

# Faith-Based Organization Eligibility for SBA Loans Under CARES Act

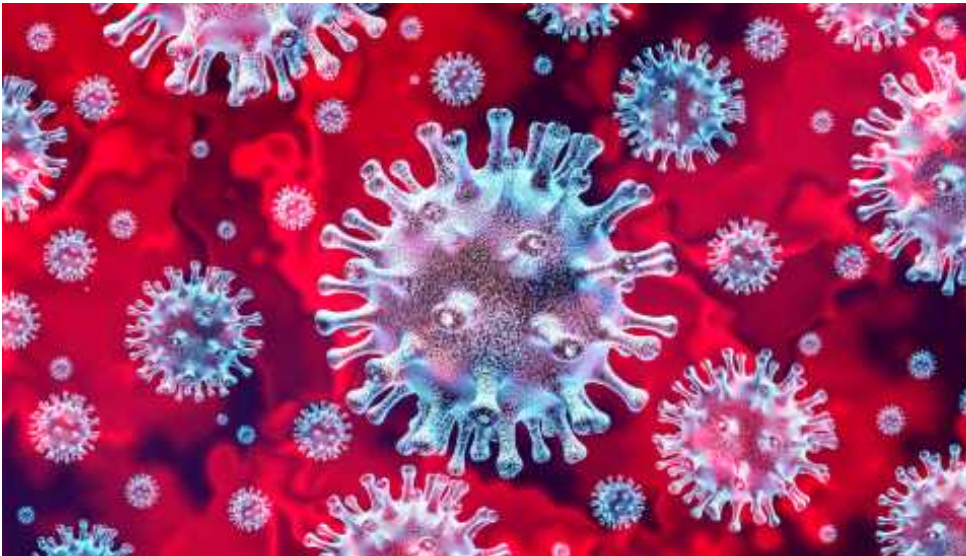
Alexander K. Auriti

April 26, 2020

Subscribe to News and Insights

Via RSS

Via Email



The Coronavirus Aid, Relief, and Economic Security Act (CARES) enacted on March 27, 2020 contained several provisions related to the provision of loans by the Small Business Administration (SBA), including loans under the Paycheck Protection Program (PPP) and Economic Injury Disaster Loan Program (EIDL). Unlike traditional SBA loans, which are not available to non-profit entities, faith-based organizations will generally be eligible for loans under these programs.

## Requirements

The SBA has issued guidance that any faith-based organization is eligible to receive the PPP and EIDL loans under CARES. While initially there was some uncertainty as to whether a faith-based organization needed to provide secular social services in order to be eligible, the guidance has clarified that non-profits are eligible for these loans regardless of whether they provide secular social services.

## Limitations

While faith-based organizations must comply with the generally applicable requirements of the loans, the PPP and EIDL are administered without regard to the religious nature of the applicant. As such, no unique burdens are placed on faith-based organizations in applying for or repaying the loans.

Additionally, applying for and receiving these loans does not cede any of the faith-based organization's authority to limit membership, define standards and duties of membership, limit employees connected to religious exercise to those associated with the organization's religion, or otherwise waive any of the rights protecting religious autonomy under federal law.

By accepting the loans, a faith-based organization is subject to certain nondiscrimination obligations due to their participation in a federal loan program. As such, the organization may not discriminate on the basis of race, color, religion, sex, handicap, age, or national origin – however, the freedom of a faith-based organization with respect to membership or employment decisions connected to its religious exercise is not affected. For example, if the organization operates a thrift store held open to the public, it must serve the public without regard to those protected categories, but

their freedom to distribute food or other items exclusively to co-religionists is not affected. The SBA has committed to interpreting the nondiscrimination obligations in a way that imposes the least burden possible on faith-based organizations.

### **Housing Coverage**

On April 24<sup>th</sup>, the SBA issued guidance confirming that housing provided by a faith-based organization will be included in the payroll calculation for the purposes of PPP loans. The guidance also confirmed that the housing allowance should be added to the employee's salary to determine whether the employee is compensated in excess of \$100,000 (the limit for coverage under the program).

With this new guidance, faith-based organizations can feel comfortable including housing allowances and housing costs on their loan applications, up to the per-employee compensation limit of \$100,000 (including the allowance).

### **Affiliations**

The loan programs limit participation in the programs to entities with 500 or fewer employees. For the purposes of this calculation, the employees of all of an entity's affiliates are included. This sort of affiliation might arise, for instance, if a local church or parish was connected to a larger organization. However, the SBA has stated that if the connection is based on religious teaching or belief, or is otherwise centered around religious exercise, the affiliation rules do not apply. If a faith-based organization is partnered or connected with another purely for administrative convenience or other secular reasons, the affiliation rules may be relevant. The SBA has committed to not assessing, and not permitting its lenders to assess, the reasonableness of a faith-based organization's good-faith determination that they are exempt from the affiliation rules. As such, a faith-based organization should feel confident if it reasonably determines that its connection with another entity is religious in nature. If this exemption is necessary, a separate sheet should be attached to the loan application stating the basis for the exemption. Sample language has been provided by the SBA for applicants to use in that attachment:

"The Applicant claims an exemption from all SBA affiliation rules applicable to Paycheck Protection Program loan eligibility because Applicant has made a reasonable, good faith determination that the Applicant qualifies for a religious exemption under 13 C.F.R. 121.103(b)(10), which says that "[t]he relationship of a faith-based organization to another organization is not considered an affiliation with the other organization . . . if the relationship is based on a religious teaching or belief or otherwise constitutes a part of the exercise of religion."

Apart from the above, the faith-based organization does not need to provide any particular detail regarding this exemption from affiliation rules.

### **Unemployment**

Until final guidance has been provided by the Department of Labor, it is uncertain whether and to what extent faith-based organization employees who are terminated will be eligible for unemployment benefits. In general, faith-based organization employees are not eligible for unemployment benefits, due to the status of faith-based organizations as "exempt" employers.

However, the CARES Act is intended in part to extend unemployment benefits to those who are not traditionally eligible for those benefits, such as "gig" workers. Additionally, the Pandemic Unemployment Assistance program substantially mirrors the Disaster Unemployment Assistance program, which has been used in recent years to cover employees of exempt employers. As such, it is likely that church employees will be covered by the Pandemic Unemployment Assistance program, but this is not certain until further guidance is issued.

If you have any questions concerning faith-based organization eligibility for SBA loans under the CARES act, please contact John Small, Bob Saunders or Alex Auriti.

crisis. For more information, please visit our [COVID-19 Response Resources](#) page.