent full quarter of employment before February 15, 2020, the amount that can be forgiven is reduced by the amount of the salary reduction. In this section only of the CARES Act, "employee" is defined as any employee who did not receive in any single 2019 pay period salary or wages at an annualized rate of pay over \$100,000.

If the nonprofit rehires the employees or makes up for wage reductions by June 30, 2020, the loan forgiveness reduction will not apply. Specifically, in the following

circumstances, the forgiveness reduction rules above will not apply to a nonprofit between February 15, 2020 and approximately April 26, 2020<sup>2</sup> if:

- Nonprofit reduces the number of FTEEs in this period and, not later than June 30, 2020, nonprofit has eliminated the reduction in FTEEs; or
- Nonprofit reduces salary (compared to salary on February 15, 2020), during this period for one or more employees and that reduction is eliminated by June 30, 2020 (it is unclear whether this is also intended to be limited to employees who made under \$100,000 in 2019).

Also, emergency advances received under the expanded SBA Disaster Loan Program discussed below will be excluded from forgiveness amounts.

**Nonprofits must submit the following to their lender in order to receive the forgiveness amounts of the loan:**

- Documentation verifying FTEEs on payroll and their pay rates;
- Documentation on covered costs/payments (e.g., documents verifying mortgage, rent, and utility payments);
- Certification from an officer of the nonprofit that the documentation is true and correct and that forgiveness amounts requested were used to retain employees and make other forgiveness-eligible payments; and
- Any other documentation the SBA may require.

The SBA may issue regulations regarding these forgiveness provisions within 15-30 days of the passage of the CARES Act.

***If you are considering reducing wages of your employees between now and approximately April 26, 2020 and plan to apply for loan under this CARES Act program, consider whether the loan forgiveness option is a better business approach.***

**CARES Act – Other Loan Options or Changes**

The CARES Act is also expected to:

- Increase Express Loans from \$350,000 to \$1 million.

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<sup>2</sup> 30 days following enactment of the CARES Act

- Expand eligibility for nonprofits applying for an Emergency Economic Injury Disaster Loan (EIDL). For more information on EIDL grants and changes under The CARES Act see [link](#).

To apply for a loan under the CARES Act, information should be available soon at <https://www.sba.gov/page/coronavirus-covid-19-small-business-guidance-loan-resource>