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April 1, 2020

Administrator Jovita Carranza
 U.S. Small Business Administration
 409 Third Street SW
 Washington, DC 20416

Dear Administrator Carranza:

On behalf of the Church Alliance, thank you for your leadership in helping businesses and nonprofits with relief as they navigate the challenges presented by COVID-19. We are writing to ask that the U.S. Small Business Administration (SBA) explicitly acknowledge that all nonprofit organizations, including churches, synagogues, and other religiously-affiliated organizations (“religious organizations”), are eligible to apply for the Paycheck Protection Program (PPP) loans established under Section 1102 of H.R. 748, the Coronavirus Aid, Relief, and Economic Security (CARES) Act, and to receive loan forgiveness under Section 1105 of the CARES Act. As the SBA issues guidance around this newly created program, the Church Alliance would appreciate consideration of the issues discussed below.

Church Alliance

The Church Alliance is an organization composed of thirty-six church benefit boards, covering mainline and evangelical Protestant denominations, Jewish entities, and Catholic schools and institutions. The boards provide employee benefit plans, including retirement and/or health coverage, to approximately one million clergy, lay workers, and their families, serving over 155,000 churches, synagogues, and religious organizations such as crisis centers, disaster aid organizations, schools, universities, early childhood centers, nursing homes, children’s homes, homeless shelters, food banks, and other ministries.

Church benefit plans sponsor or administer and maintain retirement and welfare benefit programs for eligible employees within the denomination. These benefit plans are generally multiple-employer in nature and cover thousands of church employers such as steeples and religious organizations throughout the country. Having a program sponsored by one organization serving multiple church employers helps ensure continuity and consistency of benefits for employees, including pastors who may be asked to move between small, local churches with few employees.

The Significant Impact of COVID-19 on Religious Organizations

Like many nonprofits across the country, churches and religiously-affiliated organizations are struggling to care for the many individuals in need in their communities during this difficult time. In parallel, due to decreased charitable contributions and other revenues, these organizations are struggling to pay their employees who are ministering to their communities.

The CARES Act

Consequently, we are pleased with the relief provided in the CARES Act for this sector, which is critical to communities across the nation. In particular, the text of the CARES Act supports the eligibility of all nonprofit organizations for PPP loans. Section 1102(a)(2) of the CARES Act states: “During the covered period, in addition to small business concerns, **any** business concern, nonprofit organization, veterans organization or Tribal business concern . . . shall be eligible to receive a covered loan (emphasis added)”.

We have appreciated Congress’s support for this sector and reinforcing the availability of these facilities in the nonprofit setting. Senate Small Business Committee Chairman Marco Rubio recently reinforced Congress’s intent to cover religious organizations. The Committee released a [list of Frequently Asked Questions](#) regarding PPP loans. Under the definition of what types of entities are eligible for a loan, the Committee noted that “Tribal businesses, 501(c)(19) veteran organizations, and 501(c)(3) nonprofits, **including religious organizations**, will be eligible for the program (emphasis added).” We think this is especially important to note because nonprofit organizations have not traditionally been eligible to access funding through Section 7(a) of the Small Business Act.

Issues for Forthcoming Guidance

In order to avoid any potential questions that may arise or confusion or hesitation by SBA lenders to work with religious organizations, we strongly urge the SBA to specifically acknowledge in any forthcoming guidance that both churches and religious organizations are eligible for PPP loans and forgiveness of these loans.

The CARES Act defines “nonprofit organization” as “an organization that is described in section 501(c)(3) of the Internal Revenue Code of 1986 and that is exempt from taxation under section 501(a) of such Code.” Organizations organized and operated for religious purposes are a type of entity that may qualify under that definition. Churches need not file for a determination letter on their 501(c)(3) or 501(a) status, under section 508 of the Internal Revenue Code. We strongly urge the SBA, consistent with Congress’s intent, to clarify that a church’s lack of an exemption letter from the Internal Revenue Service is not a bar to eligibility for any CARES Act assistance for which the church would otherwise be eligible.

It is important to emphasize who the ultimate beneficiaries of the paycheck protection loans made to religious organizations are: the over one million employees of these religious organizations served by Church Alliance members who want to continue their important work and to receive their paychecks and benefits from their employers. In particular, if religious organizations would be excluded from

these loans, their employees would be harmed, especially if they are not able to afford health care coverage after losing their employer-provided coverage.¹

The Church Alliance would also appreciate clarification as to whether acceptance of a PPP loan would lead to the recipient being considered the recipient of federal funds. Currently, many religious organizations do not receive any federal funding. The Church Alliance would like it clarified that if such organizations were to receive PPP loans, such amounts would not, in and of themselves, result in the classification of the borrower as the recipient of federal funds.

Finally, questions have arisen concerning how the SBA affiliation rules would apply to churches. There is precedence in the Internal Revenue Code with respect to consideration of the affiliation status of churches in Section 336(a) of the Protecting Americans from Tax Hikes Act of 2015 (Public Law 114-113 (129 Stat. 2242 (2015))) (“PATH Act”). This language was codified in 26 U.S.C. § 414(c)(2) and has some parallels to the SBA affiliation rules contained in 13 CFR § 102.103(c). The language contained in Section 414(c)(2) clarifies that “...an organization that is otherwise eligible to participate in a church plan shall not be aggregated with another such organization and treated as a single employer with such other organization for a plan year beginning in a taxable year unless ‘(i) one such organization provides (directly or indirectly) at least 80 percent of the operating funds for the other organization during the preceding taxable year of the recipient organization, and ‘(ii) there is a degree of common management or supervision between the organizations such that the organization providing the operating funds is directly involved in the day-to-day operations of the other organization.’” This language recognizes the unique structures of churches, in which control may be ecclesiastical. We urge the SBA to consider adding a reference to this definition in the forthcoming guidance, in recognition of religious organizations’ structures built upon religious beliefs.

Thank you for your time and consideration. We are happy to speak with you and your staff and answer any questions you may have regarding the PPP’s applicability to churches and religious organizations. I am available at (202) 778-9128 if you have any questions or wish to discuss any of the information in this letter further.

Sincerely,



Karishma Shah Page
Partner
K&L Gates LLP
On behalf of the Church Alliance

¹ Under a recent U.S. Supreme Court ruling, churches and religious organizations must not be excluded from a public benefit for which they otherwise would be qualified (such as PPP loans). In *Trinity Lutheran v. Comer* the U.S. Supreme Court considered a policy that categorically disqualified churches and religious organizations from receiving grants for playground mulch. After noting that the consequence of exclusion in *Trinity* was “a few extra scraped knees,” the Court decided that “the exclusion of *Trinity Lutheran* from a public benefit for which it is otherwise qualified, solely because it is a church is odious to our Constitution all the same, and cannot stand.” *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017). The consequence of excluding churches and religious organizations from the PPP loan program would be much more significant, and could mean the difference between survival versus closing of these organizations.