Note: This document briefly summarizes provisions in the Coronavirus Aid, Relief, and Economic Security Act ("the CARES Act") that could possibly be of interest to church plans, ministries and plan members. This summary reflects those CARES Act provisions as they are currently understood on April 11, 2020, without any agency guidance. As guidance is issued that may be applicable, we plan to provide information to you on that guidance or to refer you to that guidance, but may not be able to update the summary with that information. This summary may be used by Church Alliance members as a basis for communications to ministries and plan members. This summary is for general information only. It is not a complete analysis and should not be relied upon as legal advice.

Paycheck Protection Program ("PPP")

Executive Summary

PPP loan program is designed to keep small businesses, including qualifying nonprofit organizations, afloat during mandated Coronavirus Disease 2019 ("COVID-19") related closures.

This new loan program is based on the existing general business loan program of the Small Business Administration ("SBA") and will make potentially forgivable loans available to qualifying small businesses. The loan program is known as the "7(a)" program and not based on the SBA disaster loan program.

Additional detail will be provided as the SBA drafts implementing regulations, which the CARES Act requires to occur within 15 days.

Eligibility

During the period from February 15 through June 30, 2020, most nonprofit organizations, that generally have less than 500 employees, are eligible to apply. Select nonprofit organizations with more than 500 employees may qualify if the organization has an employee headcount less than the employee size standard, if any, under the applicable NAICS Code. All employees are counted, whether full or part-time.

In evaluating eligibility for such loans, lenders are to consider: (1) whether the borrower was operational on February 15, 2020, and (2) whether the borrower had employees for whom it paid salaries and payroll taxes at that time. For seasonal businesses, such as summer camps, the lenders are to consider operations for an eight-week period between February 15, 2019 and June 30, 2019.

The SBA affiliation rules generally will be applied to nonprofit organizations in the same way as they are applied to small businesses. Under these rules, generally the SBA considers whether organizations control or are controlled by another organization. However, a new SBA interim final rule states: "The relationship of a faith-based organization is not considered an affiliation with the other organization under this subpart if the relationship is based on a religious teaching or belief or otherwise constitutes a part of the exercise of religion."

Borrowing Limits

The CARES Act appropriated $349 billion for loans under this program. The maximum PPP loan available to any company is $10 million or, if less, 2.5 times the average monthly payroll costs of the company over the year prior to the making of the loan, excluding any annual compensation above $100,000 for any person, prorated for February 15 through June 30, 2020. An eligible borrower may receive only one loan.

Note: Under the CARES Act, "payroll costs" include payments for vacation, parental, family, medical, and sick leave; allowances for dismissal or separation; group health care benefits (including insurance premiums); retirement benefits; and State or local tax assessed on the compensation of employees.

Use of Proceeds

PPP loan proceeds may be used for:

- Payroll costs, excluding the prorated portion of any compensation** above $100,000 per year for any person (Payroll costs include employee vacation and family leave. Payroll costs exclude qualified sick and family leave wages for which a credit is allowed under the Families First Coronavirus Response Act.)
- Mortgage interest and rent payments
- Utilities
- Interest on debt that existed as of February 15, 2020

***To calculate the $100,000 cap on compensation, do not include non-cash benefits such as retirement plan contributions, health plan premiums, insurance premiums and state/local taxes assessed on employee compensation.*

Terms

PPP loans bear interest at a maximum rate of one percent and mature no later than two years after determination of the amount, if any, to be forgiven. Payments under PPP loans may be deferred for six months. Interest will accrue during the deferral period. The SBA is directed to issue guidance on the terms of this deferral. PPP loans have no collateral or personal-guarantee requirements.

Loan Forgiveness

PPP loans can be forgiven to the extent that the loan proceeds have been used for the following costs incurred and payments made during the eight-week period after the loan is made:

- Payroll costs, excluding the prorated portion of any compensation above $100,000 per year for any person
- Mortgage interest (but not prepayments or principal payments) and rent payments, on mortgages and leases in existence before February 15, 2020
- Certain utilities, including electricity, gas, water, transportation, and phone and Internet access for service that began before February 15, 2020

The borrower must document payroll costs, mortgage/lease payments and utility payments to substantiate the amount of forgiveness. Not more than 25% of the loan can be used for non-payroll costs.

Caveats:

- The amount forgiven is reduced based on failure to maintain the average number of full-time equivalent employees versus the period from either February 15, 2019, through June 30, 2019, or January 1, 2020, through February 29, 2020, as selected by the borrower.
- The amount forgiven is also reduced to the extent that compensation for any individual making less than $100,000 per year is reduced by more than 25% measured against the most recent full quarter.
- Reductions in the number of employees or compensation occurring between February 15, 2020, and 30 days after enactment of the CARES Act will generally be ignored to the extent reversed by June 30, 2020.
- Under the language of the CARES Act, there is no exclusion for churches and other religious organizations (collectively referred to herein as "religious organizations"). According to FAQs issued by the SBA, religious organizations, including churches, may participate in this loan program, as long as they meet the requirements of Section 501(c)(3) of the Internal Revenue Code. However, churches are not required to apply to the IRS to receive tax-exempt status.
- The SBA FAQs clarified that receipt of a PPP loan constitutes Federal financial assistance and therefore certain nondiscrimination obligations will apply. However, the FAQs state that the legal obligations attendant to these loans expire once the loan is paid or forgiven. The FAQS also state that the SBA regulations apply with respect to goods, services or accommodations offered generally to the public by recipients of these loans, but not to a faith-based organization's ministry activities within its own faith community. Furthermore, the FAQs clarify that receipt of a PPP loan "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 . . ."