

The CARES Act and the PPP: What Catholic Parishes Need to Know

May 8, 2020

This presentation is for educational purposes only. It should not be construed as legal advice or opinion or as a substitute for the advice of counsel.

MODERATOR



Matthew Pinto

President
Ascension Press

Welcome and Introductions

PRESENTERS



Jennifer A. Gniady

Counsel, Nonprofits

202.419.8436

jgniady@stradley.com



Christopher S. Connell

Partner, Corporate & Securities

215.564.8138

cconnell@stradley.com

PAYCHECK PROTECTION PLAN (PPP)

- Covers payroll, mortgage, rent, utility costs
 - Electric, gas, water, transportation, telephone, internet access
- Not dependent on credit, but on proof of costs
- Administered through banks via the SBA program (apply online and take approved application to bank)
- 100% forgivable where payroll costs are at least 75% of loan and you retain employees at current compensation level through June 30
- Repayment at 1% interest over two years

PARISH ELIGIBILITY

- Open to all 501(c)(3)
 - Private
 - Public
 - Including churches
- Specific exemption for affiliated nonprofits
 - Corporation sole structure (and some others)
- April 3: 2nd IFR issued providing religious accommodation
 - Excludes affiliation where sole connection is religious structure
 - Not required to disclose affiliates or describe relationships and beliefs
 - Provides addendum language to application

APPLICATION PROCESS

- What is the application process?
 - Two-page application with calculation formula and self-certifications
- Documentation
 - Payroll records and options
 - Checks, payments, other proof of expenses
- Churches include an addendum
 - You may need a record of approvals based on your corporate structure reflecting ecclesiastical authority for your own governance purposes. However, the loan can be signed by any authorized representative
- Application goes through your bank, not government

FORM OF EXEMPTION

■ ADDENDUM A

- 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.”

<https://home.treasury.gov/system/files/136/SBA%20IFR%202.pdf>

CHURCH AND RELIGIOUS ORGANIZATION ISSUES

- I. SBA Rules say receipt of assistance does not waive any protections under law or waive application of exemptions
- II. Is it “federal financial assistance” and what does that mean?
- III. Keep in mind – only religious discrimination under Title VII
- IV. With the King’s Coin comes the King
- V. Risks exist of lawsuits to stop use of funds by religious organizations

SHOULD YOUR PARISH APPLY?

- Good Faith Certification
 - Even if determined later that it wasn't necessary, certification could still be made honestly and conscientiously in light of the circumstance now
- Uncertainty of Current Economic Conditions
 - Based on what is known or reasonably anticipated at the time of application
 - Look to problems the statute was designed to prevent (layoffs, missed mortgage, etc.)
- Necessary ... to Support the Ongoing Operations
 - Does not mean bankruptcy or failure would result
 - Looks to current business activity (preserve the *status quo*)
 - Liquidity sources “not significantly detrimental” to the organization

ADDITIONAL GUIDANCE BEFORE MAY 14

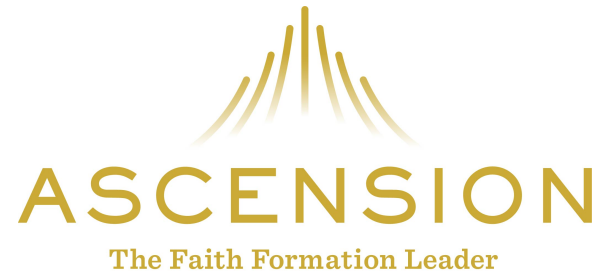
- Eligibility rules were changed in the middle of the game
 - Original applications required only determination as to economic uncertainty
 - New requirement that borrowers consider access to other sources of liquidity
 - No clarity yet as to what that means
 - Lines of credit? Endowments?
- Established Safe Harbor for return of funds (Originally May 7, extended to May 14)
- Promise of additional guidance to explain eligibility questions

PPP LOAN FORGIVENESS

- Great Deal of Uncertainty – Rules and Regulations yet to be issued
- Potentially 100% forgiven if at least 75% of loan used for payroll costs during 8 weeks following loan funding
- Use of other 25% for other permitted costs only (rent, mortgage, utilities, etc.)
- Forgiveness may be reduced if:
 - Average FTE headcount during 8 week period is less than the average FTE headcount during one of two specified prior periods
 - Salaries for employees whose annualized salary was < \$100,000 are reduced by more than 25%
- Borrowers have until June 30, 2020 to restore full employment and salary levels for any changes made between Feb.15, 2020 and April 26, 2020
- Consider employees who are offered jobs back but don't return

PPP LOAN FORGIVENESS (CONT.)

- Application for forgiveness submitted to lender
- Use of funds should be clearly documented – strongly consider a segregated account
 - Payroll tax filings
 - Verification of FTE employees
 - Canceled checks, payment receipts, other documents verifying payment of other permitted expenses
- Lender decision on forgiveness within 60 days of application (SBA to make forgiveness determination for all loans in excess of \$2 million – all such loans to be automatically audited)
- Unforgiven portions convert to two-year term loan with 1% interest rate



QUESTIONS?