



## **CARES Act Guidance for Faith Based Schools: Additional SBA Guidance on PPP and EIDL Programs**

**April 5, 2020**

Late on Friday, April 3, 2020, the Small Business Administration (SBA) issued a supplemental interim final rule to provide additional guidance on the application of affiliation rules for purposes of the Paycheck Protection Program (PPP) and the forgiveness of PPP loans in Sections 1102 and 1106 of the Coronavirus Aid, Relief and Economic Security (CARES) Act. It also issued a Frequently Asked Questions (FAQs) document regarding participation of faith-based organizations in the PPP and the Economic Injury Disaster Loan Program (EIDL).

### **Key points:**

- “we additionally clarify that faith-based organizations are eligible to receive SBA loans regardless of whether they provide secular social services. That is, no otherwise eligible organization will be disqualified from receiving a loan because of the religious nature, religious identity, or religious speech of the organization.”
- “loans under the program can be used to pay the salaries of ministers and other staff engaged in the religious mission of institutions.”
- “Simply put, a faith-based organization that receives a loan will retain its independence, autonomy, right of expression, religious character, and authority over its governance, and no faith-based organization will be excluded from receiving funding because leadership with, membership in, or employment by that organization is limited to persons who share its religious faith and practice.”
- **“Receipt of a loan through any SBA program constitutes Federal financial assistance and carries with it the application of certain nondiscrimination obligations. Any legal obligations that you incur through your receipt of this loan are not permanent, and once the loan is paid or forgiven, those nondiscrimination obligations will no longer apply.”**
- “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.”
- “Churches (including temples, mosques, synagogues, and other houses of worship), **integrated auxiliaries of churches**, and conventions or associations of churches qualify for PPP and EIDL loans as long as they meet the requirements of Section 501(c)(3) of the Internal Revenue Code, and all other PPP and EIDL requirements. Such organizations are not required to apply to the IRS to receive tax-exempt status. See 26 U.S.C. § 508(c)(1)(A).”

- “Receipt of a loan through any SBA program does not (1) limit the authority of religious organizations to define the standards, responsibilities, and duties of membership; (2) limit the freedom of religious organizations to select individuals to perform work connected to that organization’s religious exercise; nor (3) constitute waiver of any rights under federal law, including rights protecting religious autonomy and exercise under the Religious Freedom Restoration Act of 1993.”

### **What this Clarifies**

- Churches and Schools qualify for both the PPP and EIDL loan programs.
- Combined churches and schools who would have surpassed the 500-employee limit for PPP loans do have a potential path to file separately and still qualify.
- Clarifies there is not an attempt to modify how a religious entity does employment, membership or operations for co-religionist and religious standards. It does impact goods, services and accommodations offered to the public but not activities within the school’s own faith community.
- The loans and forgiveness will be considered Federal Financial Aid for as long as the loan is in repayment.

### **Remaining Concerns**

- Schools with a closed or covenantal enrollment likely will feel less impact than Christian schools with an open or missional enrollment policy. See bullet #3 directly above. Open/missional admissions policies could be argued to not be serving others within the faith and some of the non-discrimination clauses could apply as to admissions. The impact would be in the area of race, color, national origin, age, sex, disability, religion.
- It is not clear how the loan forgiveness program will work under PPP. Can a school apply for the loan forgiveness after its 8 weeks are done and possibly have the loan, and the requirements that attached with the federal aid, be dismissed within just a few months? At worst, the SBA has set a two-year repayment period in place so the additional requirements would end then.
- Non-discrimination on the basis of “sex” has been interpreted by the Trump Administration to mean male and female, as was the intent when the laws were written. In the next administration or the next big Supreme Court Case could overturn this understanding and re-institute some of the Obama Administration rulings redefining “sex” to also include gender identity. Christian schools should be mindful of this and strive not to let their repayment or loan forgiveness linger longer than necessary.

### **Takeaways**

- This guidance should be read in conjunction with the April 2<sup>nd</sup> ACSI guidance titled, “ SBA Payroll Protection Program and Christian Schools Guidance on Loan Application and Forgiveness”.
- While not every issue has been addressed nor are these programs 100% without strings attached, we do believe there is much reason for thanks that these programs are being developed as sensitive to our religious concerns as they are. Each Christian school will have to decide for itself whether it feels comfortable taking a loan under these programs or not.

- Pay the loans back, or file for forgiveness under PPP, as soon as possible. As long as you have one of these loans your program will be considered a recipient of federal aid and have additional rules it must follow.
- **Christian schools interested in these programs should apply now. It is expected these loan programs will quickly run out of funding.**

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