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Weekend Update: CARES Accommodates Nonprofit and Religious Organizations

On Friday night, April 3, important interim final rules and other interpretative guidance were released that directly address the eligibility of religious nonprofit organizations for benefits under the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act). Much was made of the roll out of the CARES legislation in late March with benefits for paycheck protection, expanded loan access, and significant appropriations for schools, health care, coronavirus response, and a select number of named nonprofit organizations. However, the language of the statute created obstacles to many nonprofits who were included in programs to be administered under the Small Business Administration (SBA). Among those hurdles were uncertainty about how public nonprofits would be treated generally, whether religious organizations would be excluded under the standing SBA rules, and if the affiliation rules explicitly applied to nonprofits would exclude otherwise qualified organizations that shared common structures based solely on their religious identity.

CARES Loan Programs

Most significantly, CARES created a Paycheck Protection Plan (PPP), consisting of loans to small businesses and nonprofit organizations to cover payroll, mortgage, lease, and utility expenses for an eight-week period ending June 30. Funds used to cover employee payroll costs can be entirely forgiven, while remaining amounts would continue as a loan at 1% interest, payable over two years (the original statute provide for repayment at not more than 4% for a period of 10 years). Nonprofits designated as 501(c)(3)'s are eligible, as well as veteran's organizations under 501(c)(19). However, the initial text appeared to exclude many faith-based charitable organizations. Unlike standard SBA loans, borrower qualifications, such as creditworthiness, have largely been waived except for various self-certifications and the documentation of costs in line with the amount to be borrowed. The PPP loans are administered by private lenders through the SBA, meaning a banking relationship is necessary.

Private 501(c)(3) organizations are also eligible for expanded Economic Injury Disaster Loans (EIDLs), including a rapid advance program of \$10,000 under CARES. These loans are made directly by the SBA and can be used for many of the same purposes as the Paycheck Protection Plan – payroll, rent, mortgage, operating and utility payments, as well as other costs of responding to the pandemic. Unlike the PPP, these loans remain low interest with no forgiveness for costs applied to retain workers. However, they also do not require that any set proportion be applied to any category of expenses.

Interim Guidance Clarifies Religious Accommodation

Initially, the statute appeared to exclude religious organizations that did not serve a secular purpose. SBA rules typically exclude religious organizations from their primary business

development loan programs. This appeared to rule out religious organizations from both PPP and EIDL programs. Under the PPP portion of the statute, it also held that nonprofits were subject to the affiliation rules used by the SBA to exclude small businesses that share common ownership, management, or economic dependencies in a way that mirrors large corporate departments.

The second interim final rules issued for the statute clarified the application to religious organizations to resolve both issues in many, if not most, cases. It made clear that the funds would be available without regard to religious affiliation so long as there was demonstrated need. Additionally, citing the Religious Freedom Restoration Act (RFRA) as grounds to ensure religious organizations are not substantially burdened without a compelling government interest, the interim rules waive the affiliation rules for faith-based organizations that are connected to each other solely based on their shared religious polity. Relationships based on religious teaching or belief, and those civil structures that result from them based on their ecclesiastical relationship alone, will not be excluded from the program under the affiliation rules. In contrast, religious organizations that continue to share administrative affiliations and exceed the limit of 500 employees without a religious basis for their affiliation may still be excluded. Applications for the loans do not require religious organizations to list their affiliates or to otherwise describe their relationships or religious beliefs. Instead, the SBA guidance requests the addition of an addendum to the application by the religious organization, a sample of which was provided in the interim final rule. The rule with sample addendum (see last page) is provided [here](#), as well as an SBA FAQ on the new rules which can be found [here](#).

Religious Freedom Issues

In providing the accommodation, the SBA guidance relied heavily on the ability to make exceptions authorized (if not mandated) by RFRA. Additionally, it cited case law mandating that faith-based entities be allowed to decide the structure of their own religious organizations, matching civil structures to ecclesiastical ones as nearly as they might. Further, that structure for many religions is its own exercise of religion or sincere religious belief.

However, the loans are not without some caveats. During the period of the loan, organizations are deemed to be recipients of federal financial assistance. The first and second interim rules make clear that religious organizations do not give up their autonomy rights by accepting the funds. But the guidance is

explicit that the funding does require organizations to comply with standard nondiscrimination provisions, for example, under federal Title VII. The federal financial assistance conditions apply until the loan is forgiven or repaid. Given the short duration of the loans, many organizations may assume that burden in exchange for the benefits of keeping faith-based charities, churches, and schools operating.

Practical Issues for Applications

- While applications are opened at the SBA website and are generally simple to complete, the loan itself must be obtained from a bank. Many larger banks delayed participation on the program's opening day and smaller banks prioritized smaller borrowers. Nonprofit organizations should plan to approach their existing bankers first once the online application is completed and qualified. If your current bank is not participating, your local Small Business Development Corporation can point you to participating lenders.
- Acting promptly is the best bet to receive funding, as the amount available does have a limit and is awarded on a first-come basis.
- As of April 5, the online applications still had some quirks to them. Likely this is because the program is being grafted on to an existing system designed for the SBA's typical loan process.
- Most of the application consists of the self-certifications and documentation of existing expenses. There is no requirement to show creditworthiness on top of the existing needs, contrary to typical SBA loans.
- For religious organizations, you may have to ensure you have a record of approvals based on your corporate structure reflecting ecclesiastical authority. However, the loan signature can be by any authorized representative of the organization.

Resources

- [Paycheck Protection Program Loan Application](#)
- [Economic Injury Disaster Loan Application](#)
- [SBA's Local Assistance Directory](#)
- [SBA's List of Lenders](#)



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