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

Significant Updates to this Article Made 4/3/2020

LOANS MAY BE AVAILABLE FRIDAY, APRIL 3, 2020

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) 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 (PPP). For a limited time (until June 30, 2020), 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, and utilities. In addition, some of these loan amounts are forgivable.

The SBA will provide the loans through authorized SBA 7(a) lenders, any FDIC insured bank, any federally insured credit union, and any farm credit system institution that is participating. The CARES Act has many requirements of lenders who are providing loans under the CARES Act. The current guidance for those lenders is still evolving, so while applications may be available on Friday, April 3, 2020, many banks may not be ready to process those loans on that date.

If you are going to apply for a PPP loan, reach out to your bank now to see if you can schedule a call and begin to gather the materials you will need. The application is found here. If your bank is not participating in the PPP loans, begin doing research now on finding a lender to use. The SBA has a list of vendors at this link. Some banks may prioritize their existing clients before outside clients, so it may take some time and work to find a lender.

Here are the details of the PPP:

General Loan Provisions

- The “Covered Period” is February 15, 2020 – June 30, 2020
- The loan’s fixed interest rate will be 1%
- The loan may be repaid over a maximum of 2 years
- No up-front guarantee fee and no 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 payments for a period of 6 months but interest will accrue during this time.
- The SBA will not be able to recover loan funds for nonpayment from any individual, officer, or director of an eligible loan unless the individual uses the loan proceeds for unauthorized purposes
- A loan made under the SBA’s Economic Injury Disaster Loan Program (EIDL) on or after January 31, 2020 may be refinanced as part of a covered loan under the PPP 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 includes, but is not limited to the following:

- The nonprofit was operating on February 15, 2020;
- The nonprofit had employees or independent contractors on February 15, 2020;
- The loan is needed to continue operations during the COVID-19 emergency;
- At least 75% of the funds will be used to keep workers and maintain payroll and 25% may be used to make mortgage, lease, and utility payments;
- The applicant does not have any other applications pending under this program for the same purpose;
- From February 15, 2020 until December 31, 2020, the applicant has not received duplicative amounts under this program;
- The nonprofit will provide lender documentation that verifies the number of full-time equivalent employees on payroll and the dollar amounts of payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities for the eight weeks after getting this loan;
- All the information the nonprofit provided in its application and in all supporting documents and forms is true and accurate. Knowingly making a false statement

to get a loan under this program is punishable by law; and

- The nonprofit understands the lender will calculate the eligible loan amount using the tax documents submitted, and nonprofit will affirm that the tax documents are identical to those the nonprofit submitted to the IRS. The nonprofit also understands, acknowledges, and agrees that the lender can share the tax information with the SBA's authorized representatives, including authorized representatives of the SBA Office of Inspector General, for the purpose of compliance with SBA Loan Program Requirements and all SBA reviews.

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[1];
- PLUS (if it applies) the outstanding amount of any EIDL loan made between January 31, 2020 and April 3, 2020 less the amount of any "advance" under an EIDL COVID-19 loan (because it does not have to be repaid).

OR

Option 2:

For businesses that were not in existence during the period from February 15, 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 amount of any EIDL loan made between January 31, 2020 and April 3, 2020 less the amount of any "advance" under an EIDL COVID-19 loan (because it does not have to be repaid).

OR

Option 3: $10 million.

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

[1]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.

What is included in the average monthly "payroll costs" of nonprofits for the loan application?

The average monthly sum of payments of any compensation with respect to employees includes:

- Salary, wage, commission, or similar compensation[2] (capped at $100,000 on an annualized basis for each employee and limited to employees who principally reside in the US) *which will need to be evidenced by documentation such as payroll processor records, payroll tax filings, or Form 1099-MISC and if the nonprofit doesn't have such records, then nonprofits can provide supporting documentation, such as bank records, sufficient to demonstrate the qualifying payroll amount,*
- Payment for vacation, parental, family, medical, or sick leave,
- Allowance for dismissal or separation,
- Payment required for the provisions of group health care benefits, including insurance premiums,
- Payment of any retirement benefit, and
- Payment of state or local tax assessed on the compensation of the employee.

Treasury has provided 4 examples:

1. No employees make more than $100,000. Annual payroll is $120,000.
   a. Average monthly payroll = $10,000. Multiply by 2.5 = $25,000.
   b. Maximum loan amount is $25,000.

2. Some employees make more than $100,000. Annual payroll is $1,500,000.
   a. Subtract compensation amounts in excess of an annual salary of $100,000 from annual payroll = $1,200,000. Average monthly qualifying payroll = $100,000. Multiply by 2.5 = $250,000.
   b. Maximum loan amount is $250,000.

3. No employees make more than $100,000. Outstanding EIDL loan of $10,000. Annual payroll is $120,000.
   a. Average monthly payroll = $10,000. Multiply by 2.5 = $25,000. Add EIDL loan of $10,000 = $35,000.
   b. Maximum loan amount is $35,000

[2] **This does NOT include independent contractors. They must apply on their own.**

4. Some employees make more than $100,000. Outstanding EIDL loan of $10,000. Annual payroll is $1,500,000.
    a. Subtract compensation amounts in excess of an annual salary of $100,000 from annual payroll: $1,200,000. Average monthly qualifying payroll = $100,000. Multiply by 2.5 = $250,000. Add EIDL loan of $10,000 = $260,000.
    b. Maximum loan amount is $260,000.

How the Loan May be Used

The loan is contemplated to be used during the Covered Period of February 15, 2020 – June 30, 2020 and within an eight-week period upon receipt of the loan. At least 75% of the loan must be used for payroll costs and the rest may be used for the additional items listed below.

- Payroll costs:
    - <u>Including</u>: compensation to employees up to $100,000 in one year but prorated for the covered period; paid leave; severance payments; payment of group health benefits (including insurance premiums); retirement benefits; state and local payroll taxes; and group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums;

    - <u>Excluding</u>: 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;

- Payments of interest on mortgage obligations (which shall not include any prepayment of or payment of principal on a mortgage obligation) incurred before February 15, 2020;
- Rent/lease payments under lease agreements in force before February 15, 2020;
- Utilities (electric, gas, water, transportation, telephone and internet access) for which service began before February 15, 2020; and
- Interest on any other debt obligations incurred before February 15, 2020 (this is not forgivable).

Loan Repayment Deferral

Nonprofits operating on February 15, 2020 who receive a PPP loan may defer payment of the principal and interest for six months but the interest will continue to accrue.

Loan Forgiveness

The PPP has a loan forgiveness provision. Specifically, all the costs describe above in the “How the Loan May be Used” section are forgivable (up to the amount of the loan) **other than**:

- Interest on any other debt obligations incurred before February 15, 2020;
- 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; and
- If a nonprofit is obtaining tax credits under the Employee Retention Credit, the loan forgiveness does not include these costs.

It is important to note that at least 75% of the forgiven amount must have been used for payroll expenses.

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

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

$$\frac{\text{FTEEs Pay Period 1 (10)} + \text{FTEEs Pay Period 2 (6)}}{\text{Total Pay Periods per Month (2)}} \qquad \frac{10 + 6}{2} \quad \frac{16}{2} = 8$$

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 use 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 eliminates 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[3] if:

[3] 30 days following enactment of the CARES Act

- 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).

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 lender must make a decision on the loan forgiveness within 60-days.

If you are cplanning to reduce wages of your employees between now and approximately April 26, 2020 and plan to apply for a PPP loan, consider fully restoring those employees' positions and salary levels before June 30, 2020 in order to take advantage of the full amount of loan forgiveness.

CARES Act – Other Loan Options or Changes

The CARES Act also:

- Increased Express Loans from $350,000 to $1 million.
- Expanded eligibility for nonprofits applying for EIDL loans. For more information on EIDL, see link.

For more information about the PPP, see: link.

COVID-19 Assistance Options Overall

There are many options nonprofits can consider for assistance during the COVID-19 crisis:

1. The PPP (described in this article)
2. Tax Credits under the Families First Coronavirus Response Act (click here for more information)
3. An advance loan under EIDL
4. A full loan under EIDL (click here for more information on both 3 and 4.)
5. The Employee Retention Credit under the CARES Act. (click here and here for more information)

Some of these options provide funding for the same expenses, so if a nonprofit takes advantage of one option to address an expense, it cannot take advantage of another option for the same expense. Carefully review each article and think through the expenses your nonprofit needs to cover during this crisis.

If you need additional guidance, contact your PBPA attorney.