



COVID-19 Update

CARES Act—Summary of Potential Impact for the UMC

March 2020

Overview

Please note: Wespath and GCFA published later guidance on several topics included in this COVID-19 Update. The information in this Update may be useful for broader context; however, *later published Wespath/GCFA information also should be read as it may reflect subsequent updates from regulatory agencies or changes in applicable law.*

On **Friday, March 27, 2020**, the House of Representatives joined the Senate in approving a “Phase III” response and economic stimulus package aimed at countering some of the economic impacts of the coronavirus disease (“**COVID-19**”) pandemic in the United States. The President signed the bill into law the same day. Full text of the package is available [here](#).

Generally, the *Coronavirus Aid, Relief, and Economic Security Act* (H.R. 748) (“**CARES**” or “**Act**”) is an unprecedented aid package that will fund public health programs, provide tax benefits for employers and individuals, increase government support for coronavirus relief efforts, and other items to help stabilize the economy. With a price tag of over \$2 trillion, CARES will:

- Create new small business government-backed lending programs;
- Fund loans for Federal Reserve credit facilities;
- Expand unemployment assistance significantly to those unemployed because of COVID-19, including assistance for many individuals who might not otherwise be covered;
- Expand access to retirement plan funds; and
- Create payroll tax incentives for employers, including tax-exempts, to retain employees; among other relief.

Many of the CARES provisions consider and accommodate tax-exempt non-profit employers such as Church-related employers, thanks in part to the work of the Church Alliance through partnerships with many other nonprofit associations. Some of the provisions described below have direct applicability to local churches, annual conferences, and other tax-exempt employers associated with The United Methodist Church (UMC).

Wespath’s Legal Department worked with colleague lawyers in the Church Alliance to create this summary of some of the important provisions of the Act for stakeholders across the UMC. **Please note:** *This is a preliminary assessment* based on initial understanding of the 850-page CARES statute by Wespath’s Legal staff and legal counsel who support the Church Alliance. **It may change as additional guidance becomes available.** Wespath staff and the Church Alliance continue to analyze the Act’s provisions to determine its impact on Church stakeholders, and to determine our ability to implement new retirement and health plan provisions.

The federal agencies charged with implementing the vast law will undoubtedly begin rapidly issuing guidance for impacted individuals and employers. Westpath will monitor regulatory guidance from federal agencies related to the CARES Act and will publish updates as more information becomes available.

Preliminary Summary

ASSISTANCE FOR INDIVIDUALS

Rebate Payments

The CARES Act includes “recovery rebate” payments of \$1,200 for single tax filers and \$2,400 for married-filing-jointly (“MFJ”) tax filers—plus \$500 per qualifying dependent child under age 17.

- These government payments to individuals phase out for higher earners: beginning at \$75,000 in taxable income (single filers) and \$150,000 in taxable income (MFJ taxpayers).
- The rebates apply to tax filers and certain non-tax filers, including Social Security recipients.

Expanded Unemployment Benefits

Pandemic Unemployment Assistance Program (PUAP)—CARES creates a temporary Pandemic Unemployment Assistance program (“**PUAP**”) to provide payment to individuals not traditionally eligible for unemployment benefits and who are unable to work as a direct result of COVID-19. The Act also provides enhanced benefits for *all* workers eligible for unemployment. Unlike the **Families First Coronavirus Response Act (“FFCRA”)**, which only applies to employers with fewer than 500 employees (including many local churches), the many provisions of the CARES Act apply to *all employers regardless of size*.

Unemployment benefits are state-based programs. Eligibility criteria, benefits amounts and funding (taxes or premiums) depend on each state’s guidelines. Generally, unemployment compensation benefits replace about one-third to one-half of wages. A list of the state programs and benefits can be found at <https://oui.doleta.gov/unemploy/content/sigpros/2020-2029/January2020.pdf>.

CARES expands and enhances the unemployment benefits available under state programs:

- Expands the availability of benefits to individuals who are not covered by a state program;
- Extends the time period for state benefits up to 39 weeks in total (expiring December 31, 2020);
- Provides for an additional \$600 weekly payment available for up to four months (expiring July 31, 2020)— temporarily allowing for a higher rate for low-wage workers; and
- Adds a short-term compensation benefit for workers who have not been laid off but whose employment and wages have been reduced due to COVID-19.

Eligibility of Workers for Non-Profits and Religious Organizations

CARES extends coverage to workers who ***typically would not qualify for regular unemployment benefits under state or federal law*** but become unemployed or cannot find work due to COVID-19. This expanded eligibility includes individuals who are: self-employed, seeking part-time employment (if permitted under state law), do not have sufficient work history, or are independent contractors. An Unemployment Insurance Explainer on the CARES Act prepared by the House Ways and Means

Republican staff on March 20, 2020, suggests that employees of churches and other religious institutions are also eligible under this expanded eligibility, as described below:

“Are self-employed and independent contractors eligible?”

Yes. Self-employed and independent contractors, like gig workers and Uber drivers, are eligible for Pandemic Unemployment Assistance. *This also covers workers laid off from churches and religious institutions who may not be eligible under the State’s program.”* (Emphasis added.)

Background for employers: Religious employer eligibility for traditional unemployment benefits varies by state. In many states, non-profit organizations, including religious organizations, may elect to participate in the state program and pay the unemployment compensation taxes or to be self-insured for unemployment benefits (typically making contributions through the state system once an employee is eligible for benefits). In other states, religious organizations are exempt from the state program. CARES appears to include church and other non-profit employers under its pandemic unemployment benefits.

- *Uncertainty Remains for Religious and Non-profit Employers:* While the CARES Act provides coverage for unemployed workers of such organizations, how the states will administer the benefits for these workers **will depend on each state**. Annual conferences or other UMC employers with employees in more than one state will need to understand the rules in each applicable state. State governments will have to work to accommodate these expansions of programs, develop rules and create new application processes; the non-profit community will have to be patient as states adjust.

To determine how to apply for benefits in a state, the U.S. Department of Labor maintains a website with information on each state at

<https://www.careeronestop.org/WorkerReEmployment/UnemploymentBenefits/unemployment-benefits.aspx>.

- *Employers’ Share of Unemployment Benefits:* For non-profits that would normally be self-insured for unemployment benefits (typically making contributions through the state system once an employee is eligible for benefits), they would only be responsible for paying 50% of the unemployment benefits their employees collect as opposed to 100%.
 - The CARES Act provides that the federal government will reimburse the state for the remaining 50% of those benefits. Employees at these organizations will also be eligible for the additional \$600 per week benefit under the **PUAP**. After the first 26 weeks of the employee’s benefits expire under regular state unemployment laws, an employee of these non-profits would become eligible for the expanded benefits (13 additional weeks) under the **PUAP**.

While employees of other non-profit organizations and religious organizations that would normally be exempt from state unemployment requirements are instead covered immediately by the PUAP under the CARES Act, it is yet to be seen how states will administer those provisions or how long it will take to process the claims of such newly eligible unemployed workers.

Eligible Individuals

In addition to the above-mentioned requirements, covered individuals are those who are unemployed, partially unemployed, or unable to work because of any of these reasons:

- They have tested positive for COVID-19 or are experiencing symptoms of COVID-19 and are seeking a medical diagnosis.
- A member of their household has been diagnosed with COVID-19.
- They are providing care for a family or household member who has been diagnosed with COVID-19.
- A child or other person in the household for whom they have primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of COVID-19, and such school or facility care is required for the individual to work.
- They cannot reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency.
- They cannot reach the place of employment because the individual has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
- They were scheduled to commence employment and do not have a job or are unable to reach the job as a direct result of the COVID-19 public health emergency.
- They have become the breadwinner for a household because the head of the household has died as a direct result of COVID-19.
- They had to quit their job as a direct result of COVID-19.
- Their place of employment is closed as a direct result of the COVID-19 public health emergency.
- They meet any additional criteria established by the Secretary for unemployment assistance.

Employees who are *not* eligible to receive unemployment benefits under the CARES Act include those who are:

- Able to “telework” with pay (i.e., work from home);
- Receiving Emergency Paid Sick Leave (“EPSL”) or Family and Medical Leave Act-Public Health Emergency Leave under the **FFCRA**;
- Receiving paid leave under an employer plan or state or local law.

Employees cannot simultaneously receive unemployment benefits under the CARES Act and government-provided unemployment benefits. Workers who voluntarily quit their employment also are not eligible for these benefits.

Eligibility Period

Covered individuals will receive benefits for weeks of unemployment, partial unemployment, or inability to work caused by COVID-19 **beginning on or after January 27, 2020 and ending on or before December 31, 2020**, for as long as the unemployment, partial unemployment or inability to work caused by COVID-19 continues.

Benefit Amount

Under the Act, the weekly benefit amount for most workers is equal to the amount authorized under the state law where the covered individual was employed. For workers not covered by a state law or for self-employed individuals, the weekly benefit is calculated under the Disaster Unemployment Assistance (“**DUA**”) program already in place under federal law. **DUA** benefits are administered by the state but funded by the federal government. The minimum weekly benefit amount is the *average benefit amount defined by the state*.

The CARES Act also enhances unemployment compensation benefits for all eligible individuals—whether eligible under the expansion in the CARES Act or under applicable state law.

- The enhanced benefits include an **additional \$600 per week** (even if this takes the employee above their pre-unemployment earnings level), the elimination of waiting periods (a measure many states already have taken), and an **additional 13 weeks of eligibility** for benefits (39 weeks in total). It is anticipated that these benefits will be carried out through agreements between each state and the federal government.

Short-Term Compensation Program for States

The Act provides funding to support states that develop a “short-time compensation” program for employers that reduce hours in lieu of a layoff. Many states already have so-called “work share” programs that provide for partial unemployment benefits when employers apply hours reductions or partial furloughs in lieu of layoffs.

- Under such a program, employees whose hours have been reduced would receive pro-rated unemployment benefits. The federal government would fund 100% of the costs employers incur by retaining employees at reduced hours through **December 31, 2020**. This is intended to provide an incentive for employers to reduce employee hours in lieu of laying off employees. However, this provision does not apply to seasonal, temporary or intermittent employees.

RETIREMENT PLAN CHANGES

Required Minimum Distribution (RMD) Waiver

Effective January 1, 2020, Section 2203 of the CARES Act waives RMDs for defined contribution 403(b) plans and 401(k) plans for calendar year 2020. This waiver applies to several plans administered by Wespeth, including (but not limited to): 403(b) plans: United Methodist Personal Investment Plan (UMPIP) and the defined contribution portion of the Clergy Retirement Security Program (CRSP); and the Horizon 401(k) Plan.

- The waiver applies to 2019 RMDs that are required to be made by April 1, 2020 (if the distribution was not already made in 2019), and to 2020 RMDs that would have been required to be made by April 1, 2021.

For purposes of determining RMDs after 2020, an individual’s required beginning date is determined without regard to this 2020 waiver. This means that starting January 1, 2021, the pre-COVID rules will apply again.

- For purposes of determining the 5-year and 10-year distribution periods which apply to certain beneficiaries of inherited accounts: these periods will be determined *without regard to calendar year 2020*. For that purpose, 2020 will in essence be a “skipped year.”

Coronavirus-Related Distributions

Section 2202(a) of CARES creates a new category of in-service distribution, called a “**coronavirus-related distribution**.” This special distribution is available to “**qualified individuals**” (defined below).

- A coronavirus-related distribution is exempt from the 10% penalty tax on early distributions from retirement plans. Such a distribution is limited to \$100,000 for the 2020 tax year, and is made from a 401(a) plan, 403(b) plan, or individual retirement account (IRA). The distribution must be made **between January 1 and December 31, 2020** to a qualified individual.

A **qualified individual** is an individual who:

- Is diagnosed with COVID-19 by a test approved by the Centers for Disease Control and Prevention (CDC); or
- Has a spouse or dependent diagnosed with COVID-19 by a test approved by the CDC; or
- Experiences adverse financial consequences as a result of being:
 - Quarantined, furloughed or laid off or having work hours reduced due to COVID-19,
 - Unable to work due to lack of child care due to COVID-19,
 - Unable to work due to closing or reducing hours of a business owned or operated by the individual due to COVID-19, or
 - Subject to other factors as determined by the Secretary of the Treasury in the regulations.

Importantly, the plan administrator, e.g., Wespath, may rely on a participant’s certification that one of the above conditions is satisfied in determining whether a distribution is a coronavirus-related distribution. Additional documentation (such as a physician’s notice) is not required.

Coronavirus-related distributions are not treated as eligible rollover distributions; therefore, mandatory withholding does not apply and a special tax notice is not required.

Unless a participant elects otherwise, a coronavirus-related distribution from the individual’s retirement account will be *taxable* to the participant over three years. In addition, a participant who receives a coronavirus-related distribution may repay the distribution in one or more contributions to any eligible retirement plan to which a rollover contribution can be made (such as their UMPIP account) within three years of the 2020 distribution. The repayment will be treated for tax purposes as a direct rollover made within 60 days of distribution. (If the repayment is made to an IRA, it will be treated as a trustee-to-trustee transfer.)

- It appears to be optional for defined contribution plans to expand the circumstances under which in-service distributions may be obtained. However, for plans that choose not to expand availability of in-service distributions, any in-service distributions permitted by the plan will qualify as coronavirus-related distributions if the requirements above are satisfied. Wespath is studying whether these distributions could be made available through its UMPIP and Horizon plans.

Plan Loan Rule Changes—Increased Limits, Extended Payback Period

Section 2202(b) of CARES would allow 401(a) plans (like Horizon) and 403(b) plans (like UMPIP) to be amended to increase the limits for plan loans to a **qualified individual** (as defined above) during the 180-day period **beginning on March 27**.

- The Act increases the maximum loan amount to **\$100,000** (currently \$50,000).
- The Act permits loans **up to 100%** (currently 50%) of the value of the participant's account.

CARES also extends repayment due dates for a **qualified individual** with an outstanding loan under a retirement plan. This optional repayment extension can be applied to an existing loan or a loan taken after March 27.

- The due dates for loan repayments otherwise due during the period **from March 27 through December 31, 2020** are delayed one year. Subsequent repayments of the loan must be adjusted to reflect the delayed due date and any interest accruing during such delay. These delays are disregarded for purposes of determining compliance with the five year term limit for plan loans.
- The loan rule changes that temporarily increases the amount of available loans appears to be *optional* for plans.
- The loan rule that extends repayment dates of outstanding loans appears to be *mandatory*.

The IRS will need to issue guidance for plan sponsors quickly. Wespath will watch for such guidance from the IRS, and is considering the feasibility of these optional retirement plan loans provisions. We will publish more guidance soon.

GROUP HEALTH PLAN CHANGES

The CARES Act makes several changes to what can be paid from certain health plans.

Telehealth Safe Harbor

CARES Section 3701 permits “high-deductible health plans” (HDHP) within the meaning of Code §223 (regarding health savings accounts [HSAs]) to cover telehealth (“telemedicine”) and other remote care services without a deductible. The amendment takes effect on **March 27, 2020** and applies to plan years beginning on or before December 31, 2021 (i.e., **2020 and 2021 plan years** for HealthFlex's HDHPs).

Over-the-Counter Drugs and Feminine Products

Section 3702 of CARES replaces language in Code §105, §106, §220 and §223 that required medicine or drugs to be *prescribed* in order to be qualified for payment by a health reimbursement account (HRA), a flexible spending account (FSA), an Archer MSA, or an HSA. The new language effectively deletes this requirement, so over-the-counter medicine and drugs including those needed in quarantine and social distancing, may be paid from or reimbursed by HRAs, MSAs, HSAs and health FSAs, without a prescription from a doctor. The Act also adds feminine and menstrual products to the category of expenses that are treated as paid-for medical care amounts. These changes are effective for amounts paid or expenses incurred **after December 31, 2019**.

Wespath is determining how these changes will affect coverage under HealthFlex's health FSAs, HRAs and HSAs.

Coverage of Vaccines

CARES Section 3203 is designed to smooth the way for payment of vaccines for COVID-19 when they are developed. Essentially "any qualifying coronavirus preventive service" will be treated as "preventive" care that group health plans will have to cover at no cost.

ASSISTANCE FOR EMPLOYERS

The CARES Act includes provisions related to employment (payroll) taxes that are intended to encourage employers to retain employees and to smooth cash flow concerns related to the timing of remitting payroll taxes to the IRS. The Act also includes expanded loans through the Small Business Administration (SBA) for employers, including nonprofits and churches.

Employer May Delay Payroll Taxes

CARES creates a "payroll tax deferral period" (Section 2302 of the Act) running from **March 27 through December 31, 2020**. Employers (and self-employed individuals as explained below) may defer payment of the "employer share" of the Social Security tax they otherwise are responsible for paying to the federal government with respect to their employees. Employers generally are responsible for paying 6.2% Social Security tax on employee wages, typically quarterly with the filing of a Form 941. This CARES Act deferral does not excuse employers from continuing to remit other tax withholdings to the IRS, e.g., federal income taxes and Medicare taxes. *For church employers: this is generally limited to Social Security taxes on the wages of lay (non-clergy) employees.*

- It is important to understand that *this is not a payroll tax holiday, but a postponement*. The 2020 taxes deferred must be paid in the following two years (2021 and 2022). This is intended to allow employers to spread these payroll tax costs over time, which may free up existing cash and other assets to continue to fund essential operations, pay wages, and provide employee benefits.
- The deferred payroll taxes must be paid over the following two years: half of the amount must be paid to the IRS by **December 31, 2021**; the other half by **December 31, 2022**.

Important Note: This payroll tax deferral program will not be available to any organization that has had a Payroll Protection Program (PPP) loan (explained below) forgiven. *Until further guidance is issued, the safest course would be to refrain from deferring payroll taxes, if the organization will be seeking to obtain a Payroll Protection Program loan and have it forgiven.*

CARES also allows self-employed individuals to defer payment of part of the Social Security taxes they would otherwise owe the IRS. By statute, clergy are considered self-employed for employment tax purposes, generally paying self-employment (SECA) taxes instead of sharing the payment of Social Security taxes with their employer. This provision in CARES would allow clergy to defer paying the employer portion of Social Security taxes (6.2%) but they would still have to timely pay the employee share (also 6.2%) of Social Security taxes as part of their SECA tax payments. The deferred Social Security self-employment taxes must be paid over the following two years, with half of the amount required to be paid by **December 31, 2021** and the other half by **December 31, 2022**.

Employee Retention Credit

Summary

Employers, including tax-exempt employers, can receive a refundable credit against “**applicable employment taxes**” of **up to \$5,000 per employee** in 2020.

- *Employers with **100 or fewer** full-time employees (measured by average employment in 2019):* This credit applies if the employer fully or partially suspends operations due to an order from a government authority or if the employer experiences a decline in revenue for any calendar quarter in 2020 of 50% or more compared to the same calendar quarter in 2019. All “**qualified wages**” count toward this credit, whether employees are working or not.
- *Employers with **more than 100** full-time employees (measured by average employment in 2019):* The same conditions apply as for employers with 100 or fewer employees described above, but the credit only applies to **qualified wages** paid to employees who are not working.

Credit Amount

- 50% of **qualified wages** (see bullets below) paid to an employee **on or after March 13, 2020 (and before January 1, 2021)** in each calendar quarter, **up to a total of \$10,000** per employee for all quarters. (50% of \$10,000 = maximum credit of \$5,000/employee for the year).
- The credit is applied against an employer’s **applicable employment taxes** (see bullets below) for each calendar quarter, with any excess *refunded* to the employer (it is a fully refundable credit).

Qualified Wages

- For employers with *more than 100* full-time employees on average during 2019, **qualified wages** are those paid to employees not providing services due to a COVID-19-related suspension of operations or significant decline in gross receipts
- For employers with *100 or fewer* full-time employees on average during 2019, **qualified wages** are those paid to any employee, whether working or not
- Wages are only included if paid during the period from **March 13, 2020 through December 31, 2020**.
- Qualified wages does not include payments made under Section 7001 or 7003 of the **Families First Coronavirus Response Act** (“FFCRA”) (required paid sick leave or required paid family leave).
- **Qualified wages** also includes the pro-rata portion of the employer’s qualified health plan expenses to the extent such amounts are excluded from an employee’s gross income and properly allocated to those employees with qualified wages.
- Wages included are those defined in Internal Revenue Code (“Code”) §3121(a) and compensation defined in Code §3231(e).
 - **Note about Clergy:** Service performed by ministers (clergy) in the exercise of their ministry is excluded from the definition of employment in Code §3121.

Applicable Employment Taxes

These employment taxes include the “employer portion” of Social Security taxes (Code §3111(a)), which generally is 6.2% of an employee’s wages, reduced by any of the following credits received by an employer:

- Employment of qualified veterans under Code Section 3111(e)
- Research expenditures of qualified small businesses under Code Section 3111(f)
- Required paid sick leave under Section 7001 of the FFCRA
- Required paid family leave under Section 7003 of the FFCRA

Eligible Employer

An eligible employer is defined as an employer (including a tax-exempt employer) carrying on trade or business during calendar year 2020 that experiences a full or partial suspension of operations due to orders from a government authority limiting commerce due to COVID-19, or that experiences a significant decline (more than 50%) in gross receipts when compared to the same quarter in the previous year.

- All persons treated as a single employer under Code Section 52(a) or (b), or Code Section 414(m) or (o) are treated as one employer.
 - **Church Employers:** Organizations eligible to participate in a church plan, like Wespath’s employee benefit plans or an annual conference’s benefit plan, are treated as a single employer only under Code §414(c), so this rule should not apply to such organizations.
- Employers receiving a Paycheck Protection Program loan (described below under Small Business Provisions) are not eligible for this credit.

The credit no longer may be claimed when the full \$10,000 per employee qualified wage maximum is reached, or when an employer’s gross receipts for a quarter in 2020 are greater than 80% of the gross receipts for the same calendar quarter in 2019.

The IRS likely will quickly issue guidance with more detail about how these payroll tax provisions work and new forms accounting for these changes. Wespath will provide an update when available.

SMALL BUSINESS PROVISIONS

Paycheck Protection Program (“PPP”)

Executive Summary

The PPP loan program is designed to keep small businesses, including qualifying non-profit organizations, afloat during mandated Coronavirus Disease 2019 (“COVID-19”) related closures.

This new loan program is based on the existing general business loan program of the Small Business Administration (“SBA”) and will make potentially *forgivable* loans available to qualifying small businesses. The loan program is known as the “7(a)” program and is not based on the SBA disaster loan program.

Additional detail will be provided as the SBA drafts implementing regulations, which the CARES Act requires to occur within 15 days. *Because the SBA is not generally familiar with churches, the Church Alliance is engaging with the SBA to help them better understand the unique aspects of church employers.*

Eligibility

Most non-profit organizations that generally have less than 500 employees are eligible to apply. Some non-profit organizations with more than 500 employees may qualify under certain circumstances.

In evaluating eligibility for such loans, lenders are to consider:

1. Whether the borrower was operational on February 15, 2020, and
2. Whether the borrower was paying salaries and payroll taxes on independent contractors at that time.

The SBA affiliation rules will be applied to non-profit organizations in the same way as they are applied to small businesses. Under these rules, generally the SBA considers whether organizations control or are controlled by another organization.

- **Note about Church Employers:** The Church Alliance intends to engage the SBA to help them understand the unique nature of churches and church-associated organizations and the nature of their control by or association with one another.

Borrowing Limits

The CARES Act appropriated \$349 billion for loans under this program. The maximum PPP loan available to any company, including tax-exempt organizations, is the **lesser of \$10 million or 2.5 times the average monthly payroll costs of the company** over the year prior to the making of the loan, excluding any annual compensation above \$100,000 for any person, prorated for February 15 through June 30, 2020.

- **Note:** Under the CARES Act, PPP “payroll costs” include payments for vacation, parental, family, medical, and sick leave; allowances for dismissal or separation; group health care benefits (including insurance premiums) and health care stipends in certain annual conferences; retirement benefits; and state or local tax assessed on the compensation of employees, as well as payments of any compensation to an independent contractor that are wages, income, earnings from self-employment or similar compensation (which might include clergy compensation).

Use of Proceeds

PPP loan proceeds may be used for:

- Payroll costs, excluding the prorated portion of any compensation above \$100,000 per year for any person
- Mortgage interest and rent payments
- Utilities
- Interest on debt that existed as of February 15, 2020

Terms

PPP loans bear interest at a maximum rate of 4% and mature no later than 10 years after determination of the amount, if any, to be forgiven. Payments under PPP loans may be deferred for 6–12 months. The SBA is directed to issue guidance on the terms of this deferral. PPP loans have no collateral, i.e., they are not secured loans, or personal-guarantee requirements. Though PPP loans are not mortgages or secured by church property, local churches should consult their annual conferences regarding applicable conference policies.

Loan Forgiveness

PPP loans can be forgiven to the extent that the loan proceeds have been used for the following costs incurred and payments made during the eight-week period after the loan is made:

- Payroll costs, excluding the prorated portion of any compensation above \$100,000 per year for any person
- Mortgage interest (but not prepayments or principal payments) and rent payments, on mortgages and leases in existence before February 15, 2020
- Certain utilities, including electricity, gas, water, transportation, and phone and Internet access for service that began before February 15, 2020

Caveats:

- The amount forgiven is reduced based on failure to maintain the average number of full-time equivalent employees versus the period from either February 15, 2019, through June 30, 2019, or January 1, 2020, through February 29, 2020, as selected by the borrower. The loans are intended to preserve employment of the company's staff.
- The amount forgiven is also reduced to the extent that compensation for any individual making less than \$100,000 per year is reduced by more than 25% measured against the most recent full quarter.
- Reductions in the number of employees or compensation occurring between February 15, 2020, and 30 days after enactment of the CARES Act (i.e., April 26, 2020) will generally be ignored to the extent reversed by June 30, 2020.

Churches

Under the language of the CARES Act, *there is no exclusion for churches and other religious organizations* (collectively referred to herein as “religious organizations”). Though it is not entirely clear how this program would apply to churches, according to information from Sen. James Lankford's office: it is the intent of Congress that religious organizations may participate in this loan program, and that intent is included in an **FAQ** from Senator Marco Rubio. Forthcoming guidance from the SBA should clarify eligibility for churches. It is unclear at this time whether participation in this program may result in the borrower being considered a **recipient of federal funds**, which may cause the borrower to be subject to federal laws to which it would otherwise not be subject. *Being considered a recipient of federal funds may have significant implications for a religious organization.*

The Church Alliance will be advocating with the SBA to make this program as beneficial as possible for religious organizations, including federal funds recipient designation and affiliation determinations.

PROVISIONS TO SUPPORT CHARITIES

The CARES Act encourages individuals, families, and corporations to continue to contribute to churches and other charitable organizations.

Allowance of Partial Above-the-Line Deduction for Charitable Contributions

Section 2204 of the Act permits taxpayers to deduct **up to \$300** of cash contributions, whether they itemize their deductions or not. It creates a new “above-the-line” deduction for all taxpayers who contribute to religious, charitable and educational organizations (i.e., for taxpayers who take the standard deduction). This deduction will permit these taxpayers to deduct up to \$300 of annual monetary contributions. This is applicable for tax years beginning after 2019, and does not sunset after 2020 like the increased limits described below.

Modification of Limitations on Charitable Contributions during 2020

Section 2205 of CARES increases the limitations on deductions for charitable contributions by individuals who itemize, as well as corporations. Such cash contributions must be made during 2020. This provision does not extend the due date of the 2020 tax return.

- For individuals, the 50%-of-adjusted-gross-income limitation is suspended for 2020.
- For corporations, the 10% limitation is increased to 25% of taxable income. This provision also increases the limitation on deductions for contributions of food inventory from 15% to 25% during 2020.

OTHER PROVISIONS OF INTEREST

Student Loan Relief

Temporary Relief for Federal Student Loan Borrowers

Section 3513 of the Act requires the Secretary of Education to defer student loan payments, principal, and interest for 6 months, **through September 30, 2020**, without penalty to the borrower for all federally owned student loans. No interest will accrue during this period, and the borrower will be treated as if payments were made for purposes of loan forgiveness and loan rehabilitation programs. Collection activity on such loans also must cease until September 30, 2020. Borrowers have the option to continue to pay principal on their student loans during this period.

The CARES Act requires notices to be provided to borrowers about the deferral period. It also requires notices to be issued beginning on August 1, 2020 about resumption of payment obligations and options with respect to such obligations.

Exclusion for Certain Employer Payments of Student Loans

Section 2206 of CARES enables employers to provide a student loan repayment benefit to employees on a tax-free basis.

Under the provision, an employer may contribute **up to \$5,250 annually** toward an employee's student loans, and such payment would be excluded from the employee's income. The \$5,250 cap applies to both the new student loan repayment benefit as well as other educational assistance (e.g., tuition, fees, books) provided by the employer under current law. The provision applies to any

student loan payments made by an employer on behalf of an employee after date of enactment and before January 1, 2021.

HIPAA and Protected Health Information

The Act makes several changes to the Health Insurance Portability and Accountability Act (HIPAA), including how it applies to employer health plans. Three changes are worth noting immediately. First, a new nondiscrimination provision has been added preventing discrimination in relation to any protected health information (PHI) an employer or other entity receives, especially if the use or disclosure violates HIPAA.

Second, new and more easily understood HIPAA Privacy Practice documents are going to be required on or after March 27, 2021. Guidance is to be published. And third, the CARES Act also requires that the Department of Health and Human Services issue guidance for how to comply with HIPAA when there is a declared public health emergency.

SUMMARY

Wespath is closely monitoring developments related to COVID-19. Please check our **webpage** for periodic updates at Wespath.

The information above should not be considered legal or tax advice. Annual conferences, local churches or other UMC employers should consult with counsel in considering the application of the Act to their circumstances.