

Guidelines for CARES Application

The CARES Act authorizes Paycheck Protection Program (PPP) loans for churches. The decision as to whether to pursue such a loan rests with the local church pastor and board. Prior to accepting any loan funds, the church should be aware of the following:

This is a fluid situation, with additional information being provided multiple times each day. This represents our understanding as of 9:00 a.m. on 3 April 2020.

- The loans are administered under the structure of the Small Business Administration (SBA). While the Act itself does not impose restrictions on religious liberties, previously adopted SBA regulations do impose such restrictions.
 - For example, an organization is not eligible for SBA loans if it is “principally engaged in teaching, instructing, counseling, or indoctrinating religion or religious beliefs, whether in a religious or secular setting.” 13 CFR 120.110(k).
 - In addition, an organization with a SBA loan must agree not to discriminate on the basis of religion (and other criteria, including sex) either in its activities or in its employment 13 CFR 113 (the regulations include a limited employment exemption for positions that perform religious activities).
- On the evening of 2 April 2020, the Treasury Department issued an interim final rule, providing 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...” While this is reassuring, as of the morning of 3 April 2020, the loan application still includes this provision: “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.”
- It is unlikely that Congress intended these restrictions to be applied in this scenario, however there have not been specific Congressional waivers on which the church can rely. The Church of the Nazarene has joined with other denominations and religious liberty advocacy groups in Washington, DC to obtain clarification from the White House, Treasury, and the SBA that these regulations in fact do not apply. Unfortunately, as of this writing we do not know when or if such clarification will be provided (we understand that the SBA is planning to provide general additional guidance by 11 April 2020).

- It is unclear if there is a private cause of action for any individual to bring a discrimination lawsuit against a church that receives these funds or if it is solely a matter of federal enforcement. In either case, the church should be aware that at least some risk exists.
- Many lenders are unaware of how churches operate and may initially decline to accept proof of 501c3 status. Additionally, since the loans are forgiven to the degree the funds are used for payroll purposes, a church may find it difficult to explain any changes in personnel involving clergy when employment changes are unrelated to the pandemic.
- Since the CARES/PPP loan is limited to 2.5 months' of payroll, a church should first consider whether these risks are worth what they would get. If a church has not been issuing W2's to its clergy, it should anticipate not receiving funds for these individuals.
- Another option a church should consider is an employee retention tax credit for employers that are not eligible or choose not to participate in the PPP.
 - Any business that has been forced to fully or partially suspend operations or that has seen a significant drop in revenues is eligible for a 50 percent credit for wages paid to furloughed or reduced-hour employees.
 - For businesses with 100 employees or less, the credit is based on all wages paid, regardless of whether an employee is furloughed.
 - There is an overall limit on wages per employee of \$10,000.
 - The credit can be claimed against the business's quarterly payroll tax liability and is fully refundable to the extent of excess.
 - There will also be options to receive advance payments.

[For more information, follow this link.](#)