

# THE CARES ACT AND RELIGIOUS FREEDOM

1

## OTHERWISE ELIGIBLE CHURCHES AND RELIGIOUS ORGANIZATIONS CANNOT BE EXCLUDED FROM THE PAYCHECK PROTECTION PROGRAM AND EIDL PROGRAM.

In 2017, the U.S. Supreme Court held that the First Amendment prohibits the government from excluding churches and other faith-based organizations from a secular government program based solely on their religious identity. *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017). Consistent with the Supreme Court's ruling in *Trinity Lutheran*, the CARES Act made churches and faith-based organizations eligible for loans under the PPP and EIDL programs. Despite the Act's plain language and intent, some doubted whether churches and religious organizations were truly eligible to receive these federal loans.

Addressing these doubts, the Small Business Administration **clarified** that "faith-based organizations," including houses of worship, "are eligible to receive SBA loans regardless of whether they provide secular social services." The SBA announced that no otherwise eligible organization will be disqualified because of its "religious nature, religious identity, or religious speech," and promised not to enforce preexisting, unconstitutional regulations excluding organizations "[p]rincipally engaged in teaching, instructing, counseling, or indoctrinating religion or religious beliefs." The SBA said that it will soon propose amendments to conform those regulations to the Constitution and Supreme Court precedent.

2

## CHURCHES NEED NOT HAVE APPLIED TO THE IRS FOR TAX-EXEMPT STATUS TO BE ELIGIBLE.

The SBA's recent guidance also explains that churches are eligible for PPP and EIDL loans so long as "they meet the requirements of Section 501(c)(3) of the Internal Revenue Code" and satisfy "all other PPP and EIDL requirements." Further, because churches are automatically considered tax exempt, they need not have applied for and obtained recognition of exempt status from the IRS to be eligible.

3

## CHURCHES AND RELIGIOUS ORGANIZATIONS ARE GENERALLY EXEMPT FROM THE SBA'S AFFILIATION RULES.

To qualify for a PPP loan, the borrower must have fewer than 500 employees. Given this requirement, some were concerned that the SBA's affiliation rules would treat a group of churches or an entire denomination as a single organization for the 500-employee limit. Because serious free-exercise concerns would arise from such an application of those rules, the SBA's guidance clarifies that an organization is exempted from the affiliation rules if the "affiliation is based on a religious teaching or belief or is otherwise a part of the exercise of religion."

**4****CHURCHES AND RELIGIOUS ORGANIZATIONS DO NOT GIVE UP THEIR RIGHTS BY PARTICIPATING IN AN SBA LOAN PROGRAM.**

Many churches and religious organizations have asked whether applying for and receiving an SBA loan would restrict their religious freedom. But the government cannot require faith-based organizations to give up their constitutional rights, including their right to the free exercise of religion, as a condition to participating in a generally available public benefit program.

The SBA's guidance acknowledges this and explains that receiving a loan through any SBA program does not (1) limit the authority of religious organizations to define the standards, responsibilities, and duties of membership; (2) limit the freedom of religious organizations to select individuals to perform work connected to that organization's religious exercise; nor (3) constitute waiver of any rights under federal law, including rights protecting religious autonomy and exercise under the Religious Freedom Restoration Act, Title VII, or the First Amendment.

So while SBA regulations generally prohibit discrimination based on race, color, religion, sex, handicap, age, or national origin with regard to offered goods, services, and accommodations, the SBA has clarified that this prohibition applies only to goods, services, and accommodations offered to the general public and not to a faith-based organization's ministry activities within its own faith community. SBA regulations also make clear that the nondiscrimination requirements do not, and cannot, limit a faith-based organization's freedom to make membership or employment decisions connected to its religious exercise.

Because the SBA's guidance concerns federal nondiscrimination requirements, it does not specifically address whether receiving an SBA loan triggers separate requirements under state law.

**5****CHURCHES AND RELIGIOUS ORGANIZATIONS CAN USE LOAN FUNDS THE SAME WAY SECULAR LOAN RECIPIENTS CAN.**

The Constitution requires that the government treat people of faith equally. Recognizing this, the SBA has confirmed that churches and religious organizations can use loan proceeds the same way secular borrowers can. For example, just as secular entities may use a PPP loan to cover payroll costs, including employees' salaries, churches and religious organizations may use a PPP loan to cover payroll costs, including the salaries of ministers and other staff engaged in their religious mission.

1-800-835-5233  
*ADLegal.org*