

NAVIGATING FINANCIAL RELIEF FROM COVID-19

April 28, 2020



COVID-19 Relief

WHAT NONPROFITS NEED TO KNOW

Presenters



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Coronavirus Aid, Relief and Economic Security (CARES) Act

Increases access to loans for small and middle market businesses

Three Programs:

1

Small Business Administration (SBA) Economic Injury and Disaster Loan Program (EIDL)

2

Paycheck Protection Program (PPP) third-party loans with SBA guarantees

3

Main Street Lending Program

Section 4003 of the CARES Act calls for special assistance for eligible midsize businesses with guidance to be published in the near future

SBA EIDL Program



Eligibility

- Businesses unable to meet existing financial obligations as a result of COVID-19 crisis
- Most manufacturing companies with 500 or fewer employees and most non-manufacturing businesses with average annual receipts under \$7.5 million (exceptions by industry)
- PPP loan and EIDL loan both allowed as long as proceeds are not duplicated



Amount

Up to \$2 million for working capital and ordinary expenditures (actual amount tied to economic injury from COVID-19)



Rate

- 3.75% for small businesses and 2.75% for nonprofit
- Loans forgiven up to \$10,000



How to Apply

Apply online directly with the SBA
<https://www.sba.gov/disaster-assistance/coronavirus-covid-19>

Paycheck Protection Program (PPP)



Eligibility

- 500 employees or less (including affiliates)
- Meets applicable employee size standards based on NAICS (including affiliates)
- 500 employees or less by location in accommodation and food service industry (NAICS 72x) or for any business acting as a franchise that is assigned a franchise identifier code by SBA
- Sole proprietors, independent contractors and other self-employed individuals, including “gig economy” workers
- Charitable tax-exempt organizations (including religious organizations), described in section 501(c)(3) of the Internal Revenue Code, and veterans organizations, described in section 501(c)(19), are eligible to participate in the program. However, other tax-exempt organizations (e.g., those described in sections 501(c)(4), (5), and (6)) are not eligible to participate.



Amount

2.5 times a borrower's monthly payroll costs for U.S. employees (employees compensated more than \$100,000 per year must be prorated) or \$10 million, whichever is smaller



Rate

- 1% for 2 years
- Payments of both principal and interest will be deferred for six months following the date of loan disbursement; however, interest will accrue during that period
- Loans are forgivable provided certain criteria are met



How to Apply

Applicants must submit SBA form 2483 with payroll documentation to a participating lender

Paycheck Protection Program (PPP) Timeline

March 27th

The over \$2 trillion economic relief package known as CARES Act was passed by Congress and signed into law by President Trump, including \$349 billion for PPP



April 16th

SBA announces the \$349 billion authorized for Paycheck Protection Program loans has been exhausted and is no longer accepting applications



April 3rd

SBA started accepting PPP applications



April 24th

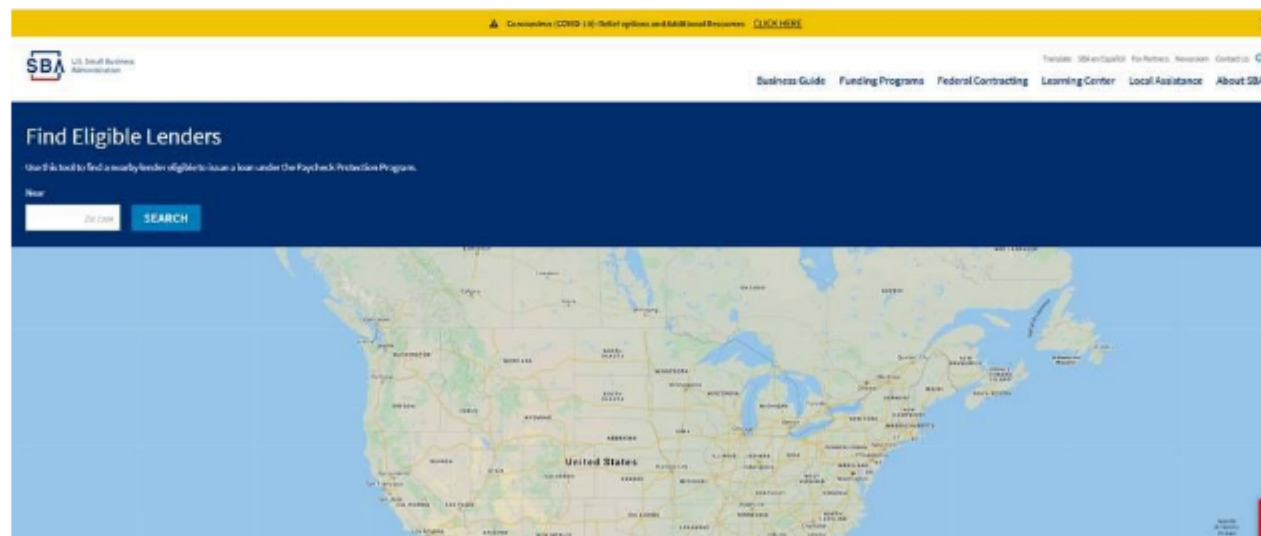
Additional aid for PPP was passed by Congress and signed into law by President Trump, including an additional \$250 billion for PPP



**Average Federal Burn Rate is \$50 billion per day.
Funds will be gone 6 – 10 days after lending
disbursement starts.**

How can I find a Participating Lender?

1. Contact your existing banking relationship to see if they are eligible to participate
2. What if our organization does not have an existing banking relationship, or our existing banking relationship is not SBA certified?
 - Can go to the SBA website and use the zip code tool to locate all SBA participating lenders in your area
<https://www.sba.gov/paycheckprotection/find>
 - As of 4/14, applicants can now apply directly through an online fintech entity (aka broker); such as PayPal, Quickbooks, Quicken Loans, etc.



Can a (PPP) loan be forgiven?



Under Certain Conditions:

Funds must be used in an eight-week period following loan origination for the following (with respect to the items below, no more than 25% of the loan forgiveness may be attributed to non-payroll costs)

- Payroll costs
- Any payment of interest on any covered mortgage obligation; any indebtedness or debt instrument that is a liability of the borrower, is a mortgage on real or personal property and was incurred before February 15, 2020
- Any payment of a rent obligation made under a leasing agreement in force before 2/15/2020
- Any utility payment related to the distribution of electricity, gas, water, transportation, telephone or internet access for which service began before February 15, 2020



Existing employees are retained at or near current salary levels

- Employee cuts or wage reductions will reduce forgiven amounts
- Employers are allowed to rehire employees previously let go before the application without penalty



Proceeds from any advance up to \$10,000 on an EIDL loan will be deducted from the loan forgiveness amount

Loan Forgiveness



Information that must be provided to the lender:

Documentation verifying the number of full time equivalent employees on payroll and pay rates including payroll tax filings reported to the IRS and State income, payroll, and unemployment insurance filings;



Documentation, including cancelled checks, payment receipts, transcripts of accounts, or other documents verifying payments on covered mortgage obligations, payments on covered lease obligations, and covered utility payments.



You must certify that documents provided are true and that loan proceeds were used to maintain employees on the payroll and make eligible rent, mortgage interest and utility payments

- Lender will determine if forgiveness is appropriate within 60 days

Loan Forgiveness

Lenders shall grant forgiveness at up to 100% of the loan amount or a lesser % based on one of the following ratios (borrower's choice):

Average # of FTE employees per month for the 8 week period following loan closing

Average # of FTE employees per month for the period of 2/15/19 through 6/30/19

OR

Average # of FTE employees per month for the 8 week period following loan closing

Average # of FTE employees per month for the period of 1/1/20 through 2/29/20



Other calculations apply for seasonal businesses.



Businesses who have laid off workers or reduced worker salaries between 2/15/20 and 4/26/20, but plan to rehire and restore salaries to original levels with PPP loan proceeds can include those amounts in a loan request. Those amounts can ultimately be forgiven as long the business re-hires or reinstates prior pay amounts no later than 6/30/20.



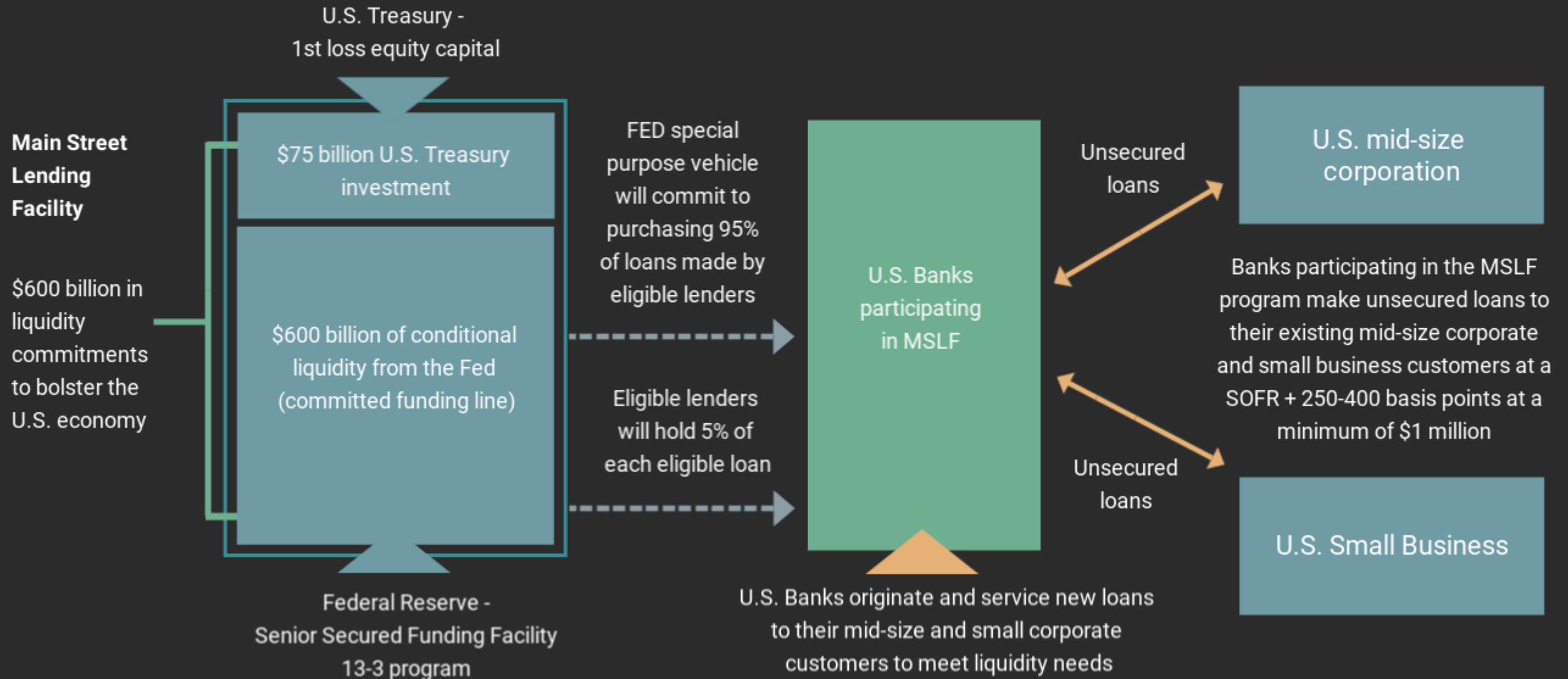
Loan forgiveness amounts shall be reduced by the amounts by which a borrower reduces the wages of an employee earning < \$100,000 per year by more than 25% during the 8 week period from the date of loan disbursement as compared to the employee's wage rate for the quarter prior to the date of loan disbursement.

CARES Act

MAIN STREET LENDING PROGRAM

Main Street Lending Program

\$600 Billion lending facility to provide low-cost loans to help small to medium-size enterprises impacted by COVID-19



Main Street Lending Program (amounts available)

- New loans
(after 4/8/2020)

- Minimum \$1 million
- Maximum \$25 million
- Not to exceed 4x 2019 EBITDA when added to existing outstanding and committed but undrawn debt

- Existing term loans
(prior to 4/8/2020)

- Minimum \$1 million
- Maximum \$150 million
- 30% of existing outstanding and committed but undrawn debt
- Not to exceed 6x 2019 EBITDA when added to existing outstanding and committed but undrawn debt

Main Street Lending Program (eligibility and terms)



Eligibility

- Up to 10,000 employees
- Up to \$2.5 billion in 2019 annual revenues
- Created or organized in the United States with significant operations in and a majority of employees in the United States



Rate

- Four-year loans at an adjustable rate of SOFR + 250-400 basis points
- Amortization of principal and interest is deferred for one year
- Prepayment is permitted without penalty
- Loans are not forgivable



How to Apply

- Borrowers should contact their lender directly

Borrower attestations for Main Street Lending Program Loans

- Borrowers must attest that they require financing due to the exigent circumstances presented by the COVID-19 pandemic, and that, using the proceeds of the loan, they will make reasonable efforts to maintain payroll and retain employees during the term of the loan
- Borrowers must attest that they will not cancel or reduce any existing lines of credit to the Main Street Lending Program lender or any other lender, and that loans obtained through the Main Street Lending Program will not be used to repay or refinance pre-existing loan balances
- Borrowers will need to follow compensation, stock repurchase and capital distribution restrictions outlined in section 4003(c)(3)(A)(ii) of the CARES Act and certify eligibility, including in light of the conflicts of interest prohibition in section 4019(b) of the CARES Act

Employer/Employee Relief Provisions

LIQUIDITY AND TAX EFFICIENCIES

Payroll Credits And Deferrals, Retention, Benefits, Sick Leave, FMLA+,
And Other Considerations

Summary of COVID-19 Provisions Affecting Compensation, Benefits, and Payroll

- Retention and leave payroll credits
 - Employee retention credit
 - Emergency sick leave
 - Six Triggers
 - FMLA plus (Emergency FMLA)
 - One Trigger
- Deferrals, distributions, coverage, and loans
 - Two year 2020 payroll (employer social security) tax deferral
 - Half due December 31, 2021
 - Half due December 31, 2022
 - Permissible plan distribution and repayment
 - Group health plan expanded permissible expense
 - Defined benefit plan contribution extensions
 - Unemployment Benefits

Payroll Tax Deferral



"Applicable employment taxes" for the "payroll tax deferral period" are not due before the "applicable date".

- Applicable employment taxes =
 - The taxes imposed under IRC Section 3111(a) (social security taxes),
 - So much of the taxes imposed under IRC Section 3211(a) as are attributable to the rate in effect under IRC Section 3111(a), and
 - So much of the taxes imposed under IRC Section 3221(a) as are attributable to the rate in effect under IRC Section 3111(a) (RRTA taxes). CARES Act Section 2302(d)(1)
- Payroll tax deferral period = the period beginning on the date of enactment of the CARES Act (March 27, 2020) and ending before January 1, 2021, i.e., December 31, 2020. CARES Act Section 2302(d)(2)
- Applicable date =
 - December 31, 2021, with respect to 50% of the amounts deferred, and
 - December 31, 2022, with respect to the remaining 50% deferred. CARES Act Section 2302(d)(3)
 - Appears deduction timing rules still apply under Section 461 tied to actual payment

Note: Payroll deferral program not available if SBA loan forgiveness under Section 1106 and 1102 of the CARES Act.

Employer Retention Credit

Eligible employers receive 50% credit for qualified wages up to \$10,000 (\$5,000 maximum credit per employee)

- Wages paid to employees after March 12, 2020 and before January 1, 2021
 - Includes allocable health expenses
- Credit against Social Security taxes
 - Precludes double benefits under work-opportunity tax and leave credits
- Excess refunded or applied against other taxes
- Controlled group under Sections 52 and 414

Note: Not eligible if receiving a loan under a Payroll Protection Program loan under Section 1102 of the CARES Act

Eligible Employer

- Operations suspended (full or partial) result of government order or
- Over 50% reduction in quarterly receipts measured year over year
- Look to each organization for certain Section 501(c)(3) Tax-Exempts
- Governmental employers NOT eligible for the credit

100 or Fewer Employees

Qualified Wages = Up to \$10,000 for each employee

More than 100 Employees

Qualified Wages = Up to \$10,000 for each employee unable to provide services due to COVID-19

Paid Leave Provisions

Applies to:

- Private employer with fewer than 500 employees,
- Public agency, and
- (For EPSL only) any other entity that is not private

Note: Count number of employees on date of leave

Obligation to provide, but also receive corresponding credit. EXCEPT NO credit for government employer.

Note that an employer may receive an advanced credit prior to the expense.

Emergency Paid Sick Leave (EPSL)

- Employees eligible day one
- Up to 80 Hours (basically, first 10 days)
- Six Triggers
- Full or 2/3rd pay depending on trigger
- Full pay capped at \$511 daily and \$5,110 in aggregate, or
- 2/3rd pay capped at \$200 and \$2,000 in aggregate

Emergency Paid FMLA (FMLA +)

- Employees eligible with 30 calendar days on payroll
- Up to 12 Weeks
 - First two weeks may be unpaid
- One trigger
- 2/3rd pay capped at \$200 and \$10,000 in aggregate



Paid Leave Provisions - Triggers

The following reasons trigger paid leave provisions to apply to employers with fewer than 500 employees:

EPSL = Employee unable to work (of telework) because:

Employee subject to quarantine or isolation order related to COVID-19

Employee advised by healthcare provider to self-quarantine because of COVID-19

Employee experiencing symptoms of COVID-19 and seeking a diagnosis

The employee is caring for an individual subject to or advised to quarantine or isolate

The employee is caring for a son or daughter whose school or place of care is closed or unavailable due to COVID-19 precautions

The employee is experiencing substantially similar conditions as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury

FMLA+ = Employee unable to work (or telework) because:

Employee is unavailable to work or telework to care for a minor child if the child's school or place of child care has been closed or is unavailable due to a public health emergency

Blue triggers = Full pay trigger capped at \$511 and 10 days (\$5,110)

Other triggers are 2/3rd pay capped at \$200 per day for the paid benefit period

Additional CARES Act compensation and benefit provisions



Student loan assistance

Employers may contribute up to \$5,250 tax free toward the student loans of employees under a non-discriminatory arrangement



Plan distributions

Required minimum distributions for defined contribution plans and IRAs suspended for 2020



Plan withdrawals and repayments

For certain taxpayers personally impacted by COVID-19, plan withdrawals up to \$100,000 permitted without early withdrawal penalty



Plan loan limit

Qualified plan loan limit for 180 days from enactment is increased to \$100,000



Funding

Required funding of qualified plans extended through December 31, 2020

Filing Guidance, UBIT Calculations, Charitable Giving

Tax Return Filing Deadline Extensions

- Income tax returns with an initial due date or extended due date between April 1 and July 15 are now due July 15
 - This includes 990s
- Most states follow the IRS due dates
- Tax-exempts that paid significant estimated taxes in tax years (TYs) ending in 2019 and now think they are owed a refund may want to file Form 990-T sooner to get a refund
 - E.g., "parking tax" repealed at the end of 2019
- Calendar year tax-exempts that overpaid estimated taxes in 2019 and want a quick refund before filing Form 990-T must file Form 4466 by July 15, 2020

CARES Act Charitable Giving Incentives

Individuals

- Provides a new "above the line" charitable contribution deduction of up to \$300 to individuals who do not itemize their deductions
- For itemizers, permits a charitable contribution deduction of up to 100% of adjusted gross income

Corporations

- Permits a deduction of 25% of taxable income (up from 10%)

Requirements for all

- Contributions must be made in cash, in 2020, and to a public charity or operating foundation described in section 170(b)(1)(A) - but contributions made to a supporting organization or a donor-advised fund do not qualify

Affiliation Rule

In determining whether affiliation exists, the SBA may consider the totality of the circumstances, and may find affiliation even though no single factor is sufficient to constitute affiliation

Key is Power to Control

Items of Consideration

- Ownership
- Options, Convertible Securities, Agreements to Merge
- Common Management
- Identify of Interest
- Joint Ventures
- Negative Covenants

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