



CARES Act—Secondary Resources

Legal/Legislative Report

May 6, 2020

FINANCIAL RELIEF PROVISIONS IN THE CARES ACT

Since Congress passed the CARES Act on March 17, 2020, the Small Business Administration has been inundated with requests for the new Paycheck Protection Program small business loans. Because Congress allocated a fixed \$350 billion toward these loans, many small nonprofits might be unable to take advantage of these loans before the funds are exhausted. This document provides an overview of some secondary resources in the CARES Act that Christian schools and churches can pursue even if they are unable to receive PPP loans.

ECONOMIC INJURY DISASTER LOAN (EIDL) PROGRAM

Background

In addition to the small business loans established in the Paycheck Protection Program (see our white paper [here](#)), the CARES Act expands the Economic Injury Disaster Loan (EIDL) program to provide immediate assistance to businesses and nonprofit organizations. Nonprofit organizations, including Christian schools and churches, can receive up to a \$10,000 advance by applying for an EIDL loan.

Qualifications

To qualify, ministries must attest that a disaster (the COVID-19 pandemic) has prevented them from meeting their necessary financial obligations. EIDL loans are traditional loans that require repayment, but the emergency advance amount is forgivable if used for the following qualifying reasons:

- Paid sick leave to employees who are unable to work due to COVID-19.
- Payroll costs.
- Rent.
- Mortgage.
- Meeting increased costs caused by interruptions in the supply chain.
- Repaying other obligations that cannot be paid due to loss of revenue.

Christian schools and churches can apply for both a PPP loan and EIDL. The amount a ministry receives under the EIDL advance will be subtracted from the forgivable amount received under the PPP loan. These loans cannot be used for the same expenses during the same time period. Because the PPP loan can be used only for 8 weeks and requires that 75% of the loan must be used for payroll costs, the EIDL advance loan can be used to cover other costs during that period, such as rent and mortgage.

The EIDL advance loan also shares the same religious liberty protections and concerns as the PPP loans. The Small Business Administration (SBA) recently issued an [FAQ](#) document applying to both PPP and EIDL programs clarifying that religious organizations can participate while maintaining their religious identity, mission, and autonomy. Positive religious liberty language makes clear that the administration wants religious organizations that participate in the EIDL 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 EIDL loan. We believe there is very limited exposure for loans that are fully forgiven or paid back in a timely manner, but potential exposure to long-term risk associated with having these loans is still being evaluated.

How to Apply

Unlike the PPP, application for EIDL must be made directly with the SBA, not through a bank or lender. To receive the advance amount, a ministry must fill out an [application](#) for the traditional EIDL loan and check a box that requests an advance of up to \$10,000. A ministry can receive the advance amount and qualify to have it forgiven even if the ministry is denied or declines to accept the traditional EIDL loan.

The SBA has indicated that approved applicants will receive up to the \$10,000 loan within 3 business days. EIDL grants are available from January 31, 2020, to December 31, 2020.

EQUITABLE SERVICES FOR CHRISTIAN SCHOOLS

Background

The CARES Act provides \$30.75 billion for an Education Stabilization Fund to aid in the educational costs incurred in the adjustments that have been made to combat the coronavirus. Of that amount, \$16.5 billion is directed towards K–12 education, provided through two funding streams: The Governor’s Emergency Education Relief Fund (\$3 billion) and the Elementary and Secondary School Emergency Relief Fund (\$16.5 billion).

The law requires both programs to provide equitable services to nonpublic schools in the same manner that the services are provided for under the Every Student Succeeds Act (ESSA). As such, any private school wishing to participate and receive services will maintain its autonomy. Additionally, it is important to note that the schools will receive services, not funds, to aid them in the adjustments they have made.

Two Funding Streams

The **Governor’s Emergency Education Relief Fund** (Section 18002) provides grants to governors to distribute to schools and educational institutions in their state that have been significantly impacted by coronavirus in their ability to provide educational services. These funds can be used to provide support to a local educational agency, higher educational institution, or “education-related entity within the State that the Governor deems essential for carrying out emergency educational services to students,” including “the provision of child care and early childhood education, social and emotional support, and the protection of education-related jobs.”

Any private school wishing to participate in this benefit should contact its governor’s office or follow the steps listed in our Equitable Services White Paper [here](#) to contact the Local Educational Agency (LEA). As governors can direct the funds to the LEA and to educational institutions, a contact to both offices could be helpful. A state ombudsman can also help a school cooperate with the LEA and receive equitable services. To find your state’s ombudsman, visit this Department of Education list [here](#).

The **Elementary and Secondary School Emergency Relief Fund** (Section 18003) provides funds to the State Educational Agencies (SEAs) to distribute to their Local Educational Agencies (LEAs), which in turn determine the distribution to schools, including private schools, choosing to participate in the equitable services. There are twelve uses for money provided under this fund, including the following:

- Activities included in the Individuals with Disabilities Education Act.
- Providing principals and other school leaders with necessary resources to address the needs of their schools.
- Training and professional development for staff of the Local Educational Agency on sanitation and minimizing the spread of infectious diseases.
- Purchasing supplies to sanitize and clean facilities.
- Planning for and coordinating during long-term closures (including for how to provide technology for online learning to all students).
- Purchasing educational technology (including hardware, software, and connectivity).
- Providing mental health services and support.
- Activities to address the unique needs of low-income children or students, children with disabilities, English learners, racial and ethnic minorities, students experiencing homelessness, and foster care youth, including how outreach and service delivery will meet the needs of each population.
- Other activities that are necessary to maintain the operation of and continuity of services.

According to the law, the Local Education Agency (LEA) should be contacting private schools in the near future to inquire of their interest in participating in the equitable services. All nonpublic schools are eligible to participate in these services. Even if a school has declined equitable services for the year, that school is still eligible to participate in the services available through the CARES Act.

ADDITIONAL BENEFITS IN THE CARES ACT

Below are some additional provisions in the CARES Act that provide financial relief to Christian schools and churches. Note that ministries cannot qualify for the deferral or retention of the employer’s share of payroll taxes if they obtain a Paycheck Protection Program loan.

Employee Retention Payroll Tax Credit

The CARES Act offers employers, including tax-exempt organizations, a refundable payroll tax credit when a workplace is fully or partially suspended due to a government order restricting commerce, travel, or group meetings because of 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. Any paid sick or family and medical leave the employer provides under the Families First Coronavirus Response Act is not included in employees' wages. The tax credit is limited to 50% of wages of up to \$10,000 per employee per calendar quarter.

To claim the credit, employers must report their total qualified wages on IRS Form 941, the federal tax return form, for each calendar quarter. An employer can request an advance refund of the credit if he is not able to set aside the amount of federal employment taxes needed to cover payroll taxes. The advance credit would simply allow the employer to keep the amount he would otherwise deposit in withheld taxes and seek a credit for whatever amount up to 50% of employees' wages remains. Employers can fill out [IRS Form 7200](#) to obtain the advance credit.

Delay of Payment of Employer Payroll Taxes

Employers can delay the 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 equal payments due December 31, 2021, and December 31, 2022.

Emergency Unemployment Relief for Governmental Entities and Nonprofit Organizations

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. Some states may choose to reimburse nonprofits for the remaining 50% of unemployment benefits. 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

The CARES Act provides an incentive for states to supply short-time compensation plans, also known as workshare 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. About 30 states offer short-time compensation plans.