



# **CORONAVIRUS RELIEF LEGISLATION:**

## **What Churches and Nonprofits Need to Know**

*Travis Weber, J.D., LL.M. and Connor Semelsberger, MPP*

April 2020

There has been much discussion recently about the “Phase 3” coronavirus relief bill, also known as [H.R. 748](#), the “Coronavirus Aid, Relief, and Economic Security” (CARES) Act. Passed by the Senate on March 25 and the House on March 27, and signed into law by President Trump on the same day, the CARES Act is designed to provide broad economic relief and funding during the coronavirus crisis. While some of the headline-grabbing sections of this bill address health care supplies and financial assistance for large corporations, several key provisions directly assist nonprofit organizations, including churches.

### **DIRECT LOANS TO SMALL BUSINESSES, NONPROFITS, AND CHURCHES**

One of the major sections of the CARES Act is the [Paycheck Protection Program](#) (PPP). Operated by the [Small Business Administration](#) (SBA), this new \$349 billion program issues federally-guaranteed loans to small businesses and other entities (including nonprofit organizations). These loans will cover eight weeks of necessary expenses. To be eligible for a loan, the entity must have fewer than 500 employees or the number designated as “standard” for its specific field, whichever is greater. These eligibility requirements will result in many small businesses and nonprofits being covered by these loan provisions.

On April 3, lenders began processing PPP relief loans around the country. 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.

### *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 that:

- They are organized and operated exclusively for religious, educational, scientific or other charitable purposes;
- Net earnings do not inure to the benefit of any private individual or shareholder;
- No substantial part of their activity may be attempting to influence legislation, and they do not intervene in political campaigns; and
- Their purposes and activities may not be illegal or violate fundamental public policy.

Members of Congress wanted to ensure the program included *all* churches and houses of worship, even unregistered churches that do not have an IRS determination letter. 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 churches without formal tax-exempt recognition are eligible for the program. Such churches are now included, according to the most recent FAQ.

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*

The most recent guidance in the interim final rules and FAQs addressed virtually all religious liberty issues in this loan program.

The loan requirements reflected on the SBA application had been a point of concern: “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 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 sex-related lifestyle choices contrary to the employer’s faith. Further, if a ministry has fewer than 15 employees, it is not currently subject to Title VII. But if the ministry accepts 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 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: Note that these loans 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. 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 possibility 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 have discerned that it is their best interest to apply for PPP loans, can find information on the [SBA website](#). To begin, interested organizations can find a bank or credit union that is eligible to administer these loans on the [SBA website](#). 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.

The 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:

The maximum loan an organization can receive is based on a calculation that will come out to 2.5 times the average monthly payroll, or \$10 million, whichever amount is less. The calculation provided in the interim final rule to determine the maximum amount for the loan acts only as a ceiling, so an eligible organization can apply for a loan amount that is below this maximum.

To get loan 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.

Organizations will submit their requests for loan forgiveness 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 any outstanding funds are not forgiven, the organization can repay the balance or convert the remaining balance into a maximum two-year loan with interest at the rate of one percent.

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 they will not need to repay. Those interested in applying for EIDL loans can do so [here](#).

The coronavirus crisis has brought the American economy to a standstill, and many nonprofit organizations are struggling with financial instability. Fortunately, Congress has made the PPP open to religious organizations and churches in the same way it is for small businesses, and virtually all the religious liberty concerns about participation in the program have been addressed by the Trump administration.

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. Churches and organizations will have different theological and practical considerations that factor into the decision, and each organization will have to make this decision for themselves. We are not urging you one way or the other regarding whether to apply. Our objective is simply that churches and religious nonprofits be included in the PPP, and that the program remain free of religious liberty concerns *for those who do choose to apply*.

## **INCENTIVIZING GIVING TO CHURCHES AND NONPROFITS**

Now more than ever, churches and other charitable organizations need donations in order to meet immediate needs related to the coronavirus outbreak. But simultaneously, many Americans face financial hardship due to job loss, limited working hours, or increased medical costs. Such hardships may lead to a decline in charitable donations. By creating additional tax incentives for charitable contributions, the Phase 3 coronavirus relief package seeks to encourage Americans to continue giving throughout the crisis.

Under the CARES Act, [charitable contributions](#) up to \$300 can be deducted above and beyond the standard deduction on annual tax returns. This new policy will help offset the negative impact on charitable giving precipitated by [the 2017 Tax Cuts and Jobs Act](#), which simplified and raised the standard deduction to \$12,000. This change caused many tax filers to take the standard deduction instead of itemizing their charitable contributions. During negotiations on the CARES Act, the FRC team worked alongside allied organizations to increase the total amount of tax-deductible donations. While the \$300 amount was not raised, this new level may apply to tax years 2020 and beyond, leading to more incentive for charitable giving going forward.

Finally, reducing charitable giving limits for those who itemize deductions on their tax return is another positive incentive put in place by the CARES Act. The cap limiting charitable contribution deductions to 50 percent of a person's income has been lifted for the 2020 taxable year. This policy also raises the limit on corporate deductions from 10 percent of taxable income to 25 percent and raises limits on [food inventory donations](#) from 15 percent to 25 percent.

## **UNEMPLOYMENT INSURANCE ASSISTANCE FOR THOSE WORKING FOR NONPROFITS**

In addition to the \$1,200 one-time rebate checks for many Americans, the CARES Act expands unemployment insurance to help those who are without work because of the coronavirus outbreak. This bill creates a temporary Pandemic Unemployment Program that will run through the end of the year. The program provides unemployment benefits for those who do not usually qualify, including religious workers, the self-employed, independent contractors, and those with limited work history. It also covers the first week of lost wages in states that do not cover the first week a person is unemployed.



While most churches are not subject to unemployment insurance, some nonprofits should be aware of this new policy in case they need to lay off or have already laid off employees who may claim unemployment insurance. Fortunately, there is language in this bill to help nonprofits cover some of these costs. H.R. 748 provides payments to states to reimburse nonprofits that are not a part of their state's unemployment system, reimbursing for half of the costs the nonprofits incur to pay unemployment benefits. Unlike other employers, nonprofits have [the option](#) to pay state unemployment insurance taxes or reimburse the state only for the benefits paid to former employees who collect unemployment insurance.

## **PAID MEDICAL AND SICK LEAVE REQUIREMENTS THAT MAY IMPLICATE NONPROFITS AND CHURCHES**

In addition to the Phase 3 bill discussed here, President Donald Trump signed the Phase 2 coronavirus relief bill, [H.R. 6201](#), on March 18th, 2020. This bill included new paid medical and sick leave requirements designed to benefit employees, who have been affected by the coronavirus. The U.S. Department of Labor has issued [guidance](#) and an [FAQ sheet](#) to help employers navigate these paid leave requirements.

First, H.R. 6201 expands [the Family and Medical Leave Act of 1993](#) (FMLA) by including increased leave protection for employees who are unable to work or telework because they need to care for a child whose school or childcare facility was closed due to the coronavirus. Under this expansion, employers are not required to pay the employee during the first ten days of leave, but the employer must pay for remaining leave time up to \$200 per day.

Separate from the FMLA change described above, the Phase 2 relief bill establishes an emergency paid sick leave program that requires employers to provide two weeks of paid sick leave for employees that cannot work or telework because of the coronavirus. Employees are only entitled to this mandatory sick leave if they are: having coronavirus symptoms, have been advised to self-quarantine, subject to a government quarantine, or caring for someone with coronavirus symptoms. The total amount of paid leave is equal to two-thirds the employee's regular wages, whether salary or hourly work, and is capped at \$511 a day. Both leave requirements will expire at the end of the year.

Providing paid leave during an uncertain financial situation can be difficult for some churches and nonprofits. The cost for the above two policy changes fall on employers, but there are ways for employers to alleviate the financial burden, as described below:

- These mandates apply only to employers with fewer than 500 employees. Pursuant to H.R. 6201, the Department of Labor also released a [temporary rule](#) on April 2, 2020, which clarifies employers including religious and nonprofit organizations with fewer than 50 employees can be exempt from this requirement if providing the paid leave would jeopardize the viability of the organization.
- If an organization has more than 50 employees or is not excluded from the Department of Labor's waiver for other reasons, the Phase 3 coronavirus relief bill creates advanceable credits to help cover paid leave. These credits are a dollar for dollar reimbursement for all wages paid under these new requirements. The tax credits also apply to costs incurred to maintain health insurance coverage. The IRS has issued [guidance](#) on how these new tax credits will operate.
- An organization can also apply for the Payment Protection Program loans that are designed to help nonprofits cover payroll costs, and health care benefits during periods of paid medical and sick leave.

## **ENCOURAGING AND AIDING THE CHURCH'S RESPONSE TO THE CORONAVIRUS OUTBREAK**

The CARES Act also recognizes how important churches and local community organizations are in providing food and other needs during this crisis. This bill increases state grants for these types of services by providing an additional \$1 billion for the [Community Services Block Grant](#) (CSBG). This grant is given to the states so they can partner with local community organizations to lower poverty, address homelessness, and provide services addressing unemployment, education, nutrition, and health. This is a grant program that churches and religious organizations can access, as the [law explicitly states](#) religious organizations must be treated the same as other nongovernmental organizations when applying for these grants. Churches in several states have partnered with community organizations or received these grants themselves to operate food banks and other key services.

These are some of the key aspects of recent coronavirus relief legislation that may be of interest to religious nonprofits. Regardless of what each organization decides about participating in these programs, we will continue working to ensure that churches and religious nonprofits are afforded equal treatment and do not face religious liberty concerns if they do choose to participate.

---

To help the church navigate these and other challenges we face due to the coronavirus, we have created a special resource page, which you can visit at [FRC.org/church](https://www.frc.org/church).