



SBA Payroll Protection Program and Christian Schools Guidance on Loan Application and Forgiveness

April 2, 2020

ACSI provided the details of the Payroll Protection Program under the CARES Act was covered in the ACSI Legal Webinar on Monday, March 30. The recording of the webinar and the PowerPoint slides can be found at the [ACSI Legal Coronavirus Resources Webpage](#).

To date there have been questions and concerns over the treatment of these loans and their subsequent forgiveness for Christian schools. We have been diligently working over the past two weeks, along with many other groups, to ensure religious nonprofits were included in this program (goal achieved) and that it includes adequate protections for religious concerns (work in progress). When a new program is created, such as this, with a new set of participants (religious schools) it is inherently more difficult to identify what requirements might attach to something new than it is for a pre-existing program with some history. Thus, to the question of what strings will come along with the aid it is not fully known at this point.

We have been in contact with the U.S. Department of Education, the White House, U.S. Senate and the Small Business Administration working to obtain further clarification. We are hopeful future guidance, that is being worked on currently, will provide answers to these questions that are positive for faith-based entities. That guidance could come as early as this afternoon and as late as weeks from now.

With an impending opening date of tomorrow, April 3rd, for the PPP loan program here is our recommendations and points of consideration as of today:

- It is possible, if not likely, these loans and/or the forgiveness portion of the program will be considered direct federal financial aid to a school as the rules and law stands today. We are still hopeful guidance and regulations being worked on provide further clarification that that minimize the potential impact on this point.
 - **Recommendation: schools treat the loan as a separate aspect apart from the forgiveness (grant) aspect. Obtaining a loan may lessen the risk or impact of being considered a recipient of federal financial aid whereas it is clearer that the loan forgiveness would likely be considered a grant. Guidance on how this will be interpreted yet to come.**

- Affirmations in the SBA application itself would require Christian schools to follow several non-discrimination and civil right provisions including:
 - Regulations seeking to effectuate Title VI of the Civil Rights Act of 1964 non-discrimination on the basis of race, color, or national origin and would include other similar federal laws and rules seeking to enforce the same or similar laws and would expand to at least religion, sex, marital status and handicap status.
 - Under section §113.3-1(h) there is a religious exemption that at least in part is helpful, “Nothing in this part 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.”
 - Regulations seeking to effectuate Title IX of Education Amendments of 1972 which is non-discrimination on the basis of sex in educational programs.
 - The Department of Education under President Obama released guidance interpreting “sex” to include gender identity. Under President Trump’s administration that guidance has been revoked.
 - Title IX also provides a religious exemption for those required activities which would violate a religious tenet of the school. This may or may not be automatically applied for a school.
 - **Recommendation: Only use PPP dollars towards payroll and related expenses as allowed. Do not use PPP dollars to cover rent, mortgage interest or other financial obligations tied to real or personal property as may be allowed under the program. SBA Regulations indicate federal financial assistance rules for Title IX only last for the “period during which Federal financial assistance is extended”. If you use the dollars for real property those obligations could potentially continue through the life of the building. 13 C.F.R. §113.115**
 - Regulations seeking to effectuate the Age Discrimination Act of 1975. A law most Christian schools are already subject to.
- There are likely other implications, such as §504 special needs concerns, and others not known at this point.
 - Generally, private schools under §504 would be required to provide access to students with special needs but not substantially modify its programs beyond what it could accomplish through “minor adjustments”.

Each school will have to make a determination on whether it should participate in the PPP loan program or whether it should abstain. ACSI has some hope grounded in reality that there will be further guidance provided that makes clearer where schools stand that are in the PPP.

Overarching Recommendation: There likely will not be a second round of funding under the PPP and the designated loan dollars will likely be claimed very early in the process. We

suggest schools apply for a PPP loan on April 3rd, the first day they are able to, and in the meantime work with ACSI and others to clarify the full implications of these loans. Ultimately, schools can refuse the loan or not sign the loan documents.

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