

MISSOURI BAPTIST CONVENTION
Q&A ON THE CARES ACT
Coronavirus Aid, Relief, and Economic Security Act
PAYCHECK PROTECTION PROGRAM
Updated April 3, 2020

Memo To: Missouri Baptist pastors and ministries leaders, to provide the most current information we have today related to the CARES ACT—Paycheck Protection Plan.¹

The Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) is over 900 pages long and was only signed into law about a week ago. Small businesses and churches who are struggling to make payroll over the next eight weeks are focused on an important part of the stimulus act, called the **Paycheck Protection Program (PPP)**.

The Program permits small business and non-profit organizations who have fewer than 500 employees to borrow low-interest funds from their local banks, guaranteed by the Small Business Administration, to help keep employees on the payroll while America fights the virus through social distancing and stay-at-home orders. If loan proceeds are used 75% for payroll costs, and 25% for other covered costs, the loan may be forgiven, with the SBA covering the loan balance for the bank.

Professionals are studying the 900-page statute as fast as they can and are seeking directions from government officials about how the Act will be implemented. Like the virus itself, information about the CARES Act seems to change daily.

The Whitehead Law firm expects that new details of the Act may be discovered tomorrow and the next day, and new agency regulations may be promulgated that warrant some mid-course adjustments. Still, we seek to provide the best information we have today and will update this page as new information becomes available. There are still several unknowns. But because this is an emergency law, there are short deadlines to make some decisions, sometimes with incomplete information.

“Bank loans are sometimes useful and sometimes necessary. They are not necessary a lack of faith in the generosity of God’s people through their churches,” says John Yeats, MBC Executive Director. “Sometimes they are a way to assist with cash flow, especially in a time of economic uncertainty.”

“Instead of backing by FDIC like our bank accounts, these loans are backed by SBA. We would not presume to tell any local church what to do, but we seek to make MBC churches aware of options that are available during this national emergency,” added Yeats.

MBC’s legal counsel has flagged some potential legal risks with government officials and national leaders.² Thereafter, SBA issued an [Interim Final Rule](#) which mostly resolved these concerns. Yeats expects additional guidance in the next few days.

¹ This article is not intended to provide “legal advice” to individuals or organizations, but to provide general information for educational purposes.

² Baptist Press, April 2, 2020, <http://tinyurl.com/u5xxn4w>

The website for applications for PPP loans was opened April 3, 2020. The volume of applications is expected to be huge, both for for-profits and non-profits. Churches who are interested may want to start the [borrower application process](#) now, to hold a place in line, and contact the church's bank to file a [lender application](#). If a church's application is approved, before taking the first dollar, the church will want to again review the latest information and proceed accordingly, with "eyes wide open."

QUESTIONS AND ANSWERS ³

What is the purpose of this bank loan program? The purpose of SBA backing of these loans is to incentivize banks to make loans to small businesses to keep workers paid and employed during the next couple of months as we fight the virus. These loans are designed to help employers keep their employees instead of laying them off and shutting down. Tax-exempt entities are specifically recognized as eligible to apply for these loans, because their employees are being impacted just like all employees, and the government's interest is helping employees.

Many churches are not meeting due to good-faith compliance with government stay-at-home orders or social distancing recommendations to stop the virus' spread and "flatten the curve." Churches and others are facing economic impact and are seeking to avoid layoffs or terminations of staff, or default on mortgages and leases, during the downturn. The financial and social impact is massive, which is one of the reasons the Congress and the president acted.

Are churches and religious non-profits eligible for small business loans? Churches and ministry organizations that are exempt from tax under Section 501(c)(3) of the Tax Code and that have fewer than 500 employees at one location and self-employed individuals, individuals operating as a sole proprietorship or individuals operating as an independent contractor, may apply for a Paycheck Protection Loan to cover payroll and related employee expenses for the period February 15 through June 30, 2020, to help them sustain their ministries.

How can the loan proceeds be used? The loan proceeds may be used to pay payroll costs, group health insurance benefits, paid sick leave, medical and insurance premiums, mortgage interest payments, rent payments, utilities or interest on other loans outstanding at the time of the pandemic.

What costs are considered payroll costs? Salary or wages, payments of a cash tip, vacation, parental, family, medical, or sick leave, health benefits, retirement benefits, state and local taxes. Note, however, that salary expenses above \$100,000 per employee are not eligible for consideration as payroll costs and loan proceeds may not be used to pay salaries above \$100,000 per employee.

Is Housing Allowance a payroll cost? The Act does not expressly state that sums paid to clergy as Housing Allowance may be treated as payroll costs. Although housing allowance is

³ For a comprehensive FAQ about other provisions of the CARE Act as it affects churches and pastors, see the website of GuideStone Financial Resources of the Southern Baptist Convention® <http://tinyurl.com/w8p5l6t> Some our answers are drawn from the GFS resource.

an exclusion from taxable income, it is still a part of the compensation to the minister and therefore is arguably a payroll cost that may be considered.

How much can a church or ministry borrow? The amount that may be borrowed is the total average monthly payroll costs for the preceding twelve (12) months (March 2019 through February 2020) multiplied by a factor of 2.5. For example, if the average monthly payroll costs for the preceding twelve months were \$20,000 per month, the maximum amount of the loan would be \$20,000 times 2.5 for a total of \$50,000. The maximum amount available for a PPP loan is \$10 million.

Can a self-employed pastor apply for a Payroll Protection Loan? The Stimulus package allows self-employed individuals to apply for these loans. Under certain circumstances, pastors are considered self-employed and should be eligible to apply for a PPP loan under the same terms and conditions as other loan applicants. For example, if a pastor's average monthly salary for the preceding twelve months was \$5,000 a month then the pastor should be able to apply for a loan in the amount of \$12,500.

How soon must the church, ministry or pastor repay the loan? PPP Loans may include a term of up to two years from the date of origination, under the Interim Final Rule. (Act said 10 years.)

What interest rate will these Payroll Protection Loans bear? The maximum interest rate under the Act is 4% per year, but the Interim Final Rule says the rate will be 1% per annum.

Is the church, ministry or pastor required to pledge collateral for the loan, or will another party have to guarantee repayment? No. Further, the loans are non-recourse to the borrower with the exception that if loan proceeds are used for an unauthorized purpose, the loan may be collected from the borrower, and fraud penalties could apply for willful misuse of funds.

May payments under the loan be deferred? Yes, for a period not less than six months but not to exceed more than one year from the date of the loan.

May all or part of the Payroll Protection Loan be forgiven? Yes. After two years, the balance of PPP loan principal may be forgiven in an amount equal to that used for covered costs during the eight-week period following the origination of the loan. The Interim Final Rule states that 75% of the covered costs must be payroll costs. 25% may be other covered costs such as interest on mortgage debt or rent payments, if the mortgage or lease existed on February 15, 2020. Accurate financial information and recordkeeping will be vital to applying for these loans and receiving the forgiveness.

How can a church, ministry or pastor apply for a Payroll Protection Loan? If you choose to pursue a Payroll Protection Loan, you will need to apply through an approved SBA lender, which includes most local banks. The approved SBA lender will assist you in completing the application and providing the required documentation for the loan. The loan documentation requirements and other traditional requirements to obtain a small business loan are substantially relaxed under this loan program.

Does the PPP loan amount to the government paying for salaries of a church? Doesn't that violate Baptist principles of church-state separation?

A Baptist distinctive holds that the spheres of the church and the state should be separate, and that the ministry of the church should proceed by spiritual means, with neither help nor hindrance by the government. *The Baptist Faith and Message* says, "The state has no right to

impose taxes for the support of any form of religion.” Our Baptist forebears were willing to be jailed or hanged for this principle, and is a non-negotiable conviction for many Baptists.

Baptist pastors have often have warned churches not to accept government funds, even where they can legally do so, because government funds eventually bring government “strings.” “Shekels lead to shackles,” the old saying goes.

On the other hand, if your church catches fire, you would call the local fire department, even though it is tax supported. This is not “government support” of religion. It’s the government’s interest in keeping people from being killed in a conflagration. A veteran may use his GI bill education benefits at a Baptist college to prepare for the ministry. The government is not aiding religion, but is aiding a veteran, who is making private religious choices about using the benefit.

A similar dynamic is at work here. The government should no more be entangled in your church’s ministry as a result of this than your bank is now. The government is not lending this money, your local bank is. The SBA is guaranteeing the loan so that the bank is protected and has incentive to make the loan.

Thus, a PPP loan is not government funding of churches or religions or ministries, any more than a FDIC guarantee on your church checking account, or a Fannie Mae or VA loan guarantee on a pastor’s home. The government, in this case, recognizes the precarious state of the economy and is seeking to get ahead of possible defaults and foreclosures and skyrocketing unemployment. While other actions may come to light that would be different, so far what we can see is not in any way a “bailout” of churches but a safety net for banks, to incentivize banks to continue the flow of money so that people are not unemployed.

The SBA-backed loans themselves, whether to a church or to a hardware store, are not from the government at all, but, as always, from banks. The government’s role is simply to guarantee to the banks these loans, in case of default. That does not privilege or penalize any religion in any way different from any other entity.

If a church seeks forgiveness of the loan, do government funds flow to the church? Some church leaders are uneasy with the fact that some of these loans may turn out to be forgivable. Again, this is not government funding of religion, but aid to banks. If the church does not repay the loan to the bank, and meets the requirements of law, then the bank is made whole by the government.

Are there any government strings attached to this money about which churches should be concerned? Southern Baptist leaders and others are working for assurances that typical “strings” or regulations will not attach to these loans because of the emergency nature of this relief act.

At this point, the PPP form gives notice that the applicant will “comply, whenever applicable, with the civil rights and other limitations in this form.” Then it gives notice that “ 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.” CFR 113.3 says a recipient of federal financial assistance will not discriminate in employment based on the traditional protected groups, including marital status, sex and religion.

Suppose a church takes the loan, and the government tries to enforce "non-discrimination" rules on the church's employment practices. The U.S. Supreme Court said unanimously in 2012 that a church is exempt from these civil rights laws when hiring or firing "ministers" or persons in a ministerial role. ([Hosanna Tabor Evan. Luth. Ch. v. EEOC](#))

In 2017, in a Missouri case, the Court said churches cannot be discriminated against in eligibility for generally available public benefit grants. ([Trinity Lutheran Church of Columbia v. Comer.](#)) SCOTUS has not yet ruled on a case involving the issue of whether the word "sex" in Title VII must be defined to include transgender or homosexual employees, where a religious employer followed religious convictions. A government agency someday may argue that a church cannot refuse to perform gay weddings if it has taken federal financial assistance. Or it might argue that a church cannot refuse to hire a person for a secretarial position because of the church's religious convictions about same-sex marriage.

The Interim Final Rule issued by SBA on April 2, 2020, provides assurances that mostly resolve the above concerns. The Rule contained this language, at pages 27 and 28:

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, the Religious Freedom Restoration Act, 42 U.S.C. 2000bb-1 and bb-3, and SBA regulation at 13 C.F.R. 113.3-1h, which provides: 28 "Nothing 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 SBA added that it "intends to promptly issue additional guidance with regard to religious liberty protections under this program. SBA may provide further guidance, if needed, through SBA notices and a program guide which will be posted on SBA's website at www.sba.gov."

What do I do if my banker sees that my blanket 501c3 document is for the MBC?

The Applicant claims an exemption from all SBA affiliation rules applicable to Paycheck Protection Program loan eligibility because the 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." Southern Baptist churches are considered independent and autonomous from other general Baptist bodies, although related by confession of faith and through voluntary cooperation in ministry.

Each church will have to balance the current economic harms to their operations with the legal risks that come with accepting the bank's help via the government's program. Every church and ministry must decide for itself how to strike that balance. The Interim Final Rule adds additional support to other constitutional and statutory defenses a church may raise in the future.

For a comprehensive FAQ about the CARE Act provisions that affect churches and pastors, see the website of GuideStone Financial Resources of the Southern Baptist Convention® <http://tinyurl.com/w8p5l6t>.

For the SBA Web page for CARES Act resources, see <http://tinyurl.com/wmdqkyc>

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