



CARES Act Legal/Legislative Report Updated: May 11, 2020

Information updated May 11, 2020, has been highlighted for your convenience.

CARES Act

On Friday, March 27, Congress passed the third stimulus bill to combat the COVID-19 pandemic. As the largest stimulus package in the nation's history, the 883-page stimulus contains \$2 trillion worth of federal grants, loans, and programs to help Americans struggling through economic hardships caused by the COVID-19 pandemic. With over 10 million Americans filing for unemployment benefits in the last two weeks, the latest stimulus aims to help American businesses and workers weather the storm of economic uncertainty that has covered the nation.

While not an exhaustive list of what is contained in the law, below are four provisions in the CARES Act that directly affect Christian schools. These provisions include expanded small business loans, unemployment insurance, equitable services, and expanded charitable deductions. Christian schools can begin taking steps to investigate how these provisions may help their ministries endure through the COVID-19 pandemic and provide for their employees and students through this time.

PROVISION 1: SMALL BUSINESS LOANS

Paycheck Protection Program

Section 1102 of the CARES Act establishes the Paycheck Protection Program, which provides \$349 billion in small business loans for businesses and organizations struggling to operate under COVID-19 related economic restrictions. If used for qualifying reasons during an eight-week period between February 15 and July 30, such as payroll, interest on mortgage, salaries less than \$100,000, and utilities, the loans can be forgiven (see important update on loan forgiveness below). Importantly, an employer can receive 100% loan forgiveness only if he does not reduce his workforce or his employees' pay. The amount of the loan would be equal to an employer's average monthly payroll costs over 2.5 months, and there are no credit-worthiness requirements. Guidance from the Small Business Administration (SBA) clarifies that at least 75% of the loan must be used for payroll costs for the loan to be fully forgiven.

A big part of our concern in the Act is whether Christian schools would fall under existing SBA restrictions on explicitly religious activities and the religious affiliation of participating organizations. Recently issued [SBA guidance](#) and [FAQ document](#) guarantee religious freedom protections for participating organizations according to the Constitution, the Religious Freedom Restoration Act, and SBA regulations. The guidance specifically applies 13 C.F.R. 113.3-1h of SBA regulations which states that "Nothing in [SBA nondiscrimination regulations] shall apply to a religious corporation, association, educational institution or society with respect to the membership or the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution or society of its religious activities." Further, any legal requirements are not permanent and would be resolved once the loan is paid off or forgiven. Positive religious liberty language makes clear that the administration wants religious organizations that participate in this new federal benefit to be protected. Religious liberty groups and advocates are still processing the potential risks Christian schools and ministries would assume for the duration of the loan. We believe there is very limited exposure for loans that are fully forgiven or paid back in a timely manner, but and potential exposure to long-term risk associated with having these loans is still being evaluated.

Because some uncertainties have been expressed, our suggestion is that any school that seeks these loans would only do so on a short-term basis, use loans solely for payroll purposes, and pay back loans or seek forgiveness quickly to minimize exposure to potential risk. Because of concerns over how certain civil rights provisions will be interpreted, we are suggesting that PPP funds not be used to pay mortgage interest or rent expenses. As regulations continue to develop, the AACCS is actively working to ensure that Christian schools and other ministries

applying for a small business loan will not be exposed to risk of future harms that restrict their ability to operate according to the tenets of their faith, practice explicitly religious activities, or maintain their religious affiliation.

Any bank may participate in this program. So, if your school or ministry is considering seeking this small business loan, we recommend you begin communicating with your bank now to identify your local lenders and understand the loan process. To view a list of lenders currently working with the SBA, click [here](#). The link [here](#) provides some helpful information from the Senate Committee on Small Business. To view the application form, click the link [here](#). Any school or ministry that participates in the Paycheck Protection Program should keep accurate records to provide to the SBA for future loan forgiveness.

PPP Loan Forgiveness

Recipients must apply for forgiveness no later than 90 days after the last day of the eight-week loan period. The loan can be forgiven only if an employer does not reduce his workforce or his employees' pay between February 1 and the eight-week period during which the funds are used. If an employer reduces workforce or pay during that time, the employer must return the worker to his position or restore his full pay by June 30, 2020, to qualify for full loan forgiveness. Lenders have 60 days from the time a recipient applies for forgiveness to determine whether the recipient used the loan for qualified purposes. Any amount that the lender determines is not forgivable must be paid back within two years (non-permitted uses of PPP loans, such as mortgage principal or salaries over \$100,000, must be paid back immediately).

It is vital that recipients keep detailed records of how they used the loan, including tax filings, number of employees, pay rates, receipts, utility payments, mortgage interest payments, and other forms of verification. Loans might not be forgiven in their entirety if recipients do not keep thorough and exhaustive records to prove the loan has been used for qualified purposes. Forgiven loans are not considered income when filing with the IRS.

Recipients of the PPP loan should begin working with their lender now to ensure that their loan forgiveness applications are submitted within the 90-day period.

Below are some additional provisions in the CARES Act that allow deferral or retention of the employer's share of payroll taxes. These provisions do not apply if an employer obtains a Paycheck Protection Program loan and are unlikely to apply to AACS member schools.

Employee Retention Credit

Section 2301 offers employers, including tax-exempt organizations, a refundable payroll tax credit when a workplace is closed due to COVID-19. Employers can receive a tax credit for 50% of employees' wages, including any health benefits, if workplace operations are fully or partially suspended, or if gross receipts for the quarter starting on December 31, 2019 are less than 50% of the gross receipts from the same quarter last year. The tax credit is limited to \$10,000 per employee.

Delay of Payment of Employer Payroll Taxes

Section 2302 offers another cost-saving option for employers by allowing them to delay payment of the employer portion of their payroll taxes through the end of the year. The employer would divide his payroll tax costs into two payments due the end of 2021 and 2022.

PROVISION 2: UNEMPLOYMENT INSURANCE

Section 2102 of the CARES Act establishes Pandemic Unemployment Assistance, expanded unemployment insurance for employees that do not typically qualify for unemployment insurance under state or federal law. The law recognizes that the best scenario for employers and employees is to keep workers meaningfully attached to their employer; however, the law also recognizes that in these unprecedented times, many workers need immediate help through federal assistance.

Employees of Christian schools, that often do not pay into the state's unemployment insurance system, would qualify for this new unemployment benefit. The benefit guarantees employees who lose their employment or resign their position because of COVID-19 a total of 39 weeks of benefits. For employers that do not contribute to state unemployment insurance for their employees, those employees should enquire at their state unemployment

office to determine what benefits are available under the Pandemic Unemployment Assistance. The law allows employees to receive \$600 per week in addition to the calculated state benefit. To qualify for Pandemic Unemployment Assistance, a worker must be unemployed for one of the following reasons:

- a. An employee is diagnosed with COVID-19 or is seeking a medical diagnosis for COVID-19 symptoms.
- b. A member of the employee's household has been diagnosed with COVID-19.
- c. An employee is providing care for a family member or a member of the employee's household who has been diagnosed with COVID-19.
- d. A child or another person for which an employee has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of COVID-19 when the school or facility is required for the employee to work.
- e. An employee is unable to reach his workplace because of a quarantine imposed as a direct result of the COVID-19 public health emergency.
- f. An employee is unable to reach his workplace because he has been advised by a health care provider to self-quarantine due to COVID-19-related concerns.
- g. An employee was scheduled to start working but does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency.
- h. An employee 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.
- i. An employee must quit his or her job as a direct result of COVID-19.
- j. An employee's workplace is closed as a direct result of the COVID-19 public health emergency.
- k. An employee meets any additional criteria established by the Secretary of Labor for unemployment assistance.

The federal government's goal in the CARES Act is to keep employees connected to their employer through meaningful employment, which not only keeps employees from depending upon government handouts but also helps generate economic growth once the pandemic passes. To learn how state programs will administer this federal unemployment compensation provision, schools should reach out to their state department of labor.

Emergency Unemployment Relief for Governmental Entities and Nonprofit Organizations

Under Section 2103, employers that do participate in their state's unemployment insurance plan or that are self-insured against unemployment can receive a 50% federal reimbursement rate for unemployment benefits paid to workers. Nonprofit and religious liberty groups were disappointed that these employers were not compensated for 100% of these costs, but we will continue working with Congress and federal agencies highlighting the needs of member ministries and other nonprofit and religious organizations.

Temporary Financing of Short-Time Compensation Payments

Section 2108 provides an incentive for states to supply short-time compensation plans to employees whose hours are reduced. This provision encourages employers to keep their workers employed at reduced hours instead of laying off workers. The employees can receive unemployment benefits for the hours they are no longer working. The federal government provides a 100% reimbursement to states that implement these plans.

PROVISION 3: EXPANDED CHARITABLE DEDUCTION

In times of economic emergencies, nonprofit organizations often experience a decline in charitable gifts. To help the organizations that are struggling to keep their workers employed while still serving their communities and providing necessary services, the CARES Act provides a temporarily expanded charitable deduction for taxpayers. The CARES Act provides a \$300 above-the-line charitable deduction even for taxpayers who take the standard deduction and do not itemize on their taxes, providing an incentive for all taxpayers to continue to give charitably even in difficult economic times. To encourage the support of nonprofit organizations, the Act also expands the cap on itemizing.

Although the CARES Act provides a lower charitable deduction than many nonprofit organizations were seeking, it is a steppingstone to further increase charitable deductions by providing incentives to more taxpayers to support the charitable organizations that provide vital services to their communities.

PROVISION 4: EQUITABLE SERVICES

The CARES Act provides \$16.5 billion in aid to K–12 schools through grants to the states. Most of the funds (\$13.5 billion) can be used for twelve reasons to help schools combat COVID-19 and support students through closures and remote learning. Part of the funds (\$3 billion) are broadly directed by a state’s governor to aid a variety of educational needs. The CARES Act requires that Local Educational Agencies (LEAs) provide equitable services to nonpublic schools that wish to take part in new federal benefits as described under the Every Student Succeeds Act (ESSA). Any school wishing to participate in this federal benefit should reach out to its LEA to identify new qualifying provisions. A state ombudsman can help a school cooperate with the LEA and receive equitable services. To find your state’s ombudsman, visit this Department of Education list [here](#).

AMENDMENTS TO FAMILIES FIRST CORONAVIRUS RESPONSE ACT

The CARES Act makes some amendments to the recently passed Families First Coronavirus Response Act that are important for Christian schools to know. In Section 3605, the CARES Act extends paid sick and family and medical leave benefits to employees who were laid off after March 1 and were rehired. The employee would need to have worked at least 30 days before the lay off to qualify for paid leave. In Section 3606, the CARES Act allows an employer to apply for an advance tax credit for providing paid leave instead of waiting to be reimbursed on his quarterly payroll taxes. We are awaiting guidance from the Treasury Department on how employers can request the advance tax credit.

CONCLUSION

Christian schools should be aware of the aid that is available through the provisions of the CARES Act to help them financially endure the COVID-19 pandemic. While working hard to keep their teachers meaningfully employed during these difficult times, schools should be aware of the newly expanded unemployment insurance benefits and how the benefits are distributed within each state. Schools can take advantage of small business loans that can be forgiven if the loans are used for qualified payments. Schools can also participate on an equal footing with public schools through the Act’s equitable services guarantee. A state ombudsman can help schools work with the local LEA to receive federal money through equitable services. The expanded charitable deduction encourages more Americans to give charitably to the nonprofit and religious organizations that provide vital services to their communities in times of need.

As ministries adapt to the challenges brought on by COVID-19, the CARES Act attempts to provide some relief to afflicted American employers and workers. The AACCS is working to address some of the uncertainties left in the Act, such as the requirements that the SBA might place on nonprofits applying for small business loans. As we develop a greater understanding of the Act, we will send updates on how Christian schools can participate in new federal programs without losing their inherently religious identities. Visit the AACCS website [here](#) to view all our recent posts on COVID-19 and to learn how your ministries can adapt to the times ahead.