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## **Coronavirus Relief: What Churches and Nonprofits Need to Know About Accessing SBA Loans**

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On April 3rd, lenders began processing [Paycheck Protection Program](#) (“PPP”) relief loans around the country. As authorized by the “Phase 3” coronavirus relief legislation known as the [CARES Act](#), the \$349 billion PPP program will grant forgivable Small Business Administration (“SBA”) loans to small businesses and nonprofits for hardship they have suffered under the coronavirus-inflicted economic shutdown. These loans will cover eight weeks of necessary expenses during the coronavirus crisis.

In conjunction with the launch of the program, the SBA published an [interim final rule](#), effective immediately, with further guidelines for lenders and borrowers—including guidance on religious freedom. SBA also issued an [interim final rule on affiliation clarifying](#) that faith-based organizations are exempt from SBA affiliation rules if those rules burden religious exercise. Finally, the SBA published a list of [Frequently Asked Questions](#) (“FAQs”) regarding the ability of faith-based organizations to access these loans—and [Economic Injury Disaster Loans](#) (“EIDL”). These FAQs bring significant clarity to many of the issues discussed below.

What follows are some key considerations for churches to understand and think through when applying for these loans.

### **Church Eligibility**

The final text of the CARES Act and subsequent guidance make clear that a tax-exempt nonprofit organization—described in section 501(c)(3) of the Internal Revenue Code (IRC)—is eligible to apply for relief. Under [IRS guidance](#), the 501(c)(3) definition generally includes churches—even if they have not registered with the IRS—as long as they meet 501(c)(3) requirements. Members of Congress wanted to ensure the program included *all* churches and houses of worship, even those unregistered churches without a letter of determination from the IRS. To make this clear, a bipartisan group of members headed by Republican Whip Steve Scalise (R-La.) and Representative Mike Johnson (R-La.) sent [a letter](#) to key agencies to clarify that these churches are included within the program. Based on the most recent guidance, we can now say they are included.

Some questions have come up about church eligibility for different types of loans under the CARES Act. The PPP created a new SBA loan program based on existing Section 7(a) small business loans, which changed eligibility to include all 501(c)(3) nonprofits, including churches, which previously were not eligible for these small business loans. It had appeared that EIDL loans, which provide working capital for organizations during a time of declared disaster, were only available for small businesses and [private nonprofits](#), which does not include public charities like churches.

However, the FAQs make clear that faith-based entities can receive both EIDL and PPP loans, and do not need a determination letter from the IRS to do so.

The bottom line: All churches, even unregistered ones, can qualify for both EIDL and PPP loans.

### **Religious Liberty Concerns for Churches and Religious Nonprofits**

Based on the most recent guidance in the interim final rules and FAQs, virtually all religious liberty issues in this loan program have been addressed.

One of the concerns had been requirements reflected on the SBA loan application: “All businesses receiving SBA financial assistance must agree not to discriminate in any business practice, including employment practices and services to the public on the basis of categories cited in 13 C.F.R., Parts 112, 113, and 117 of SBA Regulations. All borrowers must display the ‘Equal Employment Opportunity Poster’ prescribed by SBA.” Certain of these religious and sex nondiscrimination provisions in the SBA code, based on the way courts have interpreted such provisions, could run counter to church statements of faith and hiring practices and violate their faith.

The interim final rule addresses these concerns in part by reiterating religious liberty protections, stating that “all loans guaranteed by the SBA pursuant to the CARES Act will be made consistent with constitutional, statutory, and regulatory protections for religious liberty, including the First Amendment to the Constitution, and the Religious Freedom Restoration Act.” The rule also provides for the application of [13 C.F.R. 113.3-1h](#), an SBA regulation which states that “[n]othing in [SBA nondiscrimination regulations] shall apply to a religious corporation, association, educational institution or society with respect to the membership or the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution or society of its religious activities.”

The problem was that while 113.3-1h is helpful, it does not cover all relevant religious liberty concerns. As attorney Ian Speir, whose practice at Nussbaum Speir Gleason PLLC specializes in churches and religious nonprofits, points out: 13 C.F.R. 113.3-1h mirrors the Section 702 exemption in Title VII. That exemption has largely been interpreted to permit religious preferences in hiring, but not tolerate practices deemed to be other forms of “discrimination.” And “sex discrimination” may include firing an employee for out-of-wedlock pregnancy or for sex-related lifestyle choices contrary to the employer’s faith. Further, if a ministry has fewer than 15 employees, it’s not currently subject to Title VII; but if it takes SBA funds, it *will* be subject to the SBA’s regulations—so this ministry may find itself subject to new mandates as a result of accepting aid.

In the final analysis, however, any such outstanding concerns remain minimal.

The FAQs make expressly clear that:

- Faith-based organizations can receive the loans regardless of whether they provide “secular social services.” (As the FAQs say, “no otherwise eligible organization will be disqualified from receiving a loan because of the religious nature, religious identity, or religious speech of the organization.”);
- The religious instruction limitation referenced in 13 CFR 120.110 will not be applied, and will thus not inhibit religious organizations in how they use these loans;
- Faith-based organizations can use the loans for anything that a secular organization can (no “additional restrictions on how faith-based organizations may use the loan proceeds”);
- Churches are “not required to apply to the IRS to receive tax-exempt status” in order to access the loans; and
- Faith-based organizations will not be required to sacrifice their “independence, autonomy, right of expression, religious character, and authority over [their] governance” in order to access these loans.

The FAQs also make clear that religious liberty protections are to be comprehensively applied throughout the loan program:

*“Consistent with certain federal nondiscrimination laws, SBA regulations provide that the recipient may not discriminate on the basis of race, color, religion, sex, handicap, age, or national origin with regard to goods, services, or accommodations offered. 13 C.F.R. §113.3(a). But SBA regulations also make clear that these nondiscrimination requirements do not limit a faith-based entity’s autonomy with respect to membership or employment decisions connected to its religious exercise. 13 CFR §113.3-1(h). And as discussed in Question 4, SBA recognizes the various protections for religious freedom enshrined in the Constitution and federal law that are not altered or waived by receipt of Federal financial assistance. SBA therefore clarifies that its regulations apply with respect to goods, services, or accommodations offered generally to the public by recipients of these loans, but not to a faith-based organization’s ministry activities within its own faith community. For example, SBA’s regulations will require a faith-based organization that operates a restaurant or thrift store open to the public to serve the public without regard to the protected traits listed above. But SBA’s regulations do not apply to limit a faith-based organization’s ability to distribute food or clothing exclusively to its own members or co-religionists. Indeed, SBA will not apply its nondiscrimination regulations in a way that imposes substantial burdens on the religious exercise of faith-based loan recipients, such as by applying those regulations to the performance of church ordinances, sacraments, or religious practices, unless such application is the least restrictive means of furthering a compelling governmental interest.”*

A few remaining concerns: It should be noted that these loans do constitute “federal financial assistance” and thus obligate the borrower to comply with any attendant requirements. However, as explained above, the religious liberty concerns regarding those requirements are almost all addressed, and the FAQs make clear that such requirements do not extend beyond the life of the loan in any event.

However, churches may be obligated by state and local nondiscrimination requirements due to taking these loans, a [point also observed by](#) attorney Ian Speir. This is likely something that churches will have to consider based on consultations with their attorney or other professionals familiar with the legal landscape in their state.

The bottom line: While a few, smaller concerns remain, churches and other faith-based entities can be generally confident their religious freedom will be protected in this loan program.

### What to Know When Applying for These Loans

After weighing all these considerations, churches and nonprofits with fewer than 500 employees (or those who qualify under the interim final rule on affiliation) that want to apply for PPP loans can find information on the [SBA website](#). To begin, interested organizations must find a local bank or credit union that is eligible to administer these loans. The SBA is working on adding many new lenders to expand the reach of the program. To apply with the lender, the organization must fill out [this application](#) form and provide payroll documentation. If approved, the lender will work to administer the funds promptly, with the goal of them being available the same day.

This program is administered as a loan, but if the funds are used on essential payroll expenses, it will essentially act as a grant, and the loan amount will be forgiven in full. Churches considering applying for the PPP loan should keep these key facts in mind:

In order to get forgiveness, the organization must use the loan for:

- Payroll costs, including benefits;
- Interest on mortgage obligations, incurred before February 15, 2020;
- Rent, under lease agreements in force before February 15, 2020; and
- Utilities, for which service began before February 15, 2020.

Payroll costs include:

- Salary, wages, commissions, or tips (capped at \$100,000 on an annualized basis for each employee);
- Employee benefits including costs for vacation, parental, family, medical, or sick leave; allowance for separation or dismissal; payments required for the provisions of group health care benefits including insurance premiums; and payment of any retirement benefit;

- State and local taxes assessed on compensation.

Requests for loan forgiveness will be submitted to the lender. They will include documents that verify the number of full-time equivalent employees and pay rates, as well as the payments on eligible mortgage, lease, and utility obligations. An organization will owe money on the loan if it is used for anything other than payroll costs, mortgage interest, rent, and utility payments over the eight weeks after getting the loan. No more than 25% of the forgiven amount may be for non-payroll costs.

There are also requirements to maintain payroll and staff:

- **Number of Staff:** Loan forgiveness will be reduced if the number of full-time employees is reduced.
- **Level of Payroll:** Loan forgiveness will be reduced if salaries and wages are reduced by more than 25 percent for any employee that made less than \$100,000 annualized in 2019.
- **Re-Hiring:** Employers have until June 30, 2020, to restore full-time employees and salary levels for any changes made between February 15, 2020, and April 26, 2020.

If the organization must pay back any loan amount, it will be paid back with 1 percent interest. All payments are deferred for six months; however, interest will continue to accrue over this period. The loan will be due in two years.

EIDL loans are another option for nonprofit organizations to consider if they have been met with financial hardship. This program provides eligible organizations with working capital loans of up to \$2 million that can provide necessary economic support. Eligible organizations that need immediate help replacing lost revenues, can receive an advance of up to \$10,000 that will not have to be repaid. Those interested in applying for EIDL loans can do so [here](#).

It can be challenging to determine whether it is in your organization's best interest to apply for federal financial programs like the Paycheck Protection Program. The coronavirus crisis has brought the American economy to a standstill, and many nonprofit organizations are struggling with financial instability. However, government aid programs that may help organizations financially may also come with some unintended consequences. Fortunately, Congress has intended to make the PPP open to religious organizations in the same way small businesses are—without additional government stipulations that dramatically change how religious organizations operate. The FRC team will continue to work alongside allied organizations to ensure that the congressional intent of the CARES Act (to not discriminate against religious organizations for financial aid) is carried out when implementing programs like the PPP.

To help the church navigate these and other challenges we are confronted with due to the coronavirus, we have created a resource page at [FRC.org/church](https://www.familyresearchcouncil.org/church). Please visit us there and let us know how else we can be of help.

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