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Working to Reduce Poverty in America.

Member of Caritas

Ending poverty, promoting justice and restoring dignity.

Disclaimer

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Nothing in this presentation is meant as legal or financial advice. It reflects the best understanding of CCUSA at this time; however, not all official guidance has come out, and it is subject to change.

All decisions should be made in consultation with your local legal and financial advisors with reference to the official guidance from the US Treasury Department.

For additional information and updates, please see the CCUSA COVID-19 website: https://www.catholiccharitiesusa.org/resource/covid-19/.

Economic Impact Payments

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Economic Impact Payments: Up to $1,200 per adult for individuals with income <$99,000 ($198,000 for joint filers) & $500 per child under 17.

- Eligible taxpayers with 2019 or 2018 tax returns will automatically receive a payment
- IRS will use Form SSA-1099 and Form RRB-1099 for Social Security recipients who did not file tax returns in 2018 or 2019. These payments will not include $500 per child.
- Recipients will receive these payments as a direct deposit or by paper check, just as they would normally receive their benefits.
- If you have not filed a 2018 or 2019 tax return, do so as soon as possible. The payments will be available throughout the rest of 2020.
- The IRS will post all key information on IRS.gov/coronavirus as soon as it becomes available. Check back often.
- Filers and non-filers click here to check your payment status or provide additional information

Source: https://home.treasury.gov/policy-issues/cares/assistance-for-american-workers-and-families

Economic Impact Payments: Non-Filers

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- For those not required to file taxes, they may use the Non-Filers portal on Treasury.gov to register for an EIP. They must provide their Social Security Number, name, address, and dependents. Link: Non-Filers: Enter Payment Info Here.

- At this time, there is no guidance or mechanism for those without SSNs and addresses to apply for EIPs. Guidance is expected based on a ‘substantiality test’ for these groups.

- Some are concerned that refugees or immigrants applying through the Non-Filers portal may be misrepresenting their status to USG and therefore face additional hurdles when applying for citizenship and green cards. Your clients may file 2019 taxes even if they are not required to in order to try to receive an EIP instead. Please consult an immigration attorney before recommending actions to your clients.

Unemployment Insurance

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Unemployment Insurance Under the CARES Act

DOL Resources and Guidance

Federal Pandemic Unemployment Compensation ("FPUC")

- Provides an extra $600 weekly payment, in addition to the weekly benefit amount an eligible employee otherwise receives under state law between April 5, 2020 and July 31.
- Implemented at the state level through regular unemployment process

Pandemic Unemployment Emergency Compensation ("PUEC")

- Provides an additional 13 weeks of unemployment benefits for individuals who have exhausted benefits under state law (up to 39 weeks) if they are unemployed, partially employed, or cannot work due to COVID-19.
- The extended benefits are available through December 31, 2020.
- The additional benefits received prior to July 31, include the extra $600 FPUC payment.

Unemployment Insurance

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DOL Guidance for the Self-Insured

Self-Insured Agencies

- The federal government will pay all costs under the "FPUC"
- The federal government will pay half of the costs due to the State Unemployment Trust Funds. States have discretion over covering the remaining 50% of costs.
- States will process reimbursements for the half of costs covered by the federal government only after the self-insured have fully paid all costs they owe into the State Unemployment Trust.
- The CCUSA Social Policy team is exploring options to lessen the burden on self-insured agencies.

Pandemic Unemployment Assistance ("PUA")

- Expands coverage to self-employed, independent contractors, gig workers, those with limited work history, or have exhausted regular or extended unemployment benefits.
- Eligible individual must not be able to work due to COVID-19. They may collect benefits for 39 weeks between January 27, 2020 and December 31, 2020, including the $600 supplemental weekly payment under FPUC (through July 31, 2020).

FFCRA: Employer Paid Leave

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Families First Coronavirus Response Act (DOL Guidance and IRS Tax Credit FAQ)

Who: private employers with fewer than 500 employees. Those with fewer than 50 employees may qualify for exemption if the leave requirements would jeopardize their viability.

What: Employers must provide the following to all employees

- *Two weeks of **paid sick leave** at the employee's regular rate of pay (up to $5,110)* if the employee is quarantined and/or experiencing COVID-19 symptoms and seeking a medical diagnosis OR
- *Two weeks of **paid sick leave** at 2/3 the regular rate of pay (up to $2K)* if the employee needs to care for an individual subject to quarantine or care for a child (under 18 years of age) whose school or child care provider is unavailable for reasons related to COVID-19 and cannot telework.

For employees employed at least 30 days, employers must provide

- *Up to an additional 10 weeks of **paid expanded family and medical leave** at 2/3 the regular rate of pay (up to $10k)* where an employee is unable to work because caring for a child whose school or childcare provider is unavailable for reasons related to COVID-19.

FFCRA: Employer Paid Leave Tax Credits

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Families First Coronavirus Response Act (DOL Guidance and IRS Tax Credit FAQ)

Tax Credit: Employers qualify for 100% reimbursement through tax credits for all qualifying wages paid and amounts paid or incurred to maintain health insurance coverage.

- The federal government will allow federal employment tax credits for the full amount of wages and funds needed to maintain healthcare coverage for these employees on sick leave.
- You may keep federal employment taxes and the employer portion of Medicare and Social Security taxes for ALL employees to pay for leave for those that take it.
- If tax credits do not cover the full cost of leave, you can apply for the remainder as either an overpayment of taxes or as an advance from the IRS, which started processing requests for advances in April.
- **The tax credits, reimbursement, and/or advance may be a source of funding for additional personnel needed for the continuity of service provision while others are on sick leave.**

EIDL & PPP

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Terms	Economic Injury Disaster Loan - EIDL	Paycheck Protection Program - PPP
Eligibility	Small biz & private nonprofits of any size. There is a faith-based organization exemption to affiliation rules.	Small biz & nonprofits with <500 employees, except food services. Affiliation rules disqualify some businesses, but there is a faith-based exemption.
Uses	Fixed debts, payroll, accounts payable & other bills unpayable due to a disaster's impact.	Payroll, mortgage interest, rent & utilities. Cannot pay for the portion of an individual's salary >$100K.
Loan Size / Term	Up to $2M based on economic injury as determined by SBA and 4 years	Up to 2.5 x avg monthly payroll (excluding portion of salaries >$100K) up to $10M and 2 years
Interest Rate	3.75% for small biz & 2.75% for nonprofits.	1%
Grace Period	No payments for up to 1 year	No payments for 6 months
Fees	None to borrower, no prepayment penalty	None to borrower, no prepayment penalty
Forgiveness	$10K advance becomes a grant.	100%, plus interest for 8 weeks, if conditions met. Must apply for forgiveness from local lender. Forgiven amount will NOT be taxed.
Other Conditions	Can be refinanced as a PPL, but $10K advance must be subtracted from forgiven amount. May require collateral and personal guarantees	75% must be spend on payroll, must maintain # of staff or rehire, must maintain or restore salaries to at least 75% if <$100K to be forgiven. Must use by June 30.
Apply To	SBA	SBA certified lenders: large banks, CDFIs, credit unions
Availability	Yes	Yes

PPP: Max Loan Amount
Am I a 'Religious Organization'?

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The calculation of maximum loan amount under PPP differs between religious organizations and other 501(c)3 nonprofits. Your agency may be considered a 'religious organization' or it may not. There is no difference in the calculation other than the documents referenced.

To be considered a 501(c)3 religious organization, you must seek formal recognition of your tax-exempt status by submitting an Application for Recognition of Exemption (Form 1023 or 1023-EZ) to the IRS.

Religious organizations include nondenominational ministries, interdenominational and ecumenical organizations, and organizations whose main purpose is to study or advance religion. A nonprofit religious broadcasting station is one example of a religious organization in this sense.

Please consult with your local counsel to decide which calculation of maximum loan amount to use.

PPP: Max Loan Amount (Eligible Nonprofits)

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Calculation of the maximum PPP loan amount for eligible nonprofit organizations (up to $10 million)?

Step 1: Compute 2019 payroll costs by adding the following:

- **2019 gross wages and tips paid to your employees who reside in the US:** add 2019 IRS Form 941 Taxable Medicare wages & tips (line 5c-column 1) from each quarter and any pre-tax employee contributions for health insurance or other fringe benefits excluded from Taxable Medicare wages & tips. Then, subtract any amounts paid to any individual employee in excess of $100,000 and any amounts paid to any who resides outside the U.S;
- **2019 employer health insurance contributions** (portion of IRS Form 990 Part IX line 9 attributable to health insurance);
- **2019 employer retirement contributions** (IRS Form 990 Part IX line 8); and
- **2019 employer state and local taxes assessed on employee compensation**, primarily state unemployment insurance tax (from state quarterly wage reporting forms).

Source: https://home.treasury.gov/system/files/136/How-to-Calculate-Loan-Amounts.pdf

PPP: Max Loan Amount (Eligible Nonprofits)

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Step 2: Calculate the average monthly payroll costs (divide the amount from Step 1 by 12).

Step 3: Multiply the average monthly payroll costs from Step 2 by 2.5.

Step 4: Add the outstanding amount of any EIDL made between January 31, 2020 and April 3, 2020 that you seek to refinance, less the amount of any advance under an EIDL COVID-19 loan (i.e. the $10k advance that is a 'grant').

<u>The following documentation is required:</u>

- 2019 IRS Form 941 or IRS Form 944
- State quarterly wage unemployment insurance tax reporting form from each quarter (or equivalent payroll processor records or IRS Wage and Tax Statements)
- The filed IRS Form 990 Part IX or other documentation of any retirement and health insurance contributions. Records from a retirement administrator can be used to document employer retirement contributions while records from a health insurance company or third-party administrator for a self-insured plan can document employer health insurance contributions.
- A payroll statement or similar documentation from the pay period that covered February 15, 2020 must be provided to establish you were in operation and had employees on that date.

PPP: Max Loan Amount (Religious Organizations)

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Calculation of the maximum PPP loan amount for nonprofit religious organizations (up to $10 million)?

Step 1: Compute 2019 payroll costs by adding the following:

- **2019 gross wages and tips paid to your employees who reside in the US**: add 2019 IRS Form 941 Taxable Medicare wages & tips (line 5c-column 1) from each quarter and any pre-tax employee contributions for health insurance or other fringe benefits excluded from Taxable Medicare wages & tips. Then, subtract any amounts paid to any individual employee in excess of $100,000 and any amounts paid to any employee who resides outside the U.S;
- **2019 employer health insurance contributions**;
- **2019 employer retirement contributions;**
- **2019 employer state and local taxes assessed on employee compensation**, primarily state unemployment insurance tax (from state quarterly wage reporting forms).

Source: https://home.treasury.gov/system/files/136/How-to-Calculate-Loan-Amounts.pdf

PPP: Max Loan Amount (Religious Organizations)

Step 2: Calculate the average monthly payroll costs (divide the amount from Step 1 by 12).

Step 3: Multiply the average monthly payroll costs from Step 2 by 2.5.

Step 4: Add any outstanding amount of any EIDL made between January 31, 2020 and April 3, 2020 that you seek to refinance, less the amount of any advance under an EIDL COVID-19 loan (i.e. the $10k advance that is a 'grant').

<u>The following documentation is required:</u>

- 2019 IRS Form 941 or IRS Form 944
- State quarterly wage unemployment insurance tax reporting form from each quarter (or equivalent payroll processor records or IRS Wage and Tax Statements)
- Documentation of any retirement and health insurance contributions. Records from a retirement administrator can be used to document employer retirement contributions while records from a health insurance company or third-party administrator for a self-insured plan can document employer health insurance contributions.
- A payroll statement or similar documentation from the pay period that covered February 15, 2020 must be provided to establish you were in operation and had employees on that date.

PPP: Loan Forgiveness

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Official guidance has not come out that would fully answer the following questions. CCUSA continues to work with USG to obtain guidance and will provide updated information as it comes out. Please check with your local counsel and financial advisers:

1. Can PPLs be used for payroll going to federally or non-federally funded positions?
2. Can PPLs be used for hazard pay?
3. Will loan forgiveness be decreased if employees leave due to a grant ending, retirement, quitting, or other uncontrollable or planned reasons?

If you have offered an employee their job back and they refuse, your loan forgiveness will not be decreased (PPP FAQ #40).

4. Is a PPL forgiven for expenditure, costs incurred, or both during the 8 week period?

PPP: Loan Forgiveness

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*This calculation assumes no EIDL debt.
**An EIDL advance must be subtracted.
***A reduction in payroll of more than 25% of those making <$100k will reduce loan forgiveness.

Adjusted Amount of Loan Forgiven

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Payroll Costs + Interest on mortgage + Rent + utilities

(Expended in the 8-week period after loan origination)

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Average # of FTEs per month for the 8 weeks after loan origination

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Option 1: Average # of FTEs per month from 2/15/2019 to 6/30/2019

OR

Option 2: Average # of FTEs per month from 1/1/2020 to 2/29/2020

More information can be found on the [US Treasury Website](#).

A more detailed FAQ based on Catholic Charities USA's understanding of PPP is available [here](#).

PPP: Audit

As part of the PPP application, you must certify that **"current economic uncertainty makes the loan necessary to support your ongoing operations."** Below is the guidance supplied so far regarding the certification in the most recent FAQ:

31. **Question: Do businesses owned by large companies with adequate sources of liquidity to support the business's ongoing operations qualify for a PPP loan?**
Answer:

- All borrowers should review the required certification that "[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant."
- Borrowers must make this certification in good faith, taking into account their **current business activity** and **their ability to access other sources of liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business**.
- For example, it is unlikely that a public company with substantial market value and access to capital markets will be able to make the required certification in good faith.
- Any borrower that applied for a PPP loan prior to the issuance of this guidance and repays the loan in full by May 7, 2020 **(changed to May 14 in later guidance)** will be deemed by SBA to have made the required certification in good faith.

PPP: Audit

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Additional questions and answers build off of #31.

37. **Question: Do businesses owned by private companies with adequate sources of liquidity to support the business's ongoing operations qualify for a PPP loan?**
Answer: See response to FAQ #31.

39. **Question: Will SBA review individual PPP loan files?**
Answer: Yes. To ensure PPP loans are limited to eligible borrowers, the SBA will review all loans in excess of $2 million, in addition to other loans as appropriate, <u>following the lender's submission of the borrower's loan forgiveness application</u>. Additional guidance implementing this procedure will be forthcoming.

43. **Question: Is it possible for a borrower to obtain an extension of the May 7, 2020 repayment date?**
Answer: <u>SBA is extending the repayment date for this safe harbor to May 14, 2020</u>. Borrowers do not need to apply for this extension. SBA intends to provide additional guidance on how it will review the certification prior to May 14, 2020.

PPP: Audit

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- The audit announcement comes in the wake of backlash against large publicly traded companies disclosing that they received loans.
- CCUSA's consultants advice is to make contemporaneous documentation about the good faith process of making the required certifications. They stated that they believe, for the most part, these loans were intended for groups like CC agencies.
- The USCCB provided a legal review on the audit, which can be circulated upon request.
- Here are some general thoughts by CCUSA Staff based on what we know as of 5-4-2020. This is NOT LEGAL NOR FINANCIAL AUDIT advice:

What was your thought process when you certified that A) "Current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant?" and B) "The funds will be used to retain workers and maintain payroll or make mortgage interest payments, lease payments, and utility payments, as specified under the Paycheck Protection Program Rule."

Would returning the loan affect your ability to fulfil your mission of serving those in need? If so, consider the moral implications of not accepting the funds.

PPP: Audit

Here are some thoughts / documents that may be helpful in establishing 'necessity'. This is NOT LEGAL NOR FINANCIAL AUDIT advice:

1. Pass the 'common sense' test. Is your agency the type of organization the PPP was created to help from a common sense perspective, not a regulatory perspective?

2. Document economic uncertainty. Documents could include:
   - Last 3 months projections of fundraising / revenue v. actuals;
   - Loss of contract income from insurance, other sources for counseling, etc
   - Next 6-12 months projections v. actuals at the same time last year (or previous 3-year avg);
   - Increased or changed expenses based on COVID-19, such as those related to increased demand, government closures / restrictions, and new programming.
   - Ratio of reserves v. operating budget - previous 3 year avg, current, and projected avg for next 6-12 months.

3. Document other sources of liquidity. Documents could include:
   - If you have accessed and repaid debt, then what were the terms and how do they compare to PPP's terms? If you have not already, make a quick assessment of current available lenders & products and document why you chose not to take another loan (e.g. what effect such a loan would have on operations when you had to pay it back).
   - If you have not taken on debt previously, then your major sources of liquidity are reserves, grants, and donations (others?). You can document your previous 3 year avg, current, and projected avg for the next 6-12 months for each or as a whole.

PPP: Audit

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Potential argument that PPP loan was necessary. This is NOT LEGAL NOR FINANCIAL AUDIT advice:

1. The questions seem to be 1) do you have access to other sources of liquidity AND 2) would using those other sources instead of a PPP loan detrimentally affect your operations.

2. The time period of effects on operations is unclear; however, you could provide 3, 6, and 12 month narrative assessments of how operations would change if you did not get the PPP loan.
   - Would you have to furlough or lay people off within 3, 6, or 12 months? Have you already had to do this?
   - Would you have to decrease the <u>quantity</u> or <u>quality</u> of goods or services provided to the community you serve?
   - Would it affect planned new programming?
   - Would it affect your ability to fundraise or receive other sources of revenue (such as grants or donations)? Business development is often the primary source of raising revenue for nonprofits, and it is similar to product development and sales for for-profits. It is a valid and necessary function for nonprofits.

Given the waiting lists of pending applications and the fact that PPP loans are going to the most well connected, if you return the money, it very well may end up at a mid-sized for-profit, not another nonprofit that is more in need of funds.

PPP: Audit

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Perkins Coie provides the following analysis:

We recommend that each applicant make sure it has a reasonable and good faith belief/expectation that the adverse impact on its business from the shutdown would be likely to cause the company to reduce operations (i.e., layoffs/furloughs) over the next several months, and that the PPP funding would enable the company either to avoid those cutbacks or reduce their scope.

Applicants should document any decrease in its business due to COVID-19, supply chain issues, loss of revenue, inability to operate at full capacity and any other facts that support the economic necessity. Ultimately, the intent of the PPP program is to prop up employment, so **if a company can say reasonably, after considering all of its relevant circumstances, that, in the absence of the program, it would take steps to reduce headcount/expense over the next few months and conversely that with the program those steps would be avoided or mitigated, then the company may have a reasonable basis for certifying its need for the loan request.**

Source: https://www.jdsupra.com/legalnews/congress-approves-new-funding-for-ppp-16726/

Additional Resources

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Employee Retention Tax Credit

- Payroll tax credit for orgs that close temporarily due to gov order with 50%+ revenue drop
- Can be used for 50% of salaries & health benefits (up to $10k/employee) paid after March 12
- Cannot be used for same expenses as tax credits under FFCRA
- Employers taking loans under PPP are **disqualified**

Social Security Tax Deferral

- Employers may defer payment of the employer share of Social Security taxes through the end of 2020.

Expanded Unemployment Insurance and PPLs

- The expansion of unemployment insurance may be more beneficial for some laid off employees than returning to work. It is unclear if an employee that is offered a job may stay on unemployment. However, if you offer your former employee their job back and they refuse, your loan forgiveness amount will not be decreased. Unemployment insurance and regulations will vary by state.

Tax Deductions

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Above-the-Line Tax Deduction
An individual that takes the standard deduction on their 2020 tax return can claim a new "above-the-line" deduction of up to $300 for *cash* donations to charities in 2020. Donations to donor advised funds and certain organizations that support charities are not deductible.

60% Adjusted Gross Income (AGI) Limit Waived
If an individual itemizes on their 2020 tax return, they can claim a deduction for up to 100% of their AGI for *cash* contributions to charities. Any cash donations over that amount can be carried over for up to five years and deducted later. Donations to donor advised funds and certain organizations that support charities are not deductible.

PPP & Health Care Enhancement Act

Paycheck Protection Program and Health Care Enhancement Act

$484B aid package that includes:

- $310 billion in additional lending authority for the Paycheck Protection Program, with a portion of funds set aside to support loans issued by smaller lenders.
  - The SBA must guarantee at least:
    A. $30 billion in loans issued by insured depository institutions or credit unions with $10 billion to $50 billion in consolidated assets.
    B. $30 billion issued by insured depository institutions or credit unions with less than $10 billion in assets, or community lenders such as community development financial institutions and minority depository institutions.
- $60 billion for separate disaster loans to small businesses.
- $75 billion for hospitals.
- $25 billion for virus testing.

For social policy alerts, sign up for CCUSA Washington Weekly here.

Additional Information

For additional resources and updates, please see the CCUSA COVID-19 website:

https://www.catholiccharitiesusa.org/resource/covid-19/

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