Coronavirus Response Legislation

- **Coronavirus Preparedness and Response Supplemental Appropriations Act** (March 6)
  - Emergency funding for federal agencies to respond to the coronavirus outbreak
- **Families First Coronavirus Response Act** (March 18)
  - Provides new paid leave benefits and free testing, expands food assistance and unemployment benefits
- **Coronavirus Aid, Relief and Economic Security Act** (March 27)
  - Supplemental Appropriations for CSBG, Head Start, LIHEAP and other programs; aid to qualifying nonprofit organizations and small business
CARES Act

- **Supplemental appropriations**
  - CSBG, LIHEAP, Head Start, CCDBG

- **Relief for small businesses and nonprofit orgs**
  - Loans and grants to maintain employment
  - Payroll relief

- **Individual relief**
  - Expanded unemployment benefits ($600/week) for an additional 13 weeks
  - Economic stimulus payments (~$1,200/adult)

CARES Act Benefits for Nonprofit CAAs and State Associations

- Paycheck Protection Program (PPP)
- Emergency Economic Injury Disaster Loans (EIDL)
- Mid-Size Business Loans
- Employee Retention Payroll Tax Credit
- Deferral of Payroll Taxes

**Considerations for Nonprofit CAAs and State Associations**
Overview

- Small Business Administration 7(a) loan
- Helps small businesses and nonprofit organizations cover payroll costs, mortgage interest, rent, and utilities for up to 8 weeks
- Loan may be forgiven if used for qualifying purposes
- Sections 1102 and 1106 of the CARES Act

Eligibility

- 501(c)(3) tax-exempt CAAs and state associations
- Must have fewer than 500 employees
- Must have been in operation as of February 15, 2020
Eligibility

- To determine total # of employees, nonprofit CAA is considered together with its affiliates
  - 4 tests of affiliation – does one entity have power to control the other?
    1. One entity has power to control > 50% of other entity’s voting stock
    2. Stock options, convertible securities, and agreements to merge demonstrate potential for control
    3. Shared management – one entity’s board or management controls board or management of other
    4. Identical business or economic interests between close relatives

Use of PPP Loan

- Salaries and wages (cap of $100K/employee)
- Benefits (leave, health, retirement, taxes, severance, etc.)
- Mortgage interest (obligation incurred before 2/15/20)
- Interest - debt (obligation incurred before 2/15/20)
- Rent
- Utilities
- Refinancing an EIDL loan (received 1/31/20 to 4/3/20)

*Must use at least 75% of PPP proceeds towards payroll costs
What if We Have an Existing EIDL Loan?

- Still eligible for PPP
  - If EIDL was **not** used for payroll, no impact on PPP
  - If EIDL **was** used for payroll, must refinance EIDL into PPP loan

Unauthorized Uses

- Must repay SBA
- Knowing misuse will lead to additional liability (e.g., fraud)
PPP Loan Amount

- Up to 2.5 x organization’s average monthly payroll costs, plus refinancing existing EIDL
  - Minus any advance on COVID-19 EIDL loan
- Up to $10 million
- How to calculate average monthly payroll costs?
  - Use average monthly 2019 payroll
  - Exclude costs over $100,000 for any employee (on an annualized basis)
Loan Terms and Loan Forgiveness

- **Loan may be fully forgiven if:**
  - Used for payroll costs, mortgage interest, rent, and utilities in the 8-week period after loan disbursement
  - At least 75% of loan used for payroll costs

- ** Forgivable portion of loan is reduced if:**
  - # full-time employees reduced or
  - Salary of any employee reduced more than 25% compared to last calendar quarter

Apply for loan forgiveness through lender

- Submit documents verifying:
  - # full-time employees and pay rates
  - Eligible mortgage interest, lease, and utility payments
- Decision expected within 60 days

- Portion of loan **not forgiven:**
  - 2 year term
  - 1% interest
  - Payments deferred for 6 months (interest accrues)
How to Apply for PPP Loan

- Apply directly through an approved SBA lender
  - Reach out to your existing bank
  - SBA lender match tool: https://www.sba.gov/paycheckprotection/find
- Submit application (SBA Form 2483) and payroll documentation
- Application period: April 3 through June 30, 2020
  - But apply as early as possible

How to Apply for PPP Loan

- CARES Act waives SBA’s “no credit elsewhere” requirement for PPP loan
- No application fees
- No collateral required
Certifications Required for PPP Loan

1. In operation on February 15, 2020; had employees and paid salaries and payroll taxes (or paid independent contractors)

2. Current economic uncertainty makes this loan request necessary to support ongoing operations

3. The funds will be used to retain workers and maintain payroll or make mortgage interest payments, lease payments, and utility payments, as specified under program rules

4. Will provide Lender documentation verifying the number of full-time equivalent employees on payroll as well as the dollar amounts of [qualifying expenses]* for the 8-week period following the loan.

5. Understand that loan forgiveness will be provided for the sum of [qualifying expenses]*, and not more than 25% of the forgiven amount may be for non-payroll costs.

*qualifying expenses = documented payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities
Certifications Required for PPP Loan

6. Has not and will not receive another PPP loan between February 15 and December 31, 2020

7. All information provided in the loan application and supporting documents and forms is true and accurate in all material respects

8. Acknowledge that lender will confirm eligible loan amounts using submitted documentation

Concerns About PPP

- Not all banks ready to begin accepting applications
- Many lenders prioritizing their own customers
- Concern about insufficient funding ($349 billion)
  - Applications opened Friday, April 3
  - First-come, first-served
  - Federal Reserve indicated on Monday that it would provide incentives to banks making PPP loans
Economic Injury Disaster Loans

Eligibility

- 501(c)(3) and 501(c)(4) organizations
- No more than 500 employees
- In operation since January 31, 2020
- Suffered substantial economic harm as a result of COVID-19 resulting in its inability to:
  - meet its obligations as they mature
  - pay ordinary and necessary operating expenses, or
  - market, produce or provide a product or service ordinarily marketed, produced or provided by the org
Loan Amount

- Up to $2 million
- Emergency grant of up to $10,000, as requested

How to Apply

- No requirement to seek credit elsewhere first
- SBA website
- Available until December 31, 2020
- Credit score/alternative appropriate methods
- < $25,000, no collateral
- > $25,000, collateral required if assets are available
- Up to $200,000 without personal guarantee
EIDL Emergency Grant

- Up to $10,000
- Self-certification, penalty of perjury
- Available within 3 days
- No repayment, even if EIDL application denied
- May be used for EIDL purposes

Use of EIDL Funds

- Providing paid sick leave to employees unable to work due to the direct effect of COVID-19
- Maintaining payroll to retain employees during business disruptions or substantial slowdowns
- Meeting increased costs to obtain materials
- Making rent or mortgage payments
- Repaying obligations that cannot be met due to revenue losses

- 15 U.S.C. 636(b)(2)
Loan Terms and Forgiveness

- 2.75% interest rate
- Maturity up to 30 years
- 1 year payment deferral period
  - Interest accrues during deferral period
- EIDLs received after January 31, 2020 can be refinanced into PPP loan
- No forgiveness except for Emergency Grant

Mid-Size Business Loans
Eligibility and Loan Amount

- Tax-exempt nonprofits with between 500 and 10,000 employees
- No clear guidance on amounts
- Likely based on the amount necessary to restore and retain applicant’s workforce at full pay through September 2020

How to Apply

- Required certifications:
  - Uncertain economic conditions make the loan necessary to support ongoing operations;
  - Funds received will be used to retain 90% of workforce at full compensation and benefits until September 30;
  - Applicant intends to restore 90% of its workforce and all compensation and benefits no later than 4 months after termination of public health emergency;
  - Applicant is not debtor in bankruptcy proceeding;
  - Recipient will not abrogate collective bargaining agreements during term of loan and for 2 years after; and
  - Recipient will remain neutral in any union organizing effort during loan term
Use of Funds

- Restoring workforce to work
- Keeping workforce at full benefits and compensation
- Certified until September 30, 2020

Loan Terms and Forgiveness

- No higher than 2% interest
- 6 month payment deferral period
  - Interest accrues during deferral period
- Not forgivable
- Additional regulations expected
Payroll Tax Relief

Employee Retention Credit

Eligibility

- Fully refundable payroll tax credit
- Employers eligible for given quarter if either:
  1) Fully or partially suspends operations due to orders from gov't limiting travel or group meetings due to COVID-19; or
  2) Experiences significant decline in gross receipts
- Gov't employers and PPP recipients not eligible
Employee Retention Credit

Qualified Wages

- Wages, compensation and qualified health plan expenses paid after March 12, 2020 and before January 1, 2021
- Does not include qualified sick and family leave wages when credits received under FFCRA
- > 100 full-time employees in 2019
  - Wages paid to employee for the time employee is not providing services due to (1) or (2)
- ≤ 100 full-time employees in 2019
  - Wages paid to any employee during covered period

Employee Retention Credit

Amount of Credit

- 50% of qualified wages and health plan expenses paid to employees during covered quarter
- Max per employee: $10,000 in qualified wages / $5,000 credit
- Example:

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<td>Q2 2020</td>
<td>$8,000</td>
<td>$4,000</td>
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<tr>
<td>Q3 2020</td>
<td>$8,000</td>
<td>$1,000</td>
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**Employee Retention Credit**

Claiming the Credit

- Credited against employer portion of SS tax
- Form 941
- May request advance using Form 7200
- PPP recipients not eligible for credit

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**Deferral of Payroll Taxes**

- Eligibility
  - All employers
  - PPP recipients excluded
Deferral of Payroll Taxes

- Deferred taxes
  - Social security
  - All employee wages paid between March 17, 2020 and December 31, 2020

- Deferral period
  - 50% due by December 31, 2021
  - 50% due by December 31, 2022

CAA Considerations
Are CAAs Eligible for PPP, EIDL, or Mid-Size Business Loans?

- Not precluded simply because they are federal grant recipients
- Considerations:
  - Can CAA certify as to its need for the PPP loan due to economic necessity?
  - If the CAA receives a PPP loan, will it need to shift the uses of existing federal funds to other allowable program objectives?

Can CAA Make Certifications in Good Faith?

- **PPP**
  - Loan is necessary to support the ongoing operations of the organization due to the current economic uncertainty
- **EIDL**
  - Organization has suffered a substantial economic injury
- **Mid-Size Business Loan**
  - Uncertainty of economic conditions makes the loan necessary to support ongoing operations of applicant
### Center Closures

- Some CAAs have shut down operations and potentially laid off staff
- Emergency closure policies that allow CAA to continue to pay staff
  - Do benefits expire?
    - Uniform Guidance permits charging fringe benefits costs under established policies, but costs must be reasonable
  - If so, organization may need loan to continue operations

### Increased Operational Costs

- Some CAAs may face increased operating costs
  - Increased demand for services
  - Serving new needs in the community
  - Costs to sanitize and clean facilities
  - Equipment needed for staff to work remotely
Cancelled Events

- State and regional Community Action associations may have had to cancel conferences and events
  - Cancellation fees
  - Penalties for changing travel plans
  - Loss of expected revenue

Will CAA Need to Shift Use of Existing Federal Funds?

- If receiving a PPP, EIDL, or Mid-Size Business Loan will cause CAA to shift use of funds, must:
  - Document reason for doing so
  - Ensure new use of funds is an allowable purpose under existing federal funds
  - Seek prior approval from funding source if organization makes adjustments to each award’s project scope and objectives *(Uniform Guidance, 2 C.F.R. § 200.308(c)(1)(i))*
    - Block grants: states may have own approval rules
May Not Duplicate Charges

- May not charge any payroll, mortgage interest, rent, or utility payments covered by PPP, EIDL, or Mid-Size Business loan proceeds to any other award

Scheduled Layoffs or Payroll Reduction

- What if a CAA has a scheduled layoff (e.g., layoff of Head Start staff during the summer months)?
  - May be impacted by PPP loan forgiveness rules
  - Loan forgiveness reduced if:
    - # full-time employees reduced or
    - Salary of any employee reduced more than 25% compared to last calendar quarter
Reducing PPP Loan Forgiveness: Reduction in Workforce

- Total amount of loan spent on payroll, mortgage interest, rent, and utilities during 8-week period, multiplied by a fraction:
  1. The average # full-time equivalent employees per month employed during the 8-week period

(organization can choose either 2 or 3 as the denominator)

2. The average # full-time equivalent employees per month employed between 2/15/2019 and 6/30/2019

(or)

3. The average number of full-time equivalent employees per month employed between 1/1/2020 and 2/29/2020

Stimulus Checks

www.irs.gov/coronavirus
Questions?

CAPLAW’s Coronavirus Update Page
www.caplaw.org/resources/coronavirusupdates.html

Coronavirus Updates for the Community Action Network

In light of increasing concerns about a broader coronavirus outbreak and the impacts on normal business operations, CAPLAW has compiled resources that are particularly relevant to the Community Action network. We will be closely monitoring the situation and will update this page as new developments occur, particularly when federal awarding agencies issue agency-specific guidance.

Last updated March 25, 2020

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CAPLAW’s CARES Act Benefits for Nonprofit CAAs

www.caplaw.org/resources/coronavirusupdates/caresact/introduction.html

CARES Act Benefits for Nonprofit CAAs

The Coronavirus Aid, Relief and Economic Security Act (the CARES Act), which was signed into law on March 27, 2020, offers various forms of aid to nonprofit Community Action Agencies (CAAs) and state associations whose operations have been impacted by the COVID-19 outbreak:

1. Paycheck Protection Program (PPP) loans, available only to 501(c)(3) tax-exempt organizations with fewer than 500 employees and fully forgivable if spent for qualifying purposes, including payroll costs, mortgage interest, rent, and utilities; and
2. Economic Injury Disaster Loans (EIDL), available to all tax-exempt organizations with fewer than 500 employees to cover payroll costs, rent, and mortgage, and which are not forgivable, but applicants may receive an advance of up to $10,000 that does not have to be repaid;
3. Mid-Size Business Loans, available to tax-exempt organizations with between 500 and 10,000 employees, to cover payroll costs; and
4. An Employee Retention Tax Credit and a deferral of 2020 payroll taxes for certain tax-exempt employers.

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