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Churches should 'wait and see' before applying for aid

by George Schroeder and Jonathan Howe, posted Thursday, April 02, 2020 (24 days ago)

EDITOR'S NOTE: Hours after this story's publication, an Interim Final Rule was published by the U.S. Small Business Association that made churches and other ministries eligible to receive Paycheck Protection Program loans and assured faith-based nonprofits will not face potential conflict with religious liberty protections. See related story [here](#).

NASHVILLE (BP) -- While many churches and other ministries are eligible to receive loans as part of a massive financial stimulus bill passed by Congress last week, concerns have been raised over federal regulations that could set up conflict with religious liberty protections.



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The Paycheck Protection Program, enacted as part of the \$2 trillion CARES Act to relieve economic hardship caused by the COVID-19 pandemic, set aside \$350 billion to guarantee loans to businesses employing fewer than 500 employees for expenses like payroll, utilities and rent or mortgage payments. Nonprofits, including churches and religious ministries, are eligible to receive funds covering up to 2.5 times their average monthly payroll, with a cap of \$10 million per loan.

A sample application for the program, which is administered by the U.S. Small Business Administration (SBA), requires applicants to "agree not to discriminate in any business practice, including employment practices and services to the public" in categories laid out in Title 13 of the Code of Federal Regulations. Those categories include religion and sex.

Although churches would be constitutionally protected, organizations including the Ethics & Religious Liberty Commission of the Southern Baptist Convention have worked to clarify the issue.

In the interim, Jonathan Whitehead, an attorney specializing in First Amendment law, said he has advised churches seeking his counsel to "wait and see" what the SBA guidance says for churches before applying for a loan under the program. But Whitehead, an ERLC trustee, acknowledged: "There's a question about whether you need to be first in line (to ensure funds are available)."

Travis Wussow, the ERLC's general counsel and vice president for public policy, said the Trump administration is aware of the concerns and was working to provide guidance and assurances that churches would not lose their constitutional protections by participating in the program.

"We have been working closely with the Senate and White House to ensure that the constitutional rights of houses of worship are upheld and respected," Wussow said. "This is a fast-moving process, but we are confident these issues will be resolved by the Administration."

In a separate issue, several members of Congress have pushed the SBA to issue guidance to lenders that nonprofit organizations, including churches and religiously affiliated organizations, were eligible to apply for loans.

In a letter to SBA head Jovita Carranza, Sen. Josh Hawley (R-Mo.) noted the expanded access of the CARES Act as compared to section 7(a) loans from the SBA which "exclude some organizations because of their principal religious purpose."

Hawley wrote in support of churches and other religious organizations, claiming they should be eligible for the Paycheck Protection Program as it "instructs lenders to consider only organization size, whether the organization was operational on February 15th, and whether the organization paid salaries and payroll taxes at that time" instead of disqualifying certain applicants based on their "principal purpose" as might be the case with other SBA section 7(a) loans.

This intent for the eligibility of churches was echoed by a quartet of congressmen from both sides of the aisle.

Cedric Richmond (D-La.), Mike Johnson (R-La.), James E. Clyburn (D-S.C.) and Steve Scalise (R-La.) wrote in a separate letter to Carranza, Treasury Secretary Steven Mnuchin and Labor Secretary Eugene Scalia that "while the definition of non-profit organization in Section 1102 explicitly applies only to the paycheck protection program under Section 7(a) of the Small Business Act established by that section, we can assure you that Congress did not intend to require non-profits to possess an exemption determination letter to be eligible for assistance through any other section of the CARES Act either."

The letter also stated that "many houses of worship and their congregations would suffer great harm if they are not eligible to receive the assistance Congress intended for them to receive."

While the issue regarding nondiscrimination requirements is likely to be resolved soon, it highlighted concerns of some pastors and other religious leaders who are leery of accepting governmental aid because of potential entanglement with the state.

Even if churches choose not to apply for the loans, Whitehead noted that the Paycheck Protection Program could still provide indirect aid to churches, since some church members who own small businesses might participate.

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