

16.0 COMMUNITY ORGANIZATIONS/SMALL BUSINESSES

16.1 Overview

Disasters can be the cause of both physical and economic damage to microenterprises and nonprofits, resulting in both unexpected disaster-related damage repair costs and revenue loss. Disasters can also spur nonprofits to take on disaster-relief activities which may be outside of their normal programs or activities.

Community-based nonprofit organizations often require assistance in two different arenas: as an organization engaging in disaster recovery for itself and as an organization engaging in disaster relief activities for other disaster victims in the community. During and after a disaster, organizations provide food, cash assistance, social services and information. They may even decide to create new programs or new entities to respond to unique needs posed by disasters or assist underserved or marginalized communities with additional and specialized needs.

16.2 Most Common Issues/Questions

A. Where Can I Get Help?

1. Federal Emergency Management Agency (FEMA): Generally, following a federal disaster declaration, for-profit businesses and nonprofit organizations in the affected areas can begin the disaster application process by registering online with FEMA or calling the FEMA telephone hotline. *Because short deadlines apply to both FEMA and the Small Business Association (SBA), it is important and necessary to contact them as quickly as possible.*

Public Assistance Program – Nonprofit organizations within a federally declared disaster zone may qualify for FEMA grants and low interest loans through the SBA to help them repair damages to their facilities. A nonprofit must apply for both grants and loans within a short deadline, usually 30-60 days following the federal disaster declaration. Any nonprofit damaged by a disaster should register immediately with FEMA and apply for an SBA loan. Grants are available for only certain types of nonprofits as set out in more detail below.

There is specific guidance from FEMA regarding what types of emergency protective measures nonprofit organizations are taking to respond to the COVID-19 pandemic that may be eligible for funding under the Public Assistance Program. These are going to include measures to manage, control, and reduce immediate threats to public health and safety, emergency medical care, and medical sheltering.

For general information, visit <https://www.fema.gov/assistance/public>.

For COVID-19 focused information, visit https://www.usfa.fema.gov/downloads/pdf/covid19/fema_covid19_streamlined_project_application.pdf.

Disaster Assistance Grants – Two types of nonprofit organizations are eligible for disaster assistance grants: (1) Critical service providers (including educational, utility, emergency, or medical services), and

(2) essential service providers¹ open to the general public. *Eligible nonprofits providing essential services of a governmental nature*, may qualify for grants to repair or replace eligible real property losses. For example, if a nonprofit leases the building, it can qualify for grants if it is legally responsible for disaster-related repairs. Here, the (pre-disaster) lease must clearly state that the nonprofit is responsible for repairing major damage, rather than just maintenance or minor repairs.

For general information, visit <https://www.fema.gov/assistance/public>.

Both critical and essential services nonprofits must register with FEMA and submit a request for assistance within 30 days of the disaster declaration. Tight timelines and information reporting make it critical for nonprofits to understand and calendar their obligations to report information and follow up on applications. In general, most nonprofits will need to apply for an SBA loan first in order to apply for a grant. For example, essential service providers must apply for a low-interest disaster loan from the SBA at the same time they apply for the public assistance grants for permanent work assistance. However, nonprofits providing “critical services” such as sewer or wastewater services, education, fire and rescue, or nursing home services, can apply directly for grants without having to apply for a loan.

In order to obtain funding, the facility or structure damaged or destroyed by the disaster must have used over 50% of its space for eligible services. Note that space dedicated to or primarily used for religious, political, athletic, recreational, or vocational purposes, is not eligible for grant assistance. Some spaces may be used for both for eligible and ineligible purposes, e.g., a library with adjacent performing arts space. Grant assistance, if approved, is proportional to the percentage of space used for eligible services. Nevertheless, as a condition of receiving grant assistance, the organization must repair the entire building.

Eligible work is classified into the following categories: “Emergency Work,” such as debris removal and “Permanent Work,” such as replacement or repair of buildings and facilities (this can include work to mitigate or prevent future disaster damage).

To apply for Disaster Assistance Grants, visit <https://www.fema.gov/assistance/public/apply>.

2. Department of Agriculture: Farmers and ranchers with disaster-related losses may be eligible for assistance from the US Department of Agriculture, <https://www.fsa.usda.gov/programs-and-services/disaster-assistance-program/index>. This assistance includes grants and loans, and varies by type of disaster (flood, drought, fire) as well as category of damage (crops, beehives, livestock, etc.).

3. Small Business Administration: For-profit and nonprofit organizations affected by a federally declared disaster, may be eligible for disaster assistance loans from the Small Business Administration (SBA). The maximum combined loan amount available is \$2 million. There are two types of loans: (1) economic injury, which provides working capital, and (2) physical disaster, which may be used to repair or replace property.

¹ Examples of essential services are: museums, zoos, performing arts facilities, some community centers, community arts centers, libraries, homeless shelters, senior citizen centers, and health and safety services of a governmental nature, including, for example: low-income housing, substance abuse treatment centers, residences and other facilities offering programs for battered spouses, animal control facilities directly related to public health and safety, facilities offering food programs for the needy, childcare centers, and daycare centers for people with special needs (Alzheimer's, autism, muscular dystrophy, etc.)

For more information, visit <https://www.sba.gov/funding-programs/disaster-assistance>.

For applications, visit <https://disasterloanassistance.sba.gov/ela/s/>.

Find your local SBA office at <https://disasterloanassistance.sba.gov/ela/s/>.

The Economic Injury Disaster Loan (EIDL) is an SBA loan available in areas with a federal disaster declaration. These loan applications are made directly through the SBA's website. These loans are available to most private nonprofits, small businesses, and small agricultural cooperatives if the SBA determines they are unable to obtain credit elsewhere and have suffered substantial economic injury due to the disaster. This loan can be used for any operational expenses, including payroll, paid sick leave, cost of materials, rent, or mortgage, or other obligations that cannot be met due to disaster.

During the Covid-19 Pandemic disaster response, a portion of the EIDL was awarded as a grant to qualifying applicants. This has not been the prior practice in the disbursement of these loans; and it is important that applicants to the EIDL loan be aware that the grant portion of the EIDL disbursements was specific to the Covid-19 Pandemic disaster and is not typical for the EIDL program.

For more information, visit <https://www.sba.gov/funding-programs/disaster-assistance/economic-injury-disaster-loans>.

Physical Damage Disaster Loan is an SBA loan available in areas with a federal disaster declaration. These loan applications are made directly through the SBA's website. These loans are available to nonprofits as well as small businesses, who have suffered physical losses in a disaster, such as real property repairs. For more information, visit <https://www.sba.gov/funding-programs/disaster-assistance/physical-damage-loans>.

SBA Loan Abatement: Existing SBA disaster loans approved prior to 2020 in regular servicing status as of March 1, 2020, received an automatic deferment of principal and interest payments through December 31, 2020. This initial deferment period was subsequently extended through March 31, 2021. An additional 12-month deferment of principal and interest payments will be automatically granted to these borrowers. Borrowers will resume their regular payment schedule with the payment immediately preceding March 31, 2022, unless the borrower voluntarily continues to make payments while on deferment. It is important to note that the interest will continue to accrue on the outstanding balance of the loan throughout the duration of the deferment. More information can be found at <https://www.sba.gov/funding-programs/loans/covid-19-relief-options/sba-debt-relief>.

Mitigation Assistance Loan Increase: An SBA loan that allows you to increase your SBA disaster assistance loan by up to 20% of your verified physical damage to make mitigation improvements. Borrowers generally have two years after their loan approval to request an increase for higher rebuilding costs, code-required upgrades or mitigation. More information can be found at <https://www.sba.gov/funding-programs/disaster-assistance/mitigation-assistance>.

B. What About My Business or Organization's Commercial Lease?

Physical Damage

Notify the landlord as soon as possible *in writing* of damage to the premises, and if operations were shut down as a result of disaster. Review the lease—particularly the provisions relating to business interruption, duties to remain open, repair clauses, termination clauses, and the like to determine whether the lease may be terminated, rent abated or deferred, and how the responsibility for repairs is apportioned between the parties to the lease. If the lease does not provide for temporary rent reduction, try to negotiate one with the landlord. This contractual relief is often dependent on the type and extent of damage to the property that was caused by the disaster.

Damage to the organization or business property located inside the leased premises is typically not covered by the property owner's insurance. As such it is important for the business or nonprofit to contact its insurance carrier to promptly report those types of losses and damages. Photograph or videotape the damage, as well as damage to any records, inventory, equipment, and any other loss.

Inability to Pay Rent:

If the business or organization is having difficulty making timely and complete rent payments for the space, it is imperative that open lines of communication are established with the landlord. It may be possible to reach an agreement about rent deferral or abatement, or a payment plan for back rent. Be sure to get any additional agreement in writing. If the organization wants to remain in that location, extending the lease may be an option to extend the time period in which to repay any rent deferred during the disaster.

Commercial tenancies are subject to lock-out for nonpayment of rent under Chapter 93 of the Texas Property Code. This is not a judicial process, rather it is a landlord self-help remedy allowing the landlord to lock-out a commercial tenant who is behind in the rent. This means that eviction moratoriums (particularly if drafted to prevent or delay the judicial process of residential evictions during the pendency of the disaster) may not apply to commercial lock outs under Chapter 93.

C. What If the Disaster Has Affected Existing Contracts?

A good practice is to maintain copies of all fully executed, current contracts in a location (physical or digital) that will be accessible in the event of a disaster. This makes it easier to for the business or nonprofit to review its contracts in the event of a dispute over contractual obligations; or conduct a proactive review of contractual obligations after a disaster has affected the operations of the small business or nonprofit organization.

The organization may have ongoing business obligations to vendors, suppliers, and clients even though the organization's operations are interrupted. It is important to assess the business or organization's ability to comply with existing obligations along with any potential avenues for relief contained in the terms of the relevant contract.

Nonprofit organizations further need to review grant contracts, particularly if the disaster has interrupted operations to an extent that the nonprofit may not be able to fulfill deliverables or continue with the scope of the grant. Grant contracts may also contain a list of events or conditions that trigger a

duty to notify the grantor. When a nonprofit organization is having any difficulty in resuming or maintaining operations as a result of the disaster, communication with the grantor may be helpful in ensuring that the nonprofit remains in compliance with grant requirements.

A review of force majeure clauses, termination clauses, penalty clauses and termination clauses are all useful. Any contract amendments agreed upon by the business or nonprofit and the other party to any contract need to be memorialized as a written amendment to those contracts.

D. Is There Any Federal Tax Relief Available?

Business owners who suffer damage or loss to their property or business due to a natural disaster are eligible for special federal income tax provisions. These provisions fall into two categories: casualty loss deductions and deferral of casualty gains (IRS FAQs: <https://www.irs.gov/businesses/small-businesses-self-employed/faqs-for-disaster-victims-casualty-loss-valuations-and-sections-165-i>). The IRS has workbooks for businesses (Publication 584-B, Business Casualty, Disaster, and Theft Loss Workbook: <https://www.irs.gov/pub/irs-pdf/p584b.pdf>) to help compile a list of damaged or lost business equipment and prove the market value of items for insurance and casualty loss claims. More IRS information can be found at <http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Disaster-Assistance-and-Emergency-Relief-for-Individuals-and-Businesses-1>.

E. What About Unemployment?

Federal Disaster Unemployment Assistance (DUA) is a federal program that provides financial help to those who become unemployed as a direct result of a *federally declared disaster*. Self-employed people, including small business owners, owners of farms and ranches, and others not generally eligible for unemployment insurance, are eligible for Disaster Unemployment Assistance. For more information, visit <https://www.disasterassistance.gov/get-assistance/forms-of-assistance/4466>.

Applications are submitted through the Texas Workforce Commission. *The application period can be short, it is important to apply as soon as possible.* DUA is available for up to 26 weeks. Individuals have the right to appeal the denial of benefits. An individual must prove self-employment by providing tax documents, business documents, and other proof of the existence of the business, such as a lease or utility statements or business licenses. More information can be found at <https://www.twc.texas.gov/jobseekers/disaster-unemployment-assistance>.

Disaster Unemployment benefits count as taxable income. Disaster Unemployment benefits are not available for the COVID-19 Pandemic Disaster—Pandemic Unemployment Insurance was crafted as a separate program. For taxpayers whose adjusted gross income is less than \$150,000; the first \$10,200 of pandemic unemployment payments received (per spouse if married filing jointly) is not taxable.

16.3 501(c)(3) Nonprofits Engaged in Disaster Relief

Nonprofit organizations often provide assistance to disaster victims at the same time they are struggling to recover from the disaster themselves. Particularly if the disaster relief operation is not the type of charitable activity that the nonprofit normally engages in, the nonprofit must be careful to structure its disaster relief services in such a way that they remain in compliance with the requirements imposed by their 501(c)(3) status. See IRS Publication 3833: <https://www.irs.gov/pub/irs-pdf/p3833.pdf>.

Purpose Clause

Nonprofits that amend the purposes clause of their certificate of incorporation (to provide additional disaster relief programs that are not within the current mission and purposes of the nonprofit) should notify the IRS promptly. The IRS may review changes to the corporate purposes of a 501(c)(3) organization to ensure that the changes do not affect the corporation's tax-exempt status and may revoke 501(c)(3) status if it deems the new purposes to be impermissible.

Charitable Class

Disasters can affect communities in unpredictable ways and nonprofits must decide how to define the charitable class eligible for disaster assistance. Nonprofits must serve public, not private interests. This means that the parameters of the charitable class—group or individuals identified to receive assistance (at-risk children, first-responders, homeless veterans, etc.) must be broadly defined so that providing assistance to the class is a benefit to the community. This is intended to avoid narrowly defined charitable classes designed to provide benefits to specific individuals (such as a specific person or family).

Restricted Donations

Nonprofit organizations can accept donations earmarked for specific purposes, such as to provide food aid to the victims of a specific disaster. When nonprofits accept donations earmarked for particular purposes, it must take steps to account for and demonstrate that those donations were used in conformity with the conditions attached to the donated funds. So long as the purpose of the restricted donation or charitable class identified for assistance is broad enough to constitute a community benefit, the nonprofit will avoid the problem of the private interest. Also problematic is the earmarking of donations for specific disaster victims.

Personal donations to benefit pre-selected individuals are not “charitable” gifts because they benefit private individuals, and 501(c)(3) organizations should decline such donations and encourage the donation be made to support programs to help disaster victims more generally.

The “Needy or Distressed” Test

Charitable aid is defined as relief for the poor and underprivileged as well as the distressed. This does allow 501(c)(3) nonprofits to assist ‘distressed’ persons who are suffering as a result of the disaster, regardless of their economic circumstances. This does not mean that charitable funds can be distributed to individuals merely because they are victims of a disaster.

Distribution of assistance must be based on an objective evaluation of the victim's needs at the time the grant is made. For example, emergency assistance (blankets or a hot meal at an evacuation shelter) can be distributed without screening for financial need. Persons needing these services are distressed whatever their economic circumstances. However, a financial assessment would be needed before providing aid such as disaster-related cash assistance for housing.

Staffing Issues

Ramping up operations quickly in response to a disaster often poses staffing issues. Nonprofits that seek to expand their staff to provide disaster relief services have a range of options.

One is to hire temporary workers, who are employed by a temporary agency, rather than by the organization itself. Another is to hire part-time or full-time employees directly. A third option is to hire

independent contractors (nonprofits must be careful to avoid misclassifying employees as independent contractors). This includes employees who may work only a few hours a day or according to a varying or even an erratic schedule. Misclassification penalties can be steep and may include paying back the employment taxes that should have been paid with respect to the misclassified individual.

<https://www.irs.gov/charities-non-profits/exempt-organizations-independent-contractors-vs-employees>

Volunteers often assist nonprofits in providing disaster assistance to the victims of the disaster. Nonprofits may be tempted to reward or compensate those who work tirelessly to serve victims of the disaster, for example by offering stipends or other benefits. While reimbursing volunteers for some out-of-pocket expenses is allowable, compensating volunteers for their time can inadvertently create an employment relationship, with all its attendant responsibilities. It is critical that nonprofit organizations considering compensation for volunteers to explore these issues thoroughly to avoid any unintended employment law consequences. <https://www.irs.gov/charities-non-profits/charitable-organizations/providing-disaster-relief-through-charitable-organizations-working-with-volunteers>

Charitable Aid to Businesses

A charity can provide financial and other aid to small businesses in furtherance of that charity's tax-exempt purposes. Disaster relief may be provided to businesses to help individual business owners who are financially needy or otherwise distressed, combat community deterioration or lessen the burdens of government. See IRS Publication 3833: <https://www.irs.gov/pub/irs-pdf/p3833.pdf>.

The IRS has provided examples to illustrate charitable assistance to businesses in the wake of a disaster. An example of aiding a needy or distressed business owner would be assisting a small business that has been so severely impaired by a disaster that the individual who owns the business is deprived of earning a livelihood. Combating community deterioration in the context of disaster relief may include providing funds to rebuild the infrastructure of a central business district severely damaged by a disaster or providing funds in the form of grants, low-cost loans, or equity investments in such business districts to ensure that businesses remain in the area.

16.4 COVID-19 Pandemic Supplement

The COVID-19 pandemic is an unusual disaster—the world has not seen a true world-wide pandemic since the 1918 flu pandemic. Existing disaster relief programs have been supplemented and expanded by COVID-19 specific statutes such as the CARES Act.

This disaster has been unusual in the breadth and depth of the economic damage to small businesses and nonprofit organizations and the unusual nature of what could be categorized as physical damages in the potential viral contamination of the premises, and ongoing threats of illness to employees, clients, and visitors to the business premises, and the difficulties of navigating health information and privacy issues with respect to illness in the workplace and vaccination issues.

This disaster has also been unusual and particularly challenging for microenterprises and nonprofits due to the rapidly changing conditions and regulations on the ground, as well as the evolving guidance from the federal, state, and local levels. The changing orders, capacity limits, and various moratoria, make it critical for organizations to stay up to date on the applicable regulations at any given point in time, for their particular jurisdiction.

A. Paycheck Protection Program Loan Forgiveness

First Draw PPP loans made to eligible borrowers qualify for full loan forgiveness if during the 8 to 24 week covered period following the loan disbursement:

- (1) Employee and compensation levels are maintained
- (2) The loan proceeds are spent on payroll costs and other eligible expenses; and
- (3) At least 60% of the proceeds are spent on payroll costs

Second Draw PPP loans made to eligible borrowers qualify for full loan forgiveness if during the 8 to 24 week covered period following the loan disbursement:

- (1) Employee and compensation levels are maintained in the same manner as required for the First Draw PPP loan
- (2) The loan proceeds are spent on payroll costs and other eligible expenses; and
- (3) At least 60% of the proceeds are spent on payroll costs

A borrower can apply for forgiveness once all loan proceeds for which the borrower is requesting forgiveness have been used. Borrowers can apply for forgiveness any time up to the maturity date of the loan. If borrowers do not apply for forgiveness within 10 months after the last day of the covered period, then PPP loan payments are no longer deferred, and borrowers will begin making loan payments to their PPP lender.

FAQ About PPP Loan Forgiveness: <https://www.sba.gov/document/support-faq-about-ppp-loan-forgiveness>.

PPP Loan Forgiveness Application + Instructions: <https://www.sba.gov/document/sba-form-3508-ppp-loan-forgiveness-application-instructions>.

Loan forgiveness is not automatic; a request will need to be submitted to the lender along with relevant supporting documentation.

Forgiven PPP funds will not count as income for federal tax purposes, and expenses which would normally be tax-deductible business expenses remain so, even if those expenses were paid for with PPP funds.²

B. Families First Coronavirus Relief Act – Paid Sick Leave/Paid Family Medical Leave

Employer Tax Credits for COVID-Related Leave Payments – The American Rescue Plan Act of 2021 (ARP) allows small and midsize employers, and certain governmental employers, to claim refundable tax credits that reimburse them for the cost of providing paid sick and family leave to their employees due to COVID-19, including leave taken by employees to receive or recover from COVID-19 vaccinations. The ARP tax credits are available to eligible employers that pay sick and family leave for leave from April 1, 2021, through September 30, 2021.

The ARP Fact Sheet can be found at <https://www.irs.gov/newsroom/employer-tax-credits-for-employee-paid-leave-due-to-covid-19>.

General information about COVID Employer Tax Credits: <https://www.irs.gov/coronavirus/employer-tax-credits>.

² <https://www.irs.gov/pub/irs-drop/rr-21-02.pdf>.

If the federal employment taxes yet to be deposited are not sufficient to cover the cost of qualified leave wages, plus the allocable qualified health plan expenses and the amount of the employer's share of Medicare tax imposed on those wages, the employer will be able file a request for an advance payment from the IRS. The American Rescue Plan Act of 2021 extended this benefit through September 30, 2021. See Question #66c at the following link: <https://www.irs.gov/newsroom/special-issues-for-employees#specific>.

Recordkeeping – Employers must request (from the employee) and keep records and documentation related to and supporting each employee's leave to substantiate the claim for the credits.

Employee must provide his or her employer documentation in support of paid sick leave or expanded family and medical leave, including (as applicable):

- the employee's name and the date(s) for which leave is requested;
- the COVID-19 qualifying reason for leave;

AND

- a statement representing that the employee is unable to work or telework because of the COVID-19 qualifying reason:
 - the name of the government entity that issued the quarantine/isolation order to the employee
 - the name of the healthcare provider who advised him or her to self-quarantine for COVID-19 related reasons

OR

- the name of the child being cared for and
 - the name of the school, place of care, or childcare provider that closed or became unavailable due to COVID-19 reasons, and
 - statement representing that no other suitable person is available to care for the child during the period of requested leave

Employers should keep this documentation for four years, regardless of whether leave was granted or denied. If an employee provided oral statements to support his or her request for paid sick leave or expanded family and medical leave, then document and retain that information for four years.

Self-Employed Persons – Refundable tax credits are available for self-employed workers who take COVID-19 leave. This means that self-employed workers can get money back if their tax credit is bigger than the tax owed.

Eligible self-employed workers can get a tax credit of up to 2 weeks of their full average pay (capped at \$511 per day) if unable to work for the following reasons:

- Under a quarantine or isolation order related to COVID-19;
- Have been advised by a health care provider to self-quarantine because of concerns related to COVID-19; or
- Having symptoms of COVID-19 and are seeking a diagnosis.

Eligible self-employed workers can get a tax credit of up to 67% of their average pay for 10 weeks (capped at \$200 a day) if unable to work for the following reasons:

- Caring for someone who is under a quarantine order or has been advised to quarantine by a health care provider;
- Caring for your child whose school is closed or childcare provider is unavailable; or
- Experiencing any other substantially similar condition related to COVID-19 as defined by law.

Keep financial records demonstrating self-employment and earnings (Average pay = net self-employment earnings/260). Keep records verifying eligibility for leave (i.e., COVID-19 diagnosis, isolation order, school closure order, etc.). Keep these records for 4 years. See Questions #60-66 at the following link: <https://www.irs.gov/newsroom/special-issues-for-employees#specific>.

C. Pandemic Payroll Tax Deferral

Delay of Payment of Employer Payroll Taxes – The Coronavirus, Aid, Relief and Economic Security (CARES) Act allowed employers to defer payment of the employer's share of Social Security tax. [IRS Notice 2020-65](#) allowed employers to defer withholding and payment of the employee's Social Security taxes on certain wages paid in calendar year 2020. Employers must pay back these deferred taxes by their applicable dates.

The employee deferral applied to people with less than \$4,000 in wages every two weeks, or an equivalent amount for other pay periods. It was optional for most employers, but it was mandatory for federal employees and military service members.

Repayment of the employee's portion of the deferral started January 1, 2021, and will continue through December 31, 2021. Payments made by January 3, 2022, will be timely because December 31, 2021, is a holiday. The employer should send repayments to the IRS as they collect them. If the employer does not repay the deferred portion on time, penalties and interest will apply to any unpaid balance. More information can be found at <https://www.irs.gov/newsroom/what-employers-need-to-know-about-repayment-of-deferred-payroll-taxes>.