




LEVERAGING PRIVATE FOUNDATIONS DURING CHALLENGING TIMES

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3  
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4  
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## PRIVATE FOUNDATION TAX WEBINAR SERIES

**Webinar #1**  
Leveraging Private Foundations During Challenging Times

**Webinar #2**  
Private Foundations 101: A Refresher for Board Members and Management

**Webinar #3**  
Private Foundation Compensation and Other HR Issues

**Webinar #4**  
Investment Related Issues for Private Foundations

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5  
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## TODAY'S TAKEAWAY

*Private foundations are in a unique position to provide assistance if they 1) are aware of what is going on around them and 2) have information and resources that can help their donees and others in this time of need.*

## AGENDA

1. Maximizing and Leveraging Private Foundation Resources
2. Tax Related Issues Impacting Nonprofits
  - Extended federal and state tax deadlines for returns and estimated tax payments
  - Impact of the CARES Act on charitable giving
  - Changes to NOL carryback rules
3. Summary of Available Relief Programs
4. Disaster Relief Options



**RESPONDING TO NEW AND UNEXPECTED CHALLENGES**

- Minimum Distribution Requirements
  - Non-operating private foundations are required to distribute approximately 5% of the average fair market value of their noncharitable assets by the end of the following year
  - 5 year carryover of excess distributions available
  - Excise taxes for failure to meet the distribution requirements
- Impact of decrease in market value of investments
- Protecting corpus vs meeting the vast expansion of charitable needs

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9  
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## STATEMENT ENCOURAGING INCREASED GIVING IN THIS TIME OF CRISIS

- [https://www.philanthropy.com/items/biz/pdf/Joint\\_PSO\\_Statement\\_FNL.pdf](https://www.philanthropy.com/items/biz/pdf/Joint_PSO_Statement_FNL.pdf)

*As leaders of philanthropy-serving organizations in this unprecedented moment of challenge for our country and globally, we applaud the efforts by foundations to be responsive to the needs of nonprofits and the communities and causes they serve. We strongly endorse the pledge signed by more than 460 foundations to loosen restrictions on grantees during this time and generally to be as flexible as possible...*

*Deploying philanthropic assets to strengthen vital organizations doing crucial work in extremely challenging circumstances is more important right now than preserving endowment capital. The strength of a funder's grantees at the end of this crisis will be a much better measure of the significance of a foundation than the size of its endowment.*

## MAXIMIZING THE BANG OF YOUR BUCKS

- Possible options to minimize impact on corpus
  - Investment decisions to minimize losses
  - Consider other types of qualifying distributions
    - Loans, PRIs, non-cash
- Contact current grantees
  - Have their needs changed?
  - Have their activities expanded?
  - Do prior grant restrictions need to be loosened?
  - Have they considered access to other funding options?
  - Do they need non-cash assistance?
- Expanding grant making to cover greater needs
  - New urgent initiatives created by the pandemic
  - Disaster relief organizations or programs
  - Direct support to those in need
  - Debt relief



**EXTENSION OF TIME TO FILE AND PAY – IRS NOTICE 2020-23**

- The notice relates to any returns and payments that normally would have been due on or after April 1, 2020, but before July 15, 2020, and extends the filing and payment dates until July 15, 2020.
- Exempt organization business income tax and other payments and return filings on Form 990-T, Exempt Organization Business Income Tax Return (and proxy tax under section 6033(e) of the Code);
- Excise tax payments on investment income and return filings on Form 990-PF, Return of Private Foundation or Section 4947(a)(1) Trust Treated as Private Foundation;
- Excise tax payments and return filings on Form 4720, Return of Certain Excise Taxes under Chapters 41 and 42 of the Internal Revenue Code; and
- Quarterly estimated income tax payments calculated on or submitted with Form 990-W, Estimated Tax on Unrelated Business Taxable Income for Tax-Exempt Organizations, and 1120-W, Estimated Tax for Corporations.

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13  
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## STATE CONFORMITY TO IRS EXTENSION

Most states have conformed to the 7/15 extension for individuals and corporations

- New York-Deadline extended to 7/15
- New York City-will waive penalties. Interest is not waived. Extension not automatic.
- Connecticut-Deadline extended to 7/15

Some states have extended their due dates to different days

- Idaho – June 15
- Mississippi – May 15
- Virginia – June 1 – interest still applies

Some state will still charge interest

- Minnesota, North Carolina, Virginia

Still waiting on some states due to various reasons

The due date extension for other types of state taxes vary greatly

## CHARITABLE CONTRIBUTION BENEFITS

### Charitable Giving Incentive

- New above the line deduction for individuals who take the standard deduction
- Deductions up to \$300
- Does not include contributions to private non-operating foundations, DAFs or supporting organizations.

### Contribution Limitations

- Individual Itemizers:
  - Elect to deduct up to 100% of their 2020 AGI (up from 50% or 60% previously)
- Corporate Taxpayers:
  - Deduct up to 25% of taxable income (up from 10% previously)
  - Food Inventory (Limit increased from 15% of taxable income to 25%)
- Does not include contributions to private non-operating foundations, DAFs or supporting organizations.

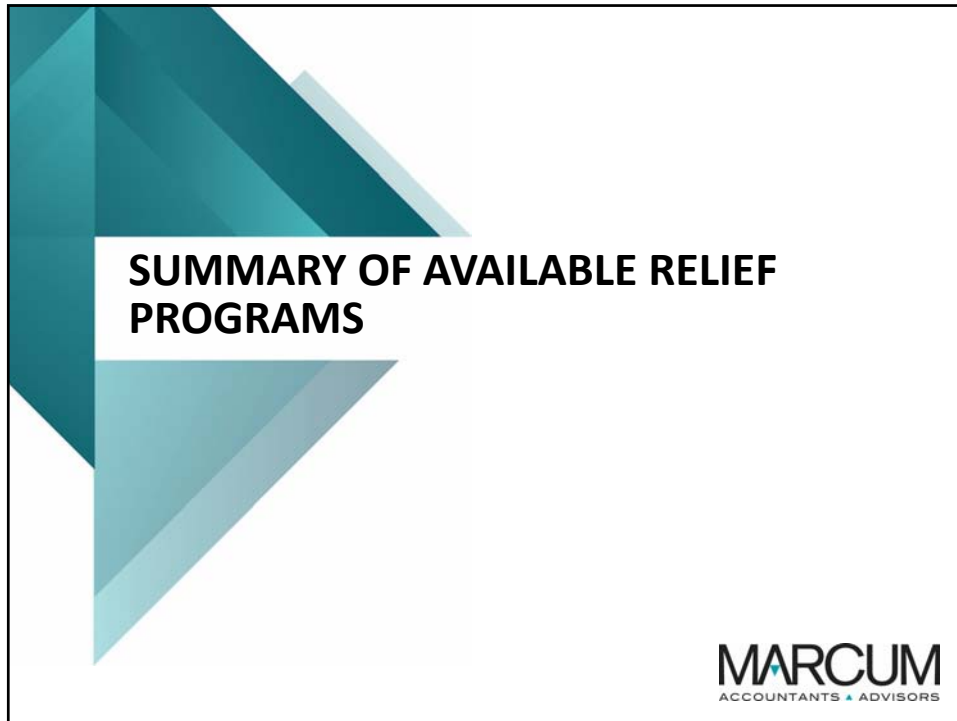
## SOLICITING DONATIONS

- For donors, focus on existing relationships. Build further trust with these stakeholders. And be sure to communicate the positive impact your organization is having to anchor their support.
- Don't be afraid to ask more of those that have given before. And don't just tell them how much money you need but how much you need to do and the impact you can have given your prior accomplishments.
- Try to avoid requesting restricted donations.

## NET OPERATING LOSSES

- Net Operating Losses subject to a 5 year carryback and not limited by 80% of Taxable Income Rule. This applies to NOLs from 2018 2019 or 2020. NOLs and IRC Section 965.
- The CARES Act allows a taxpayer to elect to exclude from its NOL carryback any taxable year to which IRC §965(a) applies (Section 965(n)).
- Immediate Refund of the Corporate AMT Credit. Instead of a 4-year period (2018-2021), the credits can be taken over 2018 and 2019. An election can be made to recover the credits entirely in 2018.
- We are awaiting additional guidance related to how the 512(a)(6) SILO rules are applied.





**FAMILIES FIRST CORONAVIRUS RESPONSE ACT**

- TAX RELIEF – REFUNDABLE PAYROLL TAX CREDITS
- Business Tax Credits for Paid Sick Leave and Paid Family Medical Leave (FFCRA Section 7001 and 7003)
- Tax-exempt organizations with Less than 500 Employees – now required to comply with expanded FMLA which offers paid family and sick leave, subject to conditions.
- 100% Refundable Tax Credits of the sick wages paid plus proportionate share of health care costs incurred
- Small business exemption – fewer than 50 employees can qualify for exemption on leave due to school closings/child care if would jeopardize the viability of the business as a going concern.

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19  
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## FAMILIES FIRST CORONAVIRUS RESPONSE ACT (2)

- Sick Leave paid at employees regular rate
- Pay employees full wages up to \$511 for 10 days (\$5110, total) if unable to work:
  - To quarantine because the employee is diagnosed with coronavirus;
  - To seek a diagnosis or preventive care for coronavirus;
  - To comply with a recommendation or order by a public official with jurisdiction or healthcare provider on the basis that the physical presence of the employee would jeopardize the health of others due to exposure of the employee to coronavirus or exhibition of symptoms by the employee;or

## FAMILIES FIRST CORONAVIRUS RESPONSE ACT (3)

- Sick Leave paid at two-thirds employee's regular rate
- Pay employees 2/3 of full wages up to \$200 for 10 days (\$2000, total) if unable to work:
  - Employee caring for individual subject to quarantine or advised to self-quarantine
  - Employee caring for child when school/care facility is closed

## FAMILIES FIRST CORONAVIRUS RESPONSE ACT (4)

- Family Leave
  - Employee unable to work due to care for child under 19 when school/care facility closed
  - Paid leave - 10 week maximum
  - 2/3 of regular pay, \$200/day, \$10,000 total
  
- Credit for health insurance coverage during leave period
- File Form 7200 for advance refundable tax credit
  
- Paid Sick Leave                                    \$5,000    \$10,000
- Payroll tax liability                                \$8,000    \$ 8,000
- Pay/(refund)                                         \$3,000    (\$ 2,000)

## CARES ACT – EMPLOYEE RETENTION CREDIT

- Refundable tax credit against SS tax up to 50% of wages paid during COVID-19 crisis, up to \$10,000 per employee.
- Wages paid between 3/13 – 12/31/20
- Eligible employer
  - Whose operation is fully or partially suspended due to orders from an appropriate governmental authority limiting commerce, travel or group meetings due to COVID-19; or
  - Who has a “significant decline” in gross receipts (i.e., there is a decrease to less than 50% of the gross receipts for the same quarter in the prior year).

## CARES ACT – EMPLOYEE RETENTION CREDIT

- For employers with more than 100 employees, this credit is for wages paid to employees that provided no services during the shut-down.
- For employers with 100 or less employees, all wages qualify for the credit without regard to whether the employee worked or the employer was in operation.
- Not eligible for obtaining loans under PPP
- Excludes paid sick leave or paid family leave wages paid under the FFCRA, however, this credit may apply to wages paid to the same employee once they return to work.

## CARES ACT – TAX PROVISIONS

- Deferral of employer's share of Social Security Tax
- Delays payroll tax payments for 2020 until 2021 and 2022
  - Begins April 2020, may elect to defer the 6.2% SS tax.
  - Not eligible for PPP if deferring taxes
- Taking FFCRA paid leave or the ERC does not disqualify an employer from this option, no special election is required.

## CARES ACT – UNEMPLOYMENT RULES

- Expands benefits to self-employed and independent contractors
- \$600/week increase to 7/31
- Additional 13 weeks of benefits beyond what states allow for those needing it
- Jobless claims at 26 million as of last week

## THERE ARE TWO SEPARATE DISASTER RELIEF LOAN PROGRAMS FOR SMALL BUSINESSES

### ECONOMIC INJURY DISASTER LOAN (EIDL) PROGRAM

- Suffered substantial economic injury in a declared disaster area (US).
- For-profit or Not-for-profit < 500 employees.\*
- Substantial economic injury means the business is unable to meet its obligations and to pay its ordinary and necessary operating expenses.
- EIDLs provide the necessary working capital to help small businesses survive until normal operations resume after a disaster.

### PAYCHECK PROTECTION PROGRAM

- Part of Keeping Workers Paid and Employed Act (CARES)
- For 501(c)(3) and (19) ONLY < 500
- Funds used to pay workers, lease and utility payments
- First tranche of funds \$350 billion, gone in two weeks. Second tranche, \$310 billion, as well as \$50 billion for EIDL and grants.

## PAYCHECK PROTECTION PROGRAM (PPP)

Eligibility – As of April 23 per PPP FAQ on Treasury.gov:

**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:** In addition to reviewing applicable affiliation rules to determine eligibility, all borrowers must assess their economic need for a PPP loan under the standard established by the CARES Act and the PPP regulations at the time of the loan application. Although the CARES Act suspends the ordinary requirement that borrowers must be unable to obtain credit elsewhere (as defined in section 3(h) of the Small Business Act), borrowers still must certify in good faith that their PPP loan request is necessary.

Specifically, before submitting a PPP application, all borrowers should review carefully 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, and such a company should be prepared to demonstrate to SBA, upon request, the basis for its certification.** Lenders may rely on a borrower's certification regarding the necessity of the loan request. 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** will be deemed by SBA to have made the required certification in good faith.

## PAYCHECK PROTECTION PROGRAM (PPP)

- Eligibility
  - 501(c)(3)'s and 501(c)(19)'s with
  - Fewer than 500 employees, including FT and PT as of March 1, 2020
  - Loan is necessary because of uncertainty of the current economic conditions and no duplicate funding is being received for the same uses
- Amounts
  - The lesser of \$10 million or 2 ½ times the average total monthly payroll costs for the prior year
  - With expedited loans of up to \$1 million.
- Repayment
  - Principal and interest payments will be deferred for at least 6 months but no longer than 1 year.
  - Interest rates will be capped at 4%
- Lender Authority
  - Loans by banks, credit unions and some nonbank lenders, not SBA
  - 15 day approval
  - SBA will not collect fees, prepayment penalties are waived, no personal guarantees, no collateral needed, and you do not have to prove that you cannot obtain credit elsewhere

## PPP-CALCULATION TO DETERMINE AMOUNT

Average total monthly “payroll costs” includes:

- the sum of payments of any compensation with respect to employees that is
- salary, wage, commission, or similar compensation;
- payment of cash tip or equivalent;
- payment for vacation, parental, family, medical, or sick leave;
- allowance for dismissal or separation;
- payment required for the provisions of group health care benefits, including insurance premiums;
- payment of any retirement benefit; or
- payment of State or local tax assessed on the compensation of employees; and
- the sum of payments of any compensation to or income of a sole proprietor or independent contractor that is a wage, commission, income, net earnings from self-employment, or similar compensation and that is in an amount that is not more than \$100,000 in 1 year, as prorated for the covered period;

## PPP-CALCULATION TO DETERMINE AMOUNT

Average total monthly “payroll costs” Does Not Include:

- the compensation of an individual employee in excess of an annual salary of \$100,000, as prorated for the covered period;
- taxes imposed or withheld under chapters 21 (Federal Insurance Contributions Act), 22 (Railroad Retirement Tax Act), or 24 (Collection of Income Tax at Source of Wages) of the Internal Revenue Code of 1986 during the covered period;
- any compensation of an employee whose principal place of residence is outside of the United States;
- qualified sick leave wages for which a credit is allowed under section 7001 of the Families First Coronavirus Response Act (Public Law 116–6 127); or
- qualified family leave wages for which a credit is allowed under section 7003 of the Families First Coronavirus Response Act (Public Law 116–12 127).

### PPP – WHAT LENDING BANKS MAY NEED

- These are the evolving documents lenders may request according to the PPP (this will likely continue to be updated)
- 2019 IRS Form 940 (typically not required for a c-3), Form 941 or Form 944 payroll tax report
- Payroll reports for the 12 months of 2019 that show:
  - Gross wages for each employee (including officers if paid w-2 wages)
  - Paid time off for each employee
  - Vacation pay for each employee
  - Family medical leave pay for each employee
  - State and local taxes assessed on an employee's compensation
- 1099s for independent contractors for 2019
- Documentation showing a total of all health insurance premiums paid by the NPO under a group health plan. Include all employees.
- Document the sum of all retirement plan funding that was paid by the NPO. Include all employees and all qualified plan (403(b), 401(k), SARSEP, Simple IRA, SEP IRA)

### PPP – Must be Used For

- Payroll Costs – compensation, vacation, parental, family, medical or sick leave, severance payments, payments for group health benefits, retirement benefits and state and local taxes,
- Interest on any debt including a mortgage incurred before February 15, 2020,
- Rent and utilities.

### PPP – CAN NOT BE USED FOR

- To compensation independent contractors
- Amounts paid to any one individual in excess of \$100,000
- Employees with principal place of residence outside of the US
- Leave wages already covered by the Families First Coronavirus Response Act



### PPP – LOAN FORGIVENESS


- For 8 weeks of eligible costs beginning on the loan origination date.
- May be reduced if:
  - The NPO reduces the number of employees as compared to the prior year, or
  - If the NPO reduces the pay of any employee by more than 25% as compared to the last calendar quarter.
  - However, the NPO that re-hires workers that had been laid off as a result of the crisis will not be penalized for such reduction.
- Can apply to the lender by submitting proper documentation and will get a decision within 60 days.
- Any remaining balance can be amortized over 10 years after the application for loan forgiveness.

### SBA: ECONOMIC INJURY DISASTER LOAN (EIDL) (1)




Eligibility	<ul style="list-style-type: none"> <li>• Small businesses &amp; <b>ALL NPO's</b> affected by the disaster</li> </ul>
Criteria	<ul style="list-style-type: none"> <li>• NPO can be approved solely on their credit score or a determination of the NPO's ability to repay</li> <li>• c-3/c-19 can apply for EIDL and PPP as long as long is not used for same purpose</li> </ul>
Borrowing Limit	<ul style="list-style-type: none"> <li>• Up to \$2 Million (down to \$25k)</li> </ul>
Interest Rate	<ul style="list-style-type: none"> <li>• 3.75% - For Profit / <b>2.75% - for NPO's</b></li> </ul>
Use	<ul style="list-style-type: none"> <li>• Fixed debts, payroll, accounts payable, and other bills that can't be paid because of the impact</li> </ul>
Collateral	<ul style="list-style-type: none"> <li>• <b>For NPO's</b> personal guarantees, one year in operations, and proof that NPO cant get credit elsewhere have all been waived</li> </ul>

## SBA: ECONOMIC INJURY DISASTER LOAN (EIDL) (2)



Applying	<ul style="list-style-type: none"> <li>• Online or through mail</li> </ul>
Documents	<ul style="list-style-type: none"> <li>• Loan Application</li> <li>• Signed and dated <b>IRS Form 4506-T</b> allowing the IRS to provide SBA your tax return information</li> </ul>
Payment Terms	<ul style="list-style-type: none"> <li>• Based on borrowers ability to pay</li> </ul>
Timing (Estimated)	<ul style="list-style-type: none"> <li>• Decision: 2 – 3 weeks</li> <li>• Disbursement: 5 days</li> </ul>
Other	<ul style="list-style-type: none"> <li>• NPO can received \$10,000 emergency advance within 3 days of applying. If loan is denied the NPO does not have to repay the \$10,000</li> </ul>
Link	<a href="https://disasterloan.sba.gov/ela/Account/Login">https://disasterloan.sba.gov/ela/Account/Login</a>




36

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### OTHER HELP -

- Main Street Loan program
- Stabilization Act
- State support in the form of grants and loans
- Unemployment assistance for self-insured employers
- Deadline and payment extensions
- Waiver of failure to make deposit of employment taxes



37

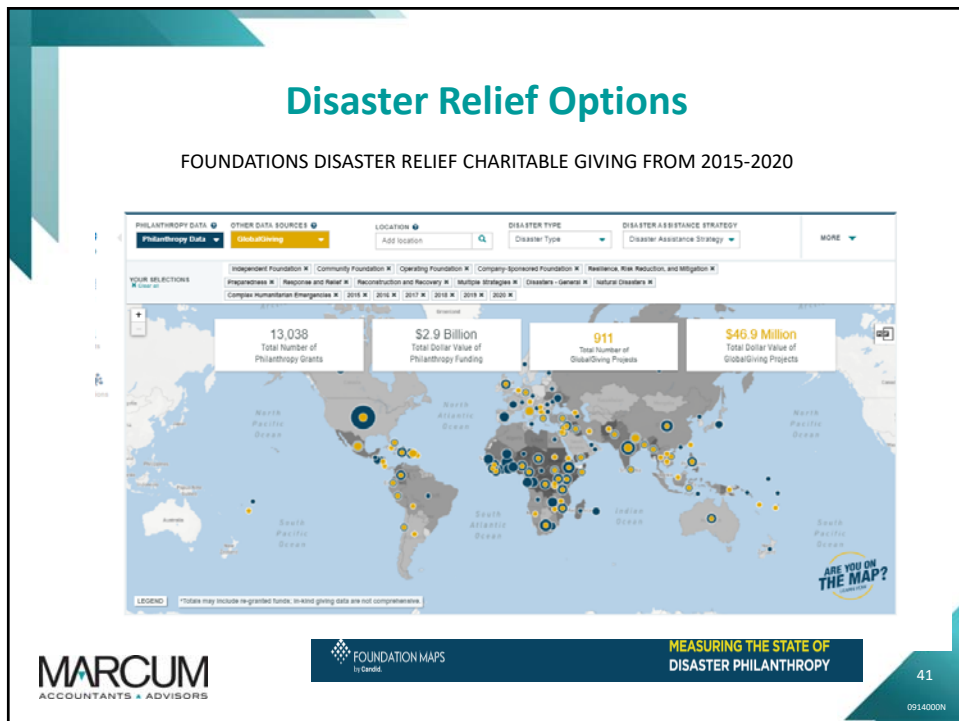
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## WHICH STIMULUS IS BEST FOR PRIVATE FOUNDATIONS?

- Consider what the next 8 days, 8 weeks and 8 months will look like.
  - Better to furlough or keep employed?
  - Unemployment versus PPP
  - Will people actually come back to work if payroll is funded?
  - Board level discussion on organization's philosophy of accepting government support
  - Meeting eligibility requirements
- FFCRA leave credit based on employees taking advantage of the program
- ERC if you can meet the partially suspended test or 50% test
  - Stay at home orders vary by state, most are around essential businesses
  - 50% rule is 'gross receipts' and can include investment income variation
  - Highly recommend the IRS FAQ on the ERC to make sure its right for you <https://www.irs.gov/newsroom/faqs-employee-retention-credit-under-the-cares-act>

## WHICH STIMULUS IS BEST FOR PRIVATE FOUNDATIONS?

- Deferring employer taxes preserves cash flow now
  - Can be used in concert with leave credits and ERC
  - Will need to be coordinated with payroll company
- PPP Largest possible stimulus
  - Forgivable grant
  - Can the organization actually get these funds with lender?
- EIDL
  - Not forgivable, other than \$10k advance
  - Lower available loan amount
  - Easier to access
  - Can be used in concern with PPP, as long as for difference costs.



## Disaster Relief Options

Grants to charitable organizations:

- Consider unrestricted general operating support grants.
- Consider loosening time reporting requirements so they can devote much need time to critical and emergency needs.
- Consider multi year grants for short and long term emergency challenges.

Consider grants to those nonprofits directly dealing with the COVID-19 pandemic:



## Disaster Relief Options

Consider giving platforms to provide you valuable information in relief funding:

- Giving Compass- [www.givingcompass.org](http://www.givingcompass.org)
  - Nonprofit organization that aggregates quality philanthropic content and resources.
  - Nationwide online resource connecting volunteers to charities in need.
  - Collaborative effort of major private foundations, National Center for Family Philanthropy and other leading philanthropic organizations to create a hub for strategic giving.



## Disaster Relief Options

Consider giving platforms to provide you valuable information in relief funding:

- Candid: merger of Guidestar and the Foundation Center - <https://candid.org/explore-issues/coronavirus>
- Platforms for both grantors and grantees to find funding and granting opportunities.
- Funding Summary- which funders are supporting COVID-19 relief efforts, recipients, grants by subject and an interactive map of distribution.



## Disaster Relief Options

Consider Community Foundations in your local area:




## Disaster Relief Options

**Private Foundations Disaster Emergency Grants to Individuals**


***EXCEPTION: Pursuant to IRC § 53.4945-4(a)(3)(i) - IRS does permit hardship grants to individuals with proper procedures and requirements***

Qualified Disaster Relief Payments, the following requirements apply:

- Grants must have a charitable purpose.
- Grants recipients must be from a large or indefinite charitable class.
- Grants must be made on an objective and nondiscriminatory basis.
- *“Insider’s”* cannot receive qualified disaster payments.
- Name, address and amount distributed to each recipient.
- Document, Document and Document.



Emergency Assistance



46


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## Disaster Relief Options

**Private Foundations making Disaster Relief Grants to Individuals**

Documentation should include:

- Foundation’s objective criteria for disbursing assistance,
- How were recipients selected, why this recipient was chosen among all others,
- Complete description of assistance provided,
- Costs associated with assistance provided,
- Purpose for which the aid was given,
- Name, address and amount distributed to each recipient.





47

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## Disaster Relief Options

### Private Foundations making Disaster Relief Grants to Individuals

#### Types of Grants Allowed:

##### Emergency and Hardship Assistance-



- Life altering disaster that has caused sudden, dire need.
- Grants to ensure that the victim can get basic necessities due to emergency, tragedy or natural disaster.
- Based on an objective evaluation grant to ease suffering.
- No restrictions on how funds are spent which can be used for food, clothing, rent, mortgage payments, transportation, medical treatment and psychological counseling.
- Foundation does NOT have to track recipients spending.

## Disaster Relief Options

### Private Foundations making Disaster Relief Grants to Individuals

#### If all requirements are met then the foundations disaster relief payments-

- Are treated as made for charitable purposes,
- Qualify for its 5% distribution requirement,
- Do not result in taxable compensation to the recipient employee.



## Disaster Relief Options

### Employer Sponsored Corporate Foundations – Assistance to Employees

Based on the “Qualified Disaster” under Section § 139:

- Results from certain terrorist or military actions,
- Presidentially declared disaster,
- Disaster that results from an accident involving a common carrier
- Any other event that the Secretary of the Treasury determines is catastrophic



## Disaster Relief Options

### Employer Sponsored Corporate Foundations – Assistance to Employees

Based on the “Qualified Disaster” under Section § 139, and with the following rules in place :

- Grant recipients must be selected on an objective determination of need.
- Beneficiaries must be based on a large or indefinite “charitable class”.
- ▪ The foundation's selection committee is independent if a majority of the members of the committee are persons who are not in a position to exercise substantial influence over the affairs of the employer.
- Disaster relief grants may not be made to members of the selection committee.
- ▪ Employee disaster relief cannot substitute for a benefit that the employer is required to or has committed to provide to employees.
- ▪ If the sponsoring company already has a disaster relief program, the corporate foundation is prohibited from stepping in and taking over this obligation.

## Disaster Relief Options

### Employer Sponsored Corporate Foundations – Assistance to Employees

If all requirements are met then the foundations disaster relief payments-

- Are treated as a qualifying distribution for 5% distribution requirement,
- Do not result in prohibited self-dealing,
- Do not result in taxable compensation to the recipient employee.

## QUESTIONS



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