

Key Provisions of the CARES Act Economic Relief Plan

By Ted R. Batson, Jr., Partner and Tax Counsel

On March 27, 2020, President Trump signed into law the [Coronavirus Aid, Relief, and Economic Security Act](#) (the “CARES Act”), which is estimated to provide more than \$2 trillion in economic aid in response to the COVID-19 pandemic.

Below is a summary of several key provisions for nonprofits, churches, educational institutions, and individuals to be aware of.

New Federal Pandemic Unemployment Assistance

The CARES Act creates a new federally funded Pandemic Unemployment Assistance benefit designed to provide coverage to individuals who otherwise do not qualify for state unemployment benefits. This includes individuals who are not eligible for regular unemployment compensation or extended benefits under state or federal law, self-employed individuals, individuals seeking part-time unemployment, individuals with insufficient work history, or individuals *who otherwise do not qualify for regular unemployment or extended benefits under state or federal law*. **The italicized wording in the previous sentence appears to open the door to unemployment benefits for furloughed or laid-off employees of churches and other employers that are exempt from participation in state unemployment insurance programs.** This benefit also provides a partial benefit for those whose hours have been reduced.

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Eligibility for this benefit hinges on being able and available for work but unemployed, partially unemployed, or unable or unavailable to work for one or more of the following reasons:

- The individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
- A member of the individual’s household has been diagnosed with COVID-19;
- The individual is providing care for a family member or a member of the individual’s household who has been diagnosed with COVID-19;
- **A child** or other person in the household for which the individual has primary caregiving responsibility **is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency** and such school or facility care is required for the individual to work;
- The individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency;
- The individual is unable to reach the place of employment because the individual has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- The individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency;
- The individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID-19;
- The individual has to quit his or her job as a direct result of COVID-19; or
- The individual’s place of employment is closed as a direct result of the COVID-19 public health emergency.

This benefit does not apply to an individual who is able to telework for pay or is receiving paid sick leave or other paid leave benefits.

The standard one-week waiting period for benefit eligibility is waived with respect to this benefit. Benefits are available for 39 weeks of unemployment, partial unemployment, or inability to work because of COVID-19 for weeks beginning on January 27, 2020 and ending on December 31, 2020. This means that individuals unemployed prior to the enactment of the CARES Act will qualify for benefits for weeks of unemployment between January 27, 2020 and March 27, 2020.

The benefit is administered by the states. (Sec. 2102)

Expanded Unemployment Benefits

The CARES Act provides for a federally funded \$600 increase in weekly unemployment benefits.

Relief for Reimbursing Employers

Many nonprofit organizations and governmental entities reimburse the state for unemployment claims by former employees in lieu of paying unemployment insurance premiums. The CARES Act permits the Secretary of Labor to issue guidance allowing the states to provide reimbursing employers flexibility regarding payment terms. In addition, the CARES Act provides for federal payment of up to one-half of the payment obligation of reimbursing employers incurred through December 31, 2020. (Sec. 2103)

Employee Retention Credit

The CARES Act creates a new credit against the FICA tax equal to 50% of qualifying wages paid by eligible employers. An eligible employer is an employer engaged in a trade or business during 2020 that:

1. Was required during any calendar quarter during 2020 to fully or partially suspend operations due to COVID-19; or
2. Experienced a period beginning with the first calendar quarter during 2020 for which gross receipts were less than 50% of the gross receipts from the same calendar quarter in 2019 and ending with the first subsequent calendar quarter during 2020 in which gross receipts were greater than the same calendar quarter in 2019.

It appears that nonprofit employers are eligible employers whether or not they have suspended operations in full or in part.

The definition of qualifying wages differs for employers whose average number of full-time employees during 2019 was more than 100 or less than or equal to 100:

- For eligible employers with more than 100 full-time employees (including full-time equivalent employees) during 2019, qualifying wages are wages paid to an employee who is not providing services due to the full or partial suspension of the employer's operations due to orders from an appropriate governmental authority that limit commerce, travel, or group meetings (for commercial, social, or religious purposes) due to COVID-19.
- For eligible employers with 100 or fewer full-time employees (including full-time equivalent employees) during 2019, wages paid to any employee.

Qualifying wages do not include any amounts paid under the paid leave provisions of the [Families First Coronavirus Response Act](#).

Only \$10,000 of wages per given employee may be taken into account for the purpose of this credit. In addition, with respect to a given employee, qualified wages may not exceed the amount the employee would have been paid for working an equivalent time period during the 30-day period immediately preceding the period for which the credit is being sought. Further, the credit must be reduced by any credit paid under either of the paid leave benefits provided by the Families First Coronavirus Response Act.

In addition to wages, employers may also include an employee's allocable share of the cost of pre-tax group health insurance benefits in the amount eligible for the credit.

If the amount of qualifying wages exceeds the employer's FICA tax liability, the excess amount is a refundable credit.

This credit is not available to an employer who receives a Paycheck Protection Loan. (Sec. 2301)

Deferral of Payment of FICA Tax

The CARES Act permits employers and self-employed individuals to delay payment of the employer share of the FICA tax (in the case of employers) and 50% of the portion of the SECA tax related to old age, survivors, and disability insurance (in the case of self-employed individuals who make estimated tax payments). Employers may pay 50% of their 2020 FICA tax liability by December 31, 2021 and the other 50% of their 2020 FICA tax liability by December 31, 2022.

Similarly, a self-employed individual may delay payment of 50% of the portion of the SECA tax related to old age, survivors, and disability insurance (12.4%) owed for 2020, paying one-half of this amount by December 31, 2021 and the other half by December 31, 2022. (Sec. 2302)

Paycheck Protection Loans

The CARES Act creates a new form of forgivable Small Business Administration (SBA) loan, the Paycheck Protection Loan, which an employer may use to cover payroll costs, mortgage interest payments, rent payments, and utilities. The maximum amount of the loan is 2.5 times the employer's average monthly payroll cost, up to \$10 million. Loans are generally available to employers with 500 or fewer full-time and/or part-time employees.

Up to 100% of the loan principal may be forgiven based on the amount used for payroll costs, mortgage interest payments, rent payments, and utilities during the eight-week period following the loan origination date. Downward adjustments to the loan forgiveness amount are required for reductions in headcount or salary and wage amounts. (Secs. 1102 and 1106) In addition, any Economic Injury Disaster Loan advance made reduces the amount of loan forgiveness available.

Learn more in our article on [How the Paycheck Protection Loan Program Applies to Nonprofit Organizations](#).

Economic Injury Disaster Loans

Between January 31, 2020 and December 31, 2020, businesses and nonprofit organizations with 500 or fewer employees may apply to the SBA for Economic Injury Disaster Loans (EIDL) under special terms. If the loan is made during this period in response to COVID-19, the SBA will waive the requirements that:

- Personal guarantees are provided on advances and loans up to \$200,000;
- The applicant has been in business for more than one year so long as the business was in operation on January 31, 2020; and
- The applicant is unable to obtain credit elsewhere.

In addition, approval may be based solely on an applicant's credit score without submission of a tax return or on other appropriate methods for determining an applicant's ability to repay.

According to the [SBA website](#), an EIDL may be made for up to \$2 million with nonprofits eligible for a 2.75% rate of interest. Repayment terms may extend for up to 30 years.

A nonprofit can apply for an EIDL using the SBA's [Coronavirus Online EIDL Application](#).

An EIDL applicant may request an advance against the requested loan balance of up to \$10,000 to be provided within three days of receipt of the applicant's loan application by the SBA. The advanced funds may be used to:

- Maintain payroll to retain employees during a business disruption or substantial slowdown.
- Provide paid sick leave to employees unable to work due to COVID-19.
- Meet the increased cost to obtain materials due to interrupted supply chains.
- Make rent or mortgage payments.
- Repay obligations that cannot be met due to revenue losses. Any amount advanced is required to be repaid if the applicant's loan is subsequently denied. (Sec. 1110)

An EIDL advance is not required to be repaid, even if the EIDL applicant is subsequently denied an EIDL. However, an EIDL advance reduces the amount of loan forgiveness available for a Paycheck Protection Loan.

Temporary Relaxation of the Net Operating Loss Rules

The CARES Act permits net operating losses arising in 2017, 2018, and 2019 to be carried back for five years and includes a special waiver of the statute of limitations to permit returns outside the statute to be filed to claim a refund. The CARES Act also allows net operating losses arising prior to 2020 to fully offset 2020 net income. (Sec. 2303)

An Economic Injury Disaster Loan (EIDL) may be made for up to \$2 million with nonprofits eligible for a 2.75% rate of interest. Repayment terms may extend for up to 30 years.

Payments to Individuals

Termed “recovery rebates,” the CARES Act provides for a one-time payment of \$1,200 (\$2,400 in the case of a married couple filing a joint return) plus \$500 per qualifying child. The amount of the payment phases out at a rate of 5% of the excess over a dollar threshold based on filing status. The table below summarizes the dollar threshold and amount at which the phase-out is complete.

Filing Status	Adjusted Gross Income Threshold	Phase-out Complete
Married Filing Joint	\$150,000	\$198,000
Head of Household	\$125,000	\$149,000
Single	\$75,000	\$99,000
Married Filing Single	\$75,000	\$99,000

In determining the appropriate thresholds, the IRS will use a taxpayer’s 2019 return if filed or, alternatively, the taxpayer’s 2018 return.

A recovery rebate is not permitted to an individual who may be claimed as a dependent or to a non-resident alien. (Sec. 2201)

“Above-the-line” Charitable Contribution Deduction for Non-itemizers

For 2020 only, each taxpayer *who does not itemize his or her deductions* may claim a charitable contribution deduction of up to \$300 for the taxable year for cash contributions made to a public charity that is not a supporting organization or donor-advised fund. This new provision does not permit an above-the-line deduction for unused charitable contributions carried forward from a prior year. (Sec. 2204)

The CARES Act does not explicitly address whether couples filing a joint return may claim \$300 each, but the reference in the statute to the deduction being available to an “eligible individual” would seem to imply this is the case.

Modification of Charitable Deduction Limit

The CARES Act effectively expands the limit on the deductibility of cash contributions made by individuals to a public charity during 2020 from 50% of adjusted gross income to 100% of adjusted gross income. The limit for noncash contributions remains at 30% of adjusted gross income. The limit on the deductibility of corporate

contributions of cash made during 2020 is increased from 10% of net taxable income (before taking into account charitable contributions) to 25%. The limit for noncash contributions made by a corporation remains at 10%.

As with the above-the-line contribution deduction for non-itemizers, the change in the charitable deduction limit does not apply to cash contributions made to a supporting organization or donor-advised fund. (Sec. 2205)

Waiver of Required Minimum Distributions

The CARES Act temporarily (for 2020) waives required minimum distributions from a 401(k) plan, a 403(b) plan, a governmental 457(b) plan, or an individual retirement plan (an IRA). (Sec. 2203)

Coronavirus-Related Withdrawals from Retirement Plans

The CARES Act waives the 10% early withdrawal penalty for coronavirus-related withdrawals of up to \$100,000 from retirement plans. A coronavirus-related withdrawal is a payment made on or after January 1, 2020 and before December 31, 2020 to an individual:

- Who is diagnosed with either the SARS-CoV-2 or COVID-19 virus by a test approved by the Centers for Disease Control;
- Whose spouse or dependent is diagnosed with either virus; or
- Who experiences adverse financial consequences as a result of being quarantined, being furloughed, laid off, or having work hours reduced due to either virus, being unable to work due to lack of child care due to either virus, closing or reducing hours by a business or individual due to either virus, or other factors determined by the Secretary of the Treasury.

Eligible retirement plans include 401(k) plans, 403(b) plans, governmental 457(b) plans, and individual retirement plans (IRAs).

While coronavirus-related withdrawals are subject to income tax, one-third of the withdrawal is includable in 2020, one-third in 2021, and one-third in 2022. Withdrawals may be repaid in one or more installments during the three-year period beginning the day after the distribution is received (Sec. 2202).

New Exclusion for Student Loan Payments Made by an Employer

The CARES Act expands the definition of educational assistance under Internal Revenue Code (IRC)

§ 127(c)(1) to include payments by an employer to an employee or lender for the purpose of paying the principal or interest on a qualified student loan (as that term is defined in IRC § 221(d)). To avoid a double tax benefit, any interest paid using funds covered by this exclusion are not deductible under IRC § 221(a). (Sec. 2206)

Summary

Note that the CARES Act is separate from the Families First Coronavirus Response Act, which expanded the circumstances under which the Family and Medical Leave Act may permit employees to take leave and provided a new Emergency Paid Sick Leave benefit. Learn more about the Families First Coronavirus Response Act [here](#).

Please [contact us online](#) or at info@capincrouse.com with questions or to discuss how we can assist you. Our entire workforce is equipped and trained to work remotely, and we are here to help.

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