

April 1, 2020 CARES Act Briefing for Nonprofits

Agenda

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- 1 Overview & Update: Federal Stimulus Programs

 - 2 Deep Dive on the Paycheck Protection Program (“PPP”)

 - 3 Employment Considerations in a Time of Crisis

 - 4 Steps to Consider

 - 5 What Comes Next
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The information provided is not intended to constitute legal advice; instead, all information, content, and materials are for general informational purposes only

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Coronavirus Aid, Relief, and Economic Security Act ("CARES Act")

By the Numbers



Stimulus and Nonprofits

- The CARES Act was enacted on Friday, March 27
- The Act set up a new lending program (the “PPP”) by expanding the authority of the existing 7(a) SBA program
- Available to nonprofits with **no more than 500 employees**
- May be available to individuals that qualify as self-employed, sole proprietors, or independent contractors
- The **Small Business Administration (“SBA”)** is **required to issue regulations within 30 days** after the enactment of the CARES Act
- Other elements of the CARES Act of **potential value to nonprofits** include:
 - SBA Emergency Disaster Loans
 - Employee Retention Tax Credit
 - Expanded charitable deductions
- While this plays out, nonprofits should get educated on various funding sources/programs that they **may be eligible for**



Blueprint for the Weeks Ahead



Understand Key Programs

Programs have different loan size limits, underwriting requirements and allowable uses

Leveraging one program may preclude you from participating in another

Option(s) based on qualification & circumstances



Set Your Strategy

Balancing cash realities with key employment decisions and potential consequences for some loan/loan forgiveness programs

Option(s) based on objectives & circumstances



Prepare to Execute

SBA regulations and specifics of the application process for some program elements are not yet in place, but there are things you can do now to prepare

Data Collection and internal planning

Key Programs & Funding Sources

Program	Summary	Considerations for Nonprofits
<p>Economic Injury Disaster Loans (EIDL)</p>	<ul style="list-style-type: none"> Loans of up to \$2M for organizations impacted by COVID-19 “Substantial economic injury” and located in declared disaster area Allows use for working capital 	<ul style="list-style-type: none"> Collateral Requirements may be issue depending on existing debt covenants Affiliation rules
<p>7(a) (“Paycheck Protection Program” or “PPP”)</p>	<ul style="list-style-type: none"> Loans of up to \$10M for small businesses impacted by COVID-19 Payroll formula determines loan amt Allows use for payroll, rent, utilities 	<ul style="list-style-type: none"> No Collateral Requirements Deferred re-payment Debt forgiveness component Affiliation rules
<p>Payroll Tax Deferral</p>	<ul style="list-style-type: none"> Allows employers to defer paying their portion of the social security payroll tax (6.2 percent) otherwise due 	<ul style="list-style-type: none"> The Act specifies that applicants for payroll tax deferral are <u>not eligible</u> for “PPP” loans
<p>7(a) SBA Express Loans</p>	<ul style="list-style-type: none"> Loans of up to \$1M processed on expedited basis 	<ul style="list-style-type: none"> Credit decisions made by SBA lenders Can require collateral Affiliation rules

Unpacking the CARES Act: Paycheck Protection Program (“PPP loan” or “PPP”)

Profile

The PPP provides short-term cash flow assistance to [qualifying Nonprofits](#) to help these Nonprofits and their employees deal with the immediate economic impact of the COVID-19 pandemic. Loans are made by lenders certified by the SBA and guaranteed by the federal government. The SBA will administer the PPP.

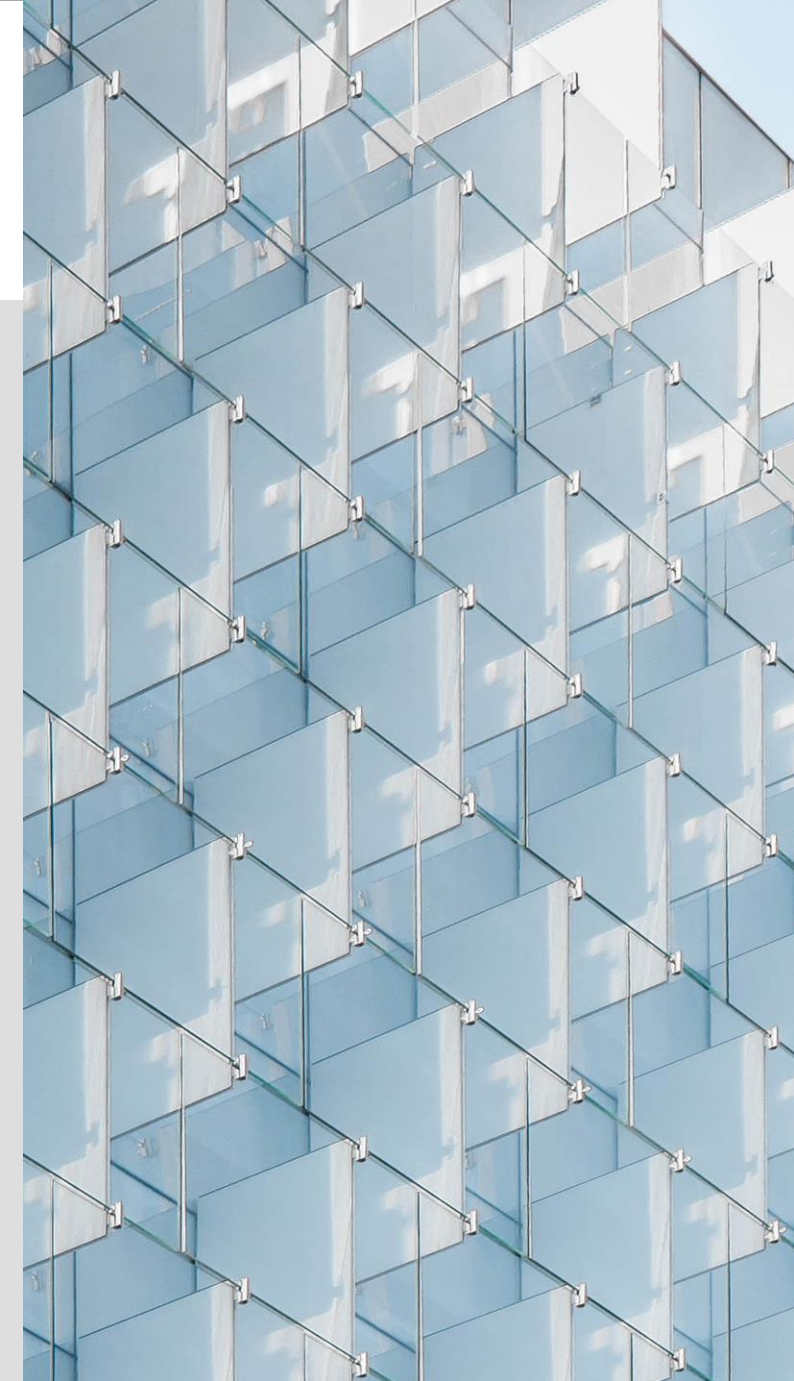
Overview

\$10M Maximum loan amounts through 12/31/20	Up to 4% Interest	Up to 10 years Loan Term w/ 6-12 months deferral relief on principal/interest and loan forgiveness provisions
Zero Loan Fees & Prepayment Penalties	No Collateral or Personal Guarantee Requirements	

Do I Qualify for a PPP Loan?

Eligibility

- CARES Act establishes Section 7(a) Paycheck Protection Program (PPP) making forgivable loans available for qualified expenses
 - [Nonprofits explicitly eligible](#)
 - CARES Act allocates [\\$349 billion Paycheck Protection Program](#)
- Eligible Nonprofits include:
 - 501(c)(3) organizations
 - Veterans groups
 - Tribal organizations
- Qualifying Nonprofits [may not have more than 500 employees](#)
- Other qualifying entities include “small business concerns” and “other business concerns” meeting certain employee limits (the greater of 500 employees or the maximum established under the NAICS code)



How Much Do I Get?

Loan Size

Depending on your Nonprofit's situation, the loan size will be calculated in different ways (see below). **The maximum loan size is always \$10 million.**

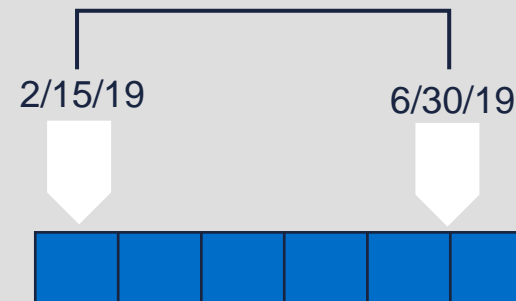
- General rule: **the max loan is equal to 250 percent of the average monthly payroll for the one year period before the loan is made**
- Seasonal employers: February 15-June 30 is the timeline for seasonal employers (as determined by the Administrator). For them, the average total monthly payments for payroll will be for the 12 week period beginning either Feb 15, 2019 or March 1, 2019 (at the employer's election), and ending June 30, 2019
- If you were not in business between February 15, 2019 – June 30, 2019: Your max loan is equal to 250 percent of your average monthly payroll costs between January 1, 2020 and February 29, 2020

General Rule

Average Monthly Payroll (12 months prior to loan)
* 250% = **Loan Size**

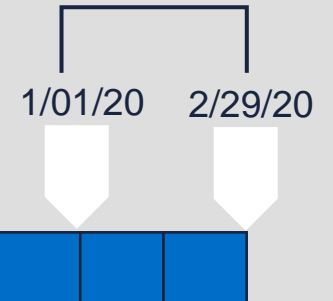
Seasonal Employers

Average Monthly Payroll
* 250% = **Loan Size**



Companies not in business between 1/15/19-6/30/19

Average Monthly Payroll
* 250% = **Loan Size**



How Much Do I Get?

Payroll Cost Calculation

Costs eligible for payroll:

- Compensation (salary, wage, commission, or similar compensation, payment of cash tip or equivalent)
- 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
- Payment of State or local tax assessed on the compensation of employee
- Compensation to independent contractors

Costs not eligible for payroll:

- Employee compensation **over** \$100,000
- Taxes imposed or withheld under chapters 21, 22, and 24 of the IRS code
- Compensation of employees whose principal place of residence is outside of the U.S
- Qualified sick and family leave for which a credit is allowed under sections 7001 and 7003 of the *Families First Coronavirus Response Act*

How Can I Spend Loan Proceeds?

Allowable Uses for Loan Proceeds

- Payroll costs (as noted above)
- Costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums
- Employee salaries, commissions, or similar compensations (see exclusions above)
- Payments of interest on any mortgage obligation (which shall not include any prepayment of or payment of principal on a mortgage obligation)
- Rent (including rent under a lease agreement)
- Utilities (electric, gas, water, transportation, telephone and internet access)
- [Utilities, rent and mortgage obligations have to be obligations of the borrower existing prior to Feb 15, 2020](#)
- Interest on any other debt obligations that were incurred before the covered period

Loan Terms

- The maximum term is 10 years, the maximum interest rate is 4 percent, zero loan fees, zero prepayment fee (SBA will establish application fees caps for lenders that charge)

How Much PPP Gets Forgiven?

Forgiveness

- Forgiveness on a covered loan is equal to the sum of the following payroll costs incurred during the covered 8 week period compared to the previous year or time period, proportionate to maintaining employees and wages (excluding compensation over \$100,000):
 - Payroll costs **plus** any payment of interest on any covered mortgage obligation (not including any prepayment or payment of principal on a covered mortgage obligation) **plus** any payment on any covered rent obligation **plus** any covered utility payment

Process for Forgiveness

- To receive forgiveness, you must apply through your lender for forgiveness on the loan. Although specific details are still forthcoming, in this application, you will likely need to include:
 - Documentation verifying the number of employees on payroll and pay rates, including IRS payroll tax filings and State income, payroll and unemployment insurance filings
 - Documentation verifying payments on covered mortgage obligations, lease obligations, and utilities
 - Certification from a representative of your organization that is authorized to certify that the documentation provided is true and that the amount that is being forgiven was used in accordance with the program's guidelines for use

Employment Considerations

Furloughs

Mandatory period of unpaid leave implemented by companies to adjust budgets for a temporary period until the financial side of the organization improves or the organization's strategy settles down.

- Employees are still employed
- Typically not required to pay out accrued PTO unless furlough is too indefinite, but need to check with state law
- Eligible for unemployment benefits on day 1 with federal government funding waiting week
- Large Nonprofits (50 or more FTEs) must continue group health insurance coverage
- Smaller Nonprofits (under 50 FTEs) typically can continue group health insurance coverage but must confirm with broker and plan documents

Layoffs

RIFs or layoffs are when an organization terminates employment and reduces its workforce.

- Employment ends
- Must pay out accrued PTO pursuant to policies/state law
- Employees eligible for unemployment benefits
- Participation in the group health insurance plan ends, but employees can elect to continue coverage through COBRA or similar state insurance law

Employment Considerations

Unemployment Benefits Stimulus

- UI benefits are determined by state and typically range between 40% - 60%, depending on income level with max cap
- An additional \$600/week will be funded by the federal government for up to 4 months
- UI benefits are typically provided for up to 26 weeks, but federal stimulus package will extend benefits for up to 13 weeks additional weeks



Steps to Consider

- Consider the pros and cons of Furlough vs. Layoffs
- If you are preparing your organization's paperwork, consider gathering:
 - Complete payroll cost estimates, including payroll registry, mortgage/rent and utility obligations for appropriate period(s) outlined (including salary caps at \$100,000)
 - Last three fiscal year end financials (minimum tax returns)
 - Year to date financials for February 15, 2020 with prior period comparable
 - February 15, 2020 financials through application, broken out as a separate period (to isolate the negative impact)
 - 2020 payroll period reports (allow for isolation of payroll costs)
 - Any other information pertaining to negative financial impact of the virus (e.g., loss of sponsorships/donations, etc.)
- Begin to consider 7a lenders
- Plan to put processes in place such as separate bank account and ledger to track that funds are used for approved forgivable purposes

Other Programs to Consider: Economic Injury Disaster Loans (EIDL)

Profile

Up to \$2M

Loan Amounts

3.75%

Interest Rate for
small business

21

Days from
Documentation
to Approval
Guidance

30 Years

Loan Term

2.75%

Interest Rate for
Nonprofits

30-45

Days to Cash
Guidance

Qualifications

- Headquartered in state that has declared COVID-19 Disaster
- Small business: <\$50M Revenues/under 100 EEs
- Nonprofits (not religious or charitable organizations)

Uses

- Working capital loans to pay fixed debts, payroll, accounts payable and other bills that could have been paid had the disaster not occurred; **cannot be used to replace lost sales or profits or for expansion**
- **Businesses may receive both PPP loans and EIDLs, so long as both loans are not used for the same purpose or otherwise duplicative**

Considerations

- Eligibility based on size and type of business and its financial resources (as determined by SBA)
- Loans over \$200,000 **may require collateral/guarantee as determined by the SBA** during the review of the application
- Affiliation rules apply

Other Programs to Consider: Payroll Tax Deferral & Retention Credits

Payroll Tax Deferral

The Act allows employers (and self-employed individuals) to [defer paying their portion of the social security payroll tax](#) (6.2 percent) otherwise due for the period ending December 31, 2020. Such deferred taxes are due in two installments: 50% by December 31, 2021, and 50% by December 31, 2022.

This payroll tax deferral applies to all employers, with no requirement to show any specific COVID-19-related impact. However, [the deferral is not available to any employer that receives loan forgiveness with respect to the “PPP” program.](#)

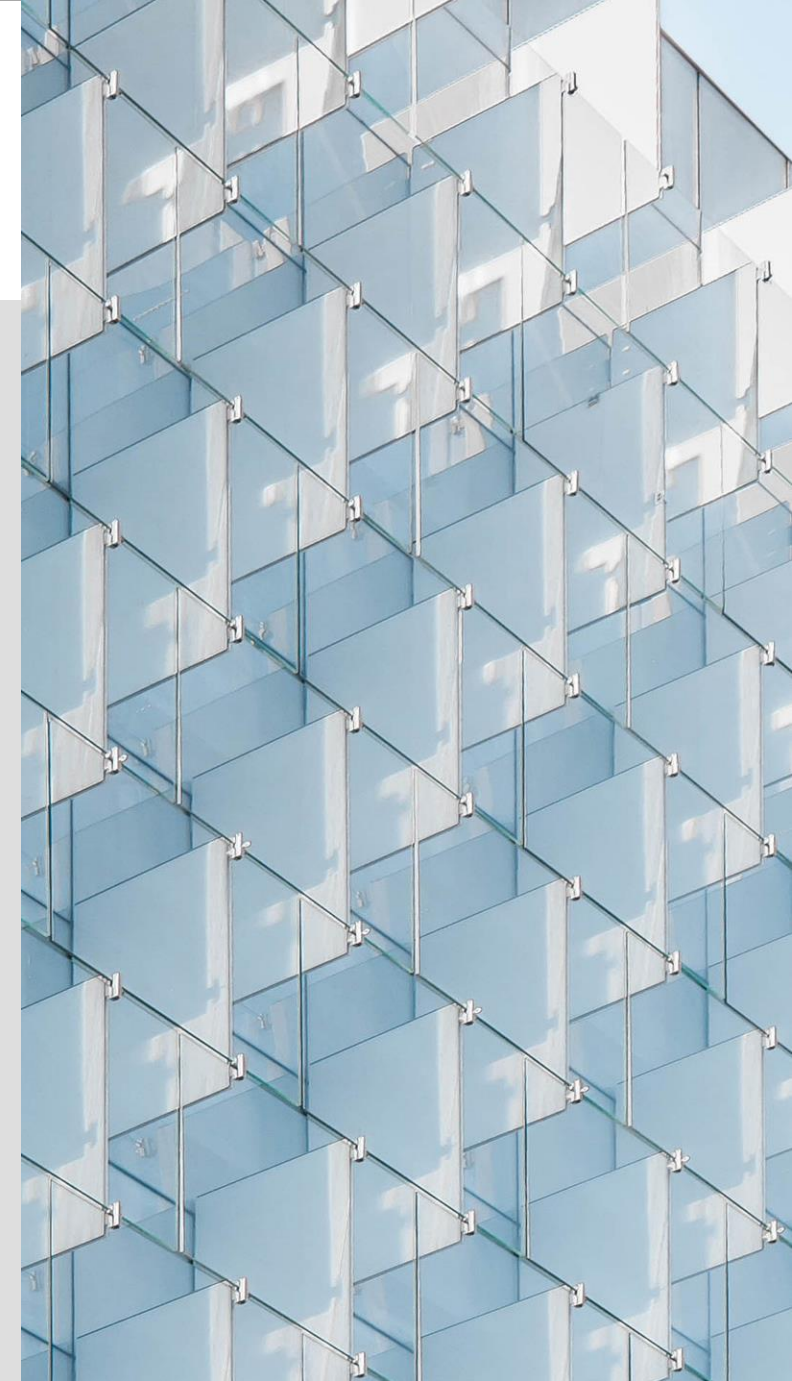
Employee Retention Credits

The Act provides a refundable tax credit against employment taxes paid by eligible employers in an amount equal to 50% of the first \$10,000 of “qualified wages” paid to employees. An employer is eligible for the payroll tax credit if, during any calendar quarter of 2020, it either has (i) operations fully or partially suspended due to a governmental order related to COVID-19 or (ii) a decline in gross receipts of more than 50% compared to the same quarter of the prior year. “Qualified wages” are treated differently for employers based on number of full-time employees. For employers with more than 100 full-time employees, “qualified wages” only covers wages paid to those employees who are not providing services due to a COVID-19-related impact as described above. For employers with 100 or fewer full-time employees, “qualified wages” covers wages paid to all employees of the employer during any applicable quarter in which a COVID-19-related impact as described above, including employees who are continuing to provide services to the employer.

[This credit is not available to employers that receive a loan under the “PPP” program.](#)

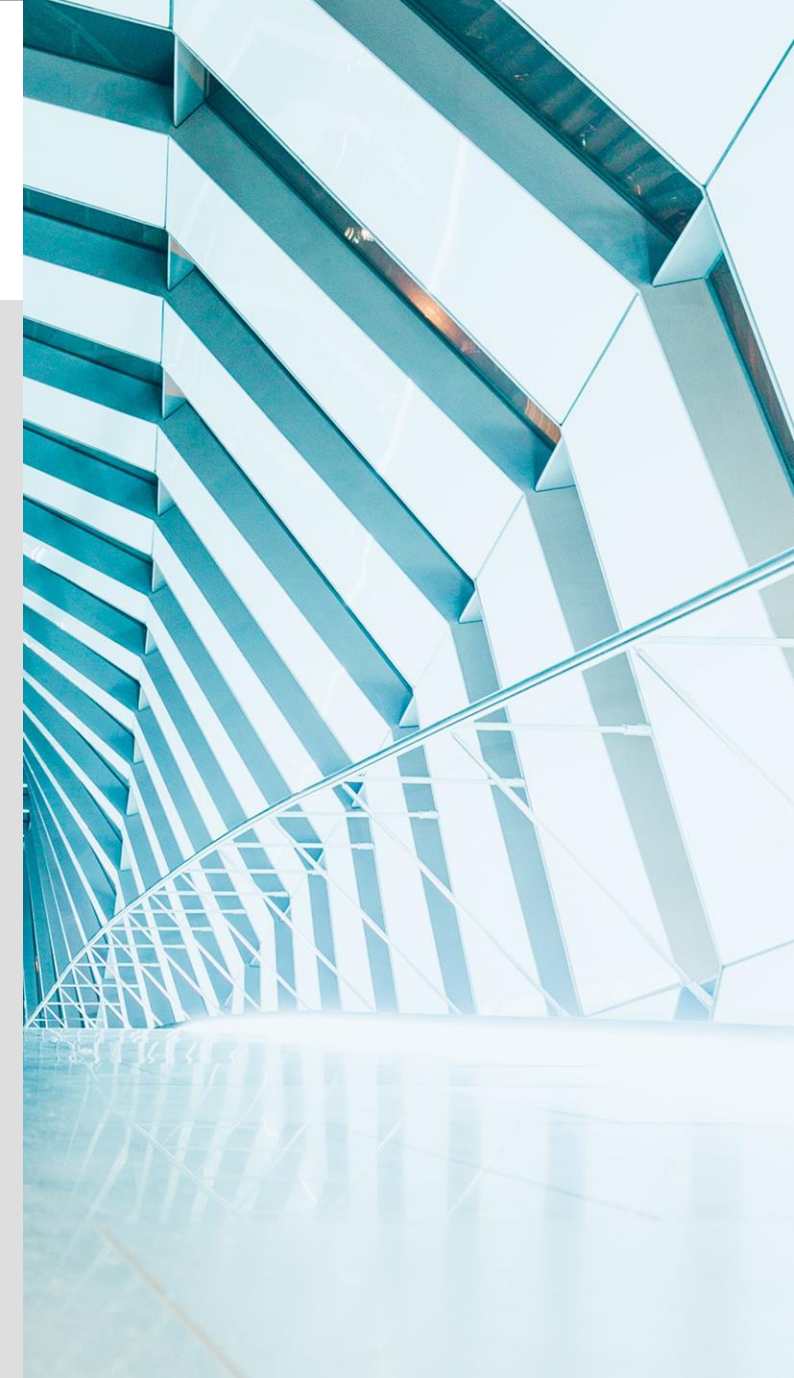
Other Considerations: CARES Act Expands Charitable Deductions

- Allowance of partial [above the line deduction for charitable contributions](#) up to \$300 of cash contributions, whether taxpayer itemizes deductions or not
- Modification of limitations on charitable contributions during 2020 [increases 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



Other Considerations: CARES Act Assistance Available to Individuals

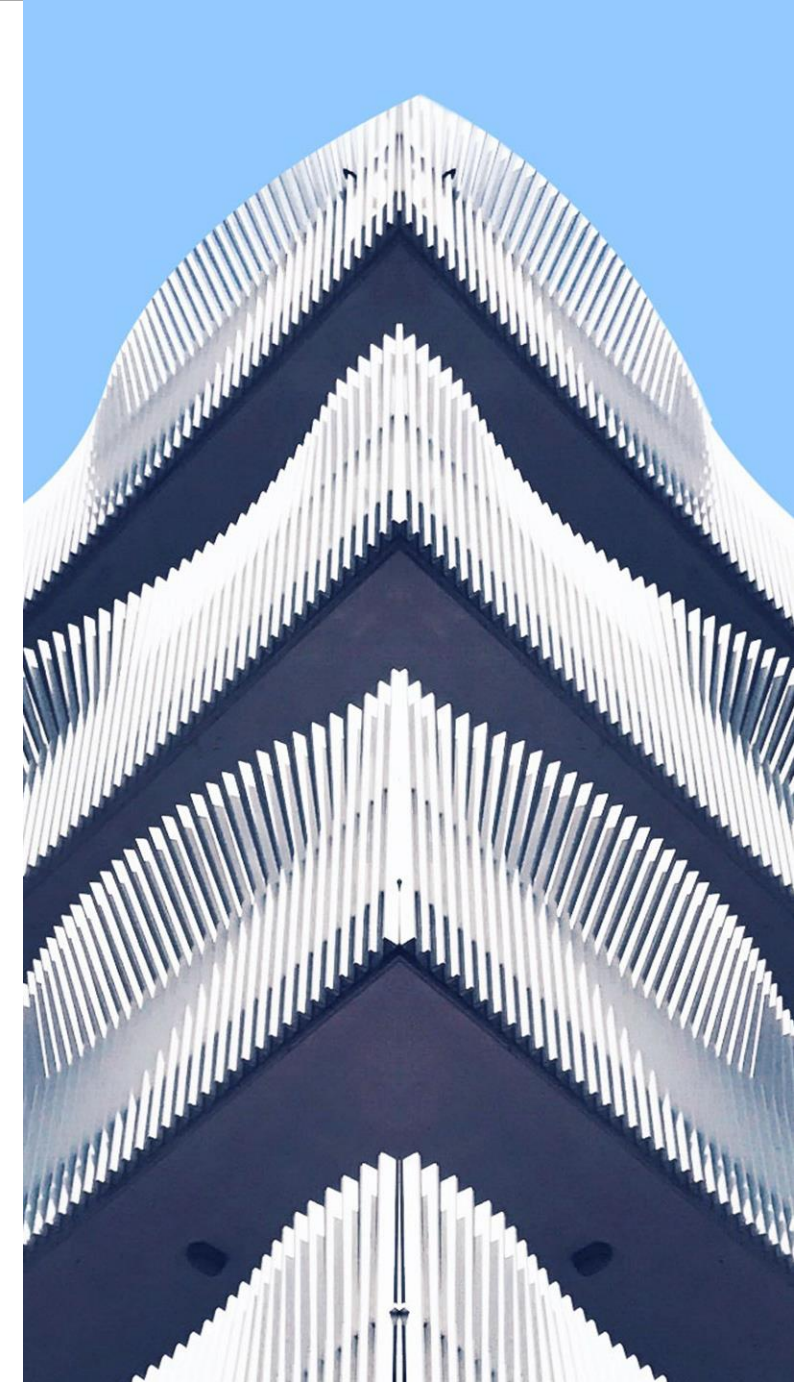
- SBA [Paycheck Protection Program](#) open to individuals who qualify as self-employed, sole proprietors, or independent contractors
- [Expanded unemployment](#) insurance programs:
 - Eligibility expanded to self-employed, independent contractors, those with limited work history, etc., who are unable to work as a direct result of the coronavirus public health emergency through the end of 2020
 - Provides additional benefits of \$600 per week for up to four months
 - Many states waive waiting period before filing for unemployment
- 2020 “[Recovery Rebates](#)” provide individuals with adjusted gross income up to \$75,000 (\$150,000 married) \$1,200 (\$2,400 married) rebate, plus \$500 per dependent child
- Waives 10% tax penalty for [early withdrawal](#) of up to \$100,000 [from certain retirement accounts](#)
- Automatic [tax filing extension](#) to July 15, 2020



A look ahead

What next?

- The SBA guidance is expected soon, including specifics on the process for submitting a loan application. Once the SBA publishes regulations for the PPP application process, DLA Piper will be able to advise and help nonprofits apply for PPP loans.
- Other stimulus programs are already under consideration:
 - Infrastructure and transportation
 - Additional tax provisions
 - Pandemic risk insurance
- Consider putting in place policies and procedures to restart operations



Thank You & Additional Q&A

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