

## Charitable Nonprofits, Forgivable Loans, and Legislative Proposals

The CARES Act extended a lifeline to many charitable nonprofits by making smaller organizations eligible for short-term forgivable loans, but provided no similar relief for larger organizations that employ millions of American workers. The Paycheck Protection Program is expiring and lawmakers are debating its renewal or replacement. As laid out more fully in the [new Nonprofit Community Letter](#), signed by more than 4,000 organizations from all 50 states, the following priorities relating to forgivable loans are essential for charitable organizations to be able to serve their communities both during the pandemic and through recovery and rebuilding efforts:

- (1) Extend and expand the Paycheck Protection Program (“PPP”) by enabling a second round of funding for all nonprofits,**
- (2) Extend eligibility for forgivable loans to all nonprofits of all sizes similar to H.R. 6800,**
- (3) Lift the loan cap to appropriately reflect the operational needs of larger organizations, and**
- (4) Ensure that the fine print of forgivable loan eligibility does not limit nonprofit access to relief.**

Nonprofits are encouraged that the **HEROES** Act included access to PPP for nonprofits of all sizes, that the **HEALS** Act proposes a second PPP forgivable loan opportunity, and that the **RESTART** Act would count the number of employees more equitably and improve on maximum loan amounts. Proposals in the House and Senate address some of these essential priorities but significant revisions are needed.

### HEROES Act

The House-passed HEROES Act would remove the 500-employee cap, eliminate a discriminatory rule that narrows the eligibility of nonprofits for PPP loans, create a 25 percent set-aside for nonprofits – half for nonprofits with fewer than 500 employees, half for those with more. The bill would also allow forgiveness for loans under the Main Street Lending Program for nonprofits serving low-income communities. **The PPP provisions should be improved by adding a second opportunity for a forgivable loan option for those that have exhausted their PPP resources, and the bill needs to be expanded to permit loan forgiveness for all nonprofits through forgivable Main Street Lending.**

### HEALS Act

The Senate HEALS Act would extend the Paycheck Protection Program, but would limit loan amounts from the current cap of \$10 million to a maximum of \$2 million for second-time applicants. In alignment with nonprofit priorities, the HEALS Act calls for a “second draw” of PPP loans. However, most charitable organizations effectively would be ineligible for participation due to excessively restrictive criteria that are not crafted with the realities of nonprofits in mind. The bill would require potential borrowers to satisfy a three-part test, each part of which is problematic or deeply flawed:

- (1) Application of the SBA Size Standards:** The [SBA revenue size standard](#) was written for for-profit businesses and utilize NAICS codes that are often awkward fits for nonprofits. The application of business standards to nonprofits will cause confusion, delay, and denial of otherwise appropriate loans. The alternative minimum size standards are also problematic for nonprofits and would make ineligible many groups that own facilities and other assets that are essential for serving on missions. **The SBA size standard should not be applied to nonprofits in a second draw program.**
- (2) The 300-employee cap** is a backtrack from current PPP policies and would narrow rather than broaden eligibility for forgivable loans. Rather than expanding access to nonprofits that have been left out of CARES Act relief, this provision would deny support to even more nonprofits that could be providing vital services in their communities. **Nonprofits seek the lifting of the cap on the number of**

employees and, in the alternative, urge Congress to use full-time equivalents as is the approach in the PPP loan forgiveness process.

- (3) **50% decline in gross revenues:** A requirement that eligibility is tied to an organization losing half its gross receipts ignores the realities of charitable organizations and, as drafted, is fatally flawed.
- a) For very many charitable nonprofits – and particularly those that experienced a lifeline of donations (at a pace that may be unsustainable) in the early months of the pandemic – the 50% decline in gross revenues in one of the first two quarters of 2020 compared to the same quarter of 2019 will not be met. Further, for many nonprofits total revenue is expected to decline further in the second two quarters of 2020. Also, numerous charitable organizations may have seen steady or small declines in revenues, but experienced exponential cost increases in unfunded demand for their services during the pandemic. **The eligibility requirement of a decline in gross receipts should be eliminated for charitable nonprofits or substantially reduced in recognition of economic and mission realities.**
  - b) The bill uses an inappropriate definition of “**gross receipts**” for nonprofit organizations that would cause perverse results. While the portion of the HEALS Act related to the Employee Retention Tax Credit defines “gross receipts” for nonprofits using the Internal Revenue Code and Treasury Department definition, the second draw text uses the [Federal Reserve definition](#) of “donations” and not “gross receipts.” Based on this flawed definition, the legislation bases eligibility for second round loans on only 2.4% of revenues of the nonprofit community. **If a decline in gross receipts standard must be used, Congress needs to properly define the term using the nonprofit tax-law definition.**

## **RESTART Act**

The RESTART Act would provide loans to for-profit and nonprofit organizations with up to 5,000 employees. It would grant access to loan forgiveness to all for-profit businesses eligible for RESTART loans, but would deny loan forgiveness for nonprofits providing jobs to more than 500 employees, and would impose discriminatory terms on smaller nonprofits that would not apply to for-profit businesses. **Charitable organizations strongly object to the disparate treatment of nonprofits in the RESTART Act and insist on parity between for-profit and nonprofit borrowers.**

- The RESTART Act has a **25% gross receipts decline requirement** for loan eligibility that will exclude many nonprofits with level resources that have seen an increase in demand for services. **Remove gross receipt decline requirements for nonprofit loan eligibility.**
- The bill provides generous loan forgiveness opportunities to for-profit employers with up to 5,000 workers, but intentionally excludes nonprofits employing an equal number of workers. Constituents rely on services from nonprofits, whether the organization has 45 or 4,500 employees. Nonprofit jobs matter to the communities served. **Congress must extend the opportunity to secure forgivable loans to mid-size nonprofits.**
- The RESTART formulas for loan forgiveness for nonprofits with fewer than 500 employees do not provide parity with the for-profit formulas. For-profit organizations use a 90% multiplier for calculating loan forgiveness to counter total revenue declines, while nonprofits must use a 70% multiplier for up to 50 employees, or a 20% multiplier for those with 50 to 500 employees. **Formulas should be adjusted to provide loan forgiveness parity for nonprofit organizations of all sizes.**
- An alternative formula for loan forgiveness using the 90% multiplier based on earned revenue declines would still provide nonprofits with a fraction of the relief available to for-profits. Nonprofits advance their mission through an essential combination of public support, charitable contributions, and earned income – all are severely challenged amid the COVID-19 crisis. **Revenue-based formulas must take this into account to ensure that nonprofits can access full relief and must be as generous as for for-profit employers.**