

NONPROFIT & TAX-EXEMPT ORGANIZATIONS ADVISORY

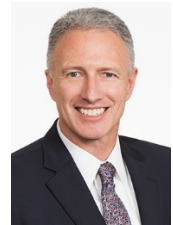
Managing Potential Religious Restrictions Attached to CARES Act PPP Loans



As described in our previous Advisory regarding the CARES Act, Congress chose to use the structure of the Small Business Administration (SBA) to provide the Paycheck Protection Program (PPP) loans (which may be forgiven in whole or in part). The CARES Act expressly extends PPP loans to nonprofit organizations, and the Act imposes no religious restrictions on either the eligibility for or the use of such loans.

However, previously adopted SBA regulations do impose such restrictions. For example, an organization is not eligible for SBA loans if it is “principally engaged in teaching, instructing, counseling, or indoctrinating religion or religious beliefs, whether in a religious or secular setting.” 13 CFR 120.110(k). In addition, an organization with a SBA loan must agree not to discriminate on the basis of religion (and other criteria, including sex) either in its activities or in its employment. 13 CFR 113 (the regulations include a limited employment exemption for positions that perform religious activities).

Congress likely did not intend for these regulatory restrictions to apply to loans authorized by the CARES Act, and we have been working with religious liberty advocacy groups in Washington DC to obtain clarification from the White House, Treasury and the SBA that these regulations in fact do not apply. Unfortunately, as of this writing we do not know when or if such clarification will be provided (we understand that the SBA is planning to provide general additional guidance by April 11th).



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To compound this dilemma, SBA loan application materials may require applicants to certify that they comply with these religious restrictions. As of this writing, the SBA has not issued a final version of the application for the PPP loans. But a draft version we have seen does include such a certification.

Given the limited funds authorized for PPP loans and the anticipated demand, many religious organizations are planning to submit PPP loan applications on Friday, April 3rd, the first day such applications are accepted. In the event there is no further clarification regarding the religious restrictions prior to Friday, religious organizations submitting an application may consider discussing with their legal counsel whether to add a statement explaining how they are interpreting the regulatory restrictions in light of the purposes of the CARES Act (e.g., as being limited to otherwise applicable laws). Such a statement might also affirm that the organization complies with its interpretation of these restrictions.

QUESTIONS

Please reach out to [John Wylie](#) or [Stu Lark](#) with any questions regarding this Advisory.