FAMILIES FIRST CORONAVIRUS RESPONSE ACT:
WHAT CHURCHES NEED TO KNOW

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Applicability of the FFCRA may vary based on your organization’s circumstances. This webinar is not legal advice, and no attorney-client relationship is created by attending or viewing the presentation. Organizations should consult their attorney if they have questions about how the provisions of the FFCRA apply to them.
Families First Coronavirus Response Act

What does it do?

• Requires paid leave for parents to care for children who are out of school/daycare due to COVID-19
• Requires paid sick leave for employees due to specific issues related to COVID-19
• Provides a refundable payroll tax credit to employer for costs of paying leave
Families First Coronavirus Response Act

When is it effective?

• For leave taken between April 1, 2020 and December 31, 2020
• The law expires December 31, 2020

The Act is not retroactive.
Families First Coronavirus Response Act

Who does it apply to?

• Employers engaged in commerce or in any industry or activity affecting commerce AND
• Having fewer than 500 employees

If a church has fewer than 500 employees and it is affecting commerce, the leave provisions will apply to the church.
Families First Coronavirus Response Act

Do these laws apply if I already give my employees paid time off?

• **YES.** These leave laws are on top of what an employer already provides, and an employer cannot force an employee to use employer-provided leave first

• An employer cannot reduce the employee’s paid time off for taking leave under these laws

• Also be aware of state and local paid leave laws
Is my church engaged in/affecting commerce?

- “Commerce” includes both for-profit and not-for-profit operations, and can include church operations
- Interpreted very broadly by courts
- Depends on size of church and nature of operations
Engaged in or Affecting Commerce

Some factors indicating that a church may be affecting commerce:

• Operation of school or any business
• Operation of a camp
• Sale of products to out-of-state persons
• Television, radio, or web broadcasting
• Employees travel out of state
• Church has members out of state
• Use of mail/wires for out-of-state-communications
FMLA: Paid Public Health Emergency Leave

Who is covered under FMLA paid leave?

• All employees who have been employed 30 calendar days or longer
• Does not matter whether employee is FT, PT, exempt, non-exempt
FMLA: Paid Public Health Emergency Leave

Why can an employee take Public Health Emergency Leave?

• Employee is unable to work, including unable to work remotely, because the employee’s child’s school or daycare is closed due to a public health emergency with respect to COVID-19
How much leave can an employee take?

- Up to twelve weeks— but the first 10 days are unpaid, unless employee elects to be covered by employer-provided time off (vacation, personal days, etc.) or FFCRA Paid Sick Leave
- Employee required to give notice “as is practicable”
FMLA: Paid Public Health Emergency Leave

How much pay are employees entitled to?
• After the first 10 days, 2/3 of their regular pay, up to $200 per day; cap of $10,000 in the aggregate

What about part-timers?
• Part time employees are entitled to leave for the average number of work hours/day in a two-week period
• If schedule varies, use a six-month average of work hours/day
FMLA: Paid Public Health Emergency Leave

Are there exceptions from complying with this law for any employer?

• YES— if ability of the employer to continue as a business is jeopardized, then the employer can apply for exemption
• Certain provisions also may not apply to employers with fewer than 50 employees

Employers are required to restore employees to a like position after leave; employers with fewer than 25 employees may be exempt.
Paid Sick Leave

Who is covered under the Paid Sick Leave provisions?
• All employees, regardless of employment duration

How much leave can an employee take?
• For full-time employees, up to 80 hours
• For part-time employees, average number of work hours in a two-week period
• Employer can require employee to follow reasonable notice procedures after taking first day of leave
Paid Sick Leave

Paid sick leave is only for the following 6 reasons:

1. Employee has been directed or ordered to quarantine or isolate related to COVID-19 by the federal, state, or local authorities

2. Employee has been advised by a healthcare provider to self-quarantine because of COVID-19

3. Employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis
Paid Sick Leave

4. Employee is caring for an individual that is subject to a directive or order as described in #1 and #2

5. Employee is caring for their child because the child’s school or daycare has been closed because of COVID-19

6. Employee is experiencing any other substantially similar condition (to be specified by the Secretary of Health and Human Services)
Paid Sick Leave

How much pay are employees entitled to?

- For reasons 1-3, relating to employee’s health, regular pay up to $511/day; capped at $5110 in the aggregate
- For reasons 4-6, not relating to employee’s health, 2/3 pay up to $200/day; capped at $2000 in the aggregate
Paid Sick Leave

Are there exceptions from complying with this law for any covered employer?

• No—unlike the FMLA paid Public Health Emergency Leave, all employers must comply
Payroll Tax Credit

How can my church afford to give paid leave?

• Fully refundable payroll tax credit “qualified” sick leave and family leave “wages” paid for leave
• Can include dollars paid for group health plan while employee is on leave
• If amount of leave paid exceeds what employer pays in payroll taxes, IRS sends you a check
Payroll Tax Credit – WAGES

What are “qualified sick leave and family leave wages?”

• The law defines wages by referring to the Internal Revenue Code
• For lay employees, it is clear
Ministers and the Payroll Tax Credit

But can our church take a payroll tax credit for leave costs paid to ministers?

• “Qualified” sick and family leave wages excludes ministerial employment
• Self-employment tax credit likely an option
Payroll Tax Credit

How does that work exactly?

• Churches pay the employer’s share of payroll taxes—Social Security and Medicare taxes— for their lay employees, and withhold employee portion

• Churches withhold federal income tax for lay and clergy employees (usually)

• Deposited with IRS and quarterly payroll tax returns filed
Payroll Tax Credit

- The Medicare, Social Security, and withheld federal income taxes may be retained by church that is paying employees on leave under the Act
- Amount retained cannot exceed statutory caps, plus cost of group health plan coverage
- If church pays more in leave than it pays/withholds in payroll taxes, the church files a claim with the IRS and receives a payment
Payroll Tax Credit Example

- Church administrator makes $300/day and goes on FMLA leave. Admin elects to be covered by Paid Sick Leave for the first 10 days, and so is paid at $200/day for 12 weeks.
- At the end of every quarter, church normally has deposited $10,000 in total Medicare, SS, and withheld federal income taxes.
- Church spends $12,000 on leave costs for Admin, plus $800 on group health plan coverage for Admin.
- Church retains entire deposit and files claim for $2800 for group health plan coverage for Admin.
Frequently Asked Questions

• Can we pay our employees more than the 2/3 required by the Act?
• Do we need to notify our employees of this new law?
• Is there an anti-retaliation provision?
• What about recordkeeping?
Families First Coronavirus Response Act

Effective April 1, 2020 and remains in effect until December 31, 2020

Applies to employers with fewer than 500 employees, including religious organizations engaged in commerce; organizations with 50 or more employees are deemed to be engaged in commerce; organizations with fewer employees must determine whether they are engaged in commerce.

**Emergency Paid Sick Leave**

10 DAYS (80 HOURS) OF FULL PAY FOR ANY EMPLOYEE:
- Subject to Government quarantine or isolation order;
- Advised by a health care provider to self-quarantine; or
- Experiencing symptoms of COVID-19 and seeking a medical diagnosis.

**Caps:** $511 per day/$5,110 aggregate

10 DAYS (80 HOURS) OF 2/3 PAY FOR ANY EMPLOYEE:
- Caring for a person subject to a quarantine order or advised to self-quarantine;
- Caring for children if schools are closed or their regular caregiver / daycare is unavailable because of a public health emergency; or
- Experiencing substantially similar conditions.

**Caps:** $200 per day/$2,000 aggregate

**Tax Credit:** employer entitled to a fully refundable tax credit equal to 100% of FMLA paid leave wages*

**Impact on Existing Leave Policies:** is additional to UCC’s existing sick leave. Cannot require employee to use other paid sick leave before using this leave.

**Part Time Employees:** instead of 10 days, average hours of work over 2 week period

**Notice:** We must post a notice. DOL to provide model notice w/in 7 days.

**Emergency Family and Medical Leave Expansion**

12 WEEKS JOB-PROTECTED PAID LEAVE FOR ANY EMPLOYEE:
- Employed at UCC for at least 30 days
- Unable to work or telework, because they must care for child (under 18) as the result of closed school/daycare or unavailable childcare provider due to a public health emergency

**Pay Schedule:**
- Weeks 1-2 (10 days): unpaid (must use personal leave or FFCRA sick leave)
- Weeks 3-12: 2/3 pay

**Caps:** $200/day and $10,000 aggregate

**Tax Credit:** employer entitled to a fully refundable tax credit equal to 100% of FMLA paid leave wages*
- Job Restoration Requirements under FMLA apply.

*qualified wages may not include clergy wages; check most recent guidance
TO: Conferences of the United Church of Christ
FROM: Office of General Counsel
DATE: March 30, 2020
RE: UPDATED Families First Coronavirus Response Act

MEMORANDUM

This memorandum, originally provided on March 19, 2020 and updated on March 23, 2020, has been updated again to include recent guidance from the Department of Labor, including information about the refundable payroll tax credit and applicability to clergy wages.

The Families First Coronavirus Response Act (FFCRA) was signed into law by the President on March 18, 2020. It expands the provisions of the Family and Medical Leave Act (FMLA), including which employers are covered under the Act, which may bring smaller religious organizations like Local Churches and Conferences under the new provisions.¹

¹ FFCRA did not affect the requirement that a covered employer be engaged in “engaged in commerce or in an industry or activity affecting commerce” to be covered under the FMLA. The Code of Federal Regulations deems any employer with 50 or more employees to be engaged in commerce. 29 CFR part 825.104. Whether a Local Church or Conference with fewer than 50 employees is engaged in commerce is a determination to be made on all of the particular facts and circumstances of the organization. For example, it may be more likely that a Local Church or Conference is engaged in commerce if it has a camp, a daycare or preschool, sells products to persons in other states, operates an unrelated trade or business, or broadcasts its services.
The FFCRA expands FMLA to allow for an employee’s **paid leave** in the event that a child’s school or daycare is closed due to a public health emergency with respect to COVID-19. It also requires Paid Sick Leave for all employees. This memorandum summarizes the new provisions that are most applicable to the United Church of Christ National Setting and covenant partners. This is a developing situation and this memorandum is subject to change and/or be updated as more information becomes available. Note that these provisions are only applicable with respect to circumstances arising out of the COVID-19 pandemic.

**Effective Date and Enforcement**

The FFCRA is effective April 1, 2020 and expires December 31, 2020. No enforcement action will be brought by the Department of Labor against an employer for the first 30 days if the employer makes a good-faith effort to comply with the new law. The Department of Labor is focusing on compliance assistance during this time.

**Covered Employers**

Both the FMLA and the Paid Sick Leave provisions apply to private employers (including nonprofit religious organizations) with fewer than 500 employees, including those with fewer than 50 employees. This means that Local Churches and Conferences may be covered if they have lay employees and are engaged in commerce (see Covered Employees, below).

The FFCRA provides an exemption from the FMLA and Paid Sick Leave provisions for organizations with fewer than 50 employees, when the requirements of the law would jeopardize the ability of the business to continue. Current guidance, issued on March 28, 2020, by the DOL, provides the following.

“An employer, including a religious or nonprofit organization, with fewer than 50 employees (small business) is exempt from providing (a) paid sick leave due to school or place of care closures or child care provider unavailability for COVID-19 related reasons and (b)}
expanded family and medical leave due to school or place of care closures or child care provider unavailability for COVID-19 related reasons when doing so would jeopardize the viability of the small business as a going concern. A small business may claim this exemption if an authorized officer of the business has determined that:

1. The provision of paid sick leave or expanded family and medical leave would result in the small business’s expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity;

2. The absence of the employee or employees requesting paid sick leave or expanded family and medical leave would entail a substantial risk to the financial health or operational capabilities of the small business because of their specialized skills, knowledge of the business, or responsibilities; or

3. There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services provided by the employee or employees requesting paid sick leave or expanded family and medical leave, and these labor or services are needed for the small business to operate at a minimal capacity.”

Employers should take care to notice that the exemption is ONLY from providing paid FMLA or Paid Sick Leave for employees who have a child out of school due to a COVID-19 closure; an authorized officer of the church, such as the church president or moderator, should document this determination, which may need to be made by the church governing body in accordance with church bylaws.

**Covered Employees**

The FMLA paid leave provisions cover employees who have been employed at least 30 calendar days. The usual FMLA requirements that the employee be employed for a year, work at least 1250 hours, and work in a location with 50 employees within a 75-mile radius do not apply.
The Paid Sick Leave provisions apply to all employees of covered employers. Note that under the ministerial exception, employees who are ministers may be exempt from these laws. Also note that there is no prohibition on providing a policy with similar provisions for ministers, and settings of the United Church of Christ may wish to do so. Employers may not be able to take the payroll tax credit for wages paid to ministers on leave. Please see below for more information on the payroll tax credit.

**FMLA Paid Leave Provision**

If an employee is unable to work, including unable to work remotely, because the employee’s child’s school or daycare is closed due to a public health emergency with respect to COVID-19, that employee is entitled to up to 12 weeks of **paid leave**.

The employer can provide the first 10 days of leave unpaid. Subsequent absences must be paid at 2/3 of the employee’s regular rate of pay. The pay is capped at $200 per day, and $10,000 over the 12 weeks. An employee may elect, but may not be forced, to use sick leave, vacation, or personal time to cover the initial 10 days. This includes the sick leave available to the employee under the Paid Sick Leave provisions described below, which will enable the employee to effectively have 12 weeks of paid leave, under two separate provisions of the FFCRA. Note that an employer is not prohibited from exceeding the rate of pay per diem or in the aggregate. Many settings of the United Church of Christ may choose to maintain an employee’s regular pay if FMLA leave is taken for this purpose, but will only be able to claim the tax credit for qualified wages up to the statutory cap.

**Paid Sick Leave Provision**

Employers with fewer than 500 employees must immediately make available 80 hours of paid sick leave for full-time employees (or the equivalent of the average number of hours over two weeks for part-time employees) for the following reasons:
• Employee has been directed or ordered to quarantine or isolate related to COVID-19 by the federal, state, or local authorities.

• Employee has been advised by a healthcare provider to self-quarantine because of COVID-19.

• Employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.

• Employee is caring for an individual that is subject to a directive or order as described in the first two bullet points. Note that the individual need not be related to the employee.

• Employee is caring for their child because the child’s school or daycare has been closed because of COVID-19.

• Employee is experiencing any other substantially similar condition (to be specified by the Secretary of Health and Human Services).

When the reason for the leave is due to caring for another individual; the closure of a child’s school or daycare; or experiencing a substantially similar condition, the leave is to be paid at 2/3 regular pay, cap of $200/day and $2000 in the aggregate. Otherwise, the leave is paid at the employee’s regular rate, and is capped at $511/day and $5110 in the aggregate. Note that an employer is not prohibited from exceeding the rate of pay per diem or in the aggregate. Many settings of the United Church of Christ may choose to maintain an employee’s regular pay if paid sick leave is taken for this purpose, but will only be able to claim the tax credit for qualified leave wages up to the statutory cap.

Payroll Tax Credit

The intent of the legislation is that it be revenue-neutral; thus, the FFCRA provides a fully refundable payroll tax credit for qualified wages paid by employers for paid FMLA and Paid Sick Leave. Fully refundable means that if the qualified wages paid for leave under the FFCRA exceeds the amount of federal payroll taxes paid, the employer will receive a payment from the IRS for the difference, which is expected to occur by an expedited process that takes
two weeks or less. Our United Church of Christ settings, including Local Churches, can take advantage of the tax credit, which provides an immediate dollar for dollar tax offset against payroll taxes.

Here is how the payroll tax credit works. Ordinarily, employers withhold federal income taxes and the employees’ share of Social Security and Medicare taxes.\(^2\) Employers deposit these taxes with the IRS and file quarterly payroll tax returns (Form 941) with the IRS. Employers who pay qualifying Paid Sick Leave or paid FMLA under the FFCRA will be able to retain the amount of the federal payroll taxes equal to the amount of leave paid, rather than send it to the IRS. This includes federal income taxes and the employees’ share of Social Security and Medicare taxes. If the amount paid in qualifying leave exceeds the amount of federal payroll taxes that the employer has available to retain, then the employer will be able to request a payment from the IRS for the difference. Again, the expectation is that the IRS will process these refunds quickly.

Note, however, that the qualifying leave is only the leave that is provided pursuant to the FFCRA. If a Local Church, for example, decides to pay an employee’s full salary for the paid FMLA, only 2/3 of the salary up to the $200 per day cap is eligible for the tax credit. Similarly, with the Paid Sick Leave, the amount of qualifying leave eligible for the tax credit is capped at different levels depending on the reason for the Paid Sick Leave, as discussed above.

In addition to the payroll tax credit, employers may also be eligible to claim an immediate tax credit for the employer’s cost of continuing the employee’s health insurance during the time that the employee is on paid FMLA or Paid Sick Leave. This credit is available to employers who participate in a group health plan as defined by the Internal Revenue Code section 5000(b)(1).\(^3\)

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\(^2\) For clergy, the only federal taxes withheld are federal income taxes.

\(^3\) This memorandum will be updated with information specific to the Pension Boards- United Church of Christ health plan and further Department of Labor/IRS guidance when available.
Churches should take note that ministers’ wages may not be qualified wages as defined by the FFCRA. Under the law, the definition of qualified sick leave wages refers to the Internal Revenue Code definition of wages, which excludes employment by a minister. Churches may not be able to take the payroll tax credit for the minister’s paid FMLA or Paid Sick Leave wages. It is likely that this legislation was drafted and passed without consideration for that issue, and it is possible that the issue could be addressed in future guidance issued by the Department of Labor. As it stands now, this is the most up to date interpretation. Because ministers are treated as statutory self-employed employees for purposes of Medicare and Social Security, it is possible that a minister may be eligible to claim the payroll tax credit personally, but the credit would go to the minister and not to the church. The church and the minister may need to work collaboratively if this is the case. This memorandum will be updated if more information becomes available.

**Effect on Employer’s Current Policies**

An employer may not require an employee to use other paid leave provided by the employer before the employer uses FMLA or paid sick leave under FFCRA. The paid sick leave provided is in addition to any other sick leave provided by the employer. Employers should also be aware of state and local paid family and sick leave laws.

**Notice**

Employers must notify their employees of the available of both types of leave by providing a copy of the posters available on the Department of Labor’s website.4

For FMLA paid leave, the employee must notify the employer that the employee is taking leave “as is practicable.”

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For paid sick leave, an employer may require the employee to follow reasonable notice procedures after the first workday that the employee receives paid sick leave to continue to receive the leave.

**Job Protection**

Employers are required to return employees to their positions at the end of the leave. Employers with fewer than 25 employees may be exempt if employee’s position no longer exists due to economic or operating conditions due to the COVID-19 health emergency and the employer makes reasonable efforts to restore the employee to an equivalent position with equivalent pay, benefits, and employment terms/conditions for a one-year period following the end of the leave.
I am receiving numerous questions on the CARES Act, especially as it relates to forgivable small business loans and unemployment compensation for church employees. No regulations have been issued on these new laws yet, and thus interpretations are subject to change. This email summarizes provisions that will be of most interest to our churches.

The CARES Act includes the Paycheck Protection Loan Program, providing funding to small businesses and nonprofit organizations (under 500 employees) to cover up to 8 weeks of payroll and related costs, with such loan to be entirely forgiven if an employer maintains all of its employees and salaries during the period of time commencing February 15, 2020 through June 30, 2020. Loan proceeds may be used for payroll costs, employee salaries (with some exceptions for salaries in excess of 100k/year), commissions, costs related to group health care benefits (including sick, medical or family leave and insurance premiums), interest payments on mortgage obligations or other debt obligations incurred prior to February 15, 2020, rent and utilities. Under the language of the Act, churches and religious organizations are not excluded, and according to at least one Senator, churches may participate in this program. To qualify for forgiveness, employers must retain employees through a specified period of time and a few options are provided to the borrower as to how to calculate employees during that time period. There are also provisions relating to payroll tax delay and payroll tax credits for retaining employees if the business has closed due to COVID-19, but the credit will not apply to wages paid to clergy in exercise of their ministerial duties. Other loan programs are available to larger businesses (over 500 employees). This program is administered by the Small Business Administration (SBA) and more information can be found at sba.gov.

The CARES Act also includes Pandemic Unemployment Assistance. This extends coverage to workers who are self-employed, seeking part-time employment (if permitted under state law), do not have sufficient work history, or otherwise would not qualify for regular unemployment under state or federal law and become unemployed or cannot find work due to COVID-19. This includes workers laid off from churches and religious institutions who may not be eligible under the state’s program. Please see the attached CARES Act Unemployment Insurance Explainer, stating this. Churches which may normally be exempt from state unemployment requirements are covered under the CARES Act, but we do not know how States will administer this for those unemployed church workers. It is not clear how ministers will be treated under this program. Workers will only be eligible for PUA if they are unemployed for specified reasons relating to COVID-19. Unemployment will be administered by each state.
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1. Are faith-based organizations, including houses of worship, eligible to receive SBA loans under the PPP and EIDL programs?

Yes, and we additionally clarify that faith-based organizations are eligible to receive SBA loans regardless of whether they provide secular social services. That is, no otherwise eligible organization will be disqualified from receiving a loan because of the religious nature, religious identity, or religious speech of the organization. The requirements in certain SBA regulations—13 C.F.R. §§ 120.110(k) and 123.301(g)—impermissibly exclude some religious entities. Because those regulations bar the participation of a class of potential recipients based solely on their religious status, SBA will decline to enforce these subsections and will propose amendments to conform those regulations to the Constitution. Although 13 C.F.R. § 120.110(a) states that nonprofit entities are ineligible for SBA business loans (which includes the PPP program), the CARES Act explicitly makes nonprofit entities eligible for the PPP program and it does so without regard to whether nonprofit entities provide secular social services.

2. Are there any limitations on how faith-based organizations can use the PPP and EIDL loan money they receive?

Only the same limitations that apply to all other recipients of these loans (such as that loan forgiveness will cover non-payroll costs only to a maximum of 25% of the total loan to a recipient). The PPP and EIDL loan programs are neutral, generally applicable loan programs that provide support for nonprofit organizations without regard to whether they are religious or secular. The CARES Act has provided those program funds as part of the efforts to respond to the economic dislocation threatened by the COVID-19 public health emergency. Under these circumstances, the Establishment Clause does not place any additional restrictions on how faith-based organizations may use the loan proceeds received through either the PPP or the EIDL loan program. See, e.g., Religious Restrictions on Capital Financing for Historically Black Colleges and Universities, 43 Op. O.L.C. __, *7–15 (Aug. 15, 2019); Authority of FEMA to Provide Disaster Assistance to Seattle Hebrew Academy, 26 Op. O.L.C. 114, 122–32 (2002). In addition, the CARES Act does not impose unique burdens or limitations on faith-based
organizations. In particular, loans under the program can be used to pay the salaries of ministers and other staff engaged in the religious mission of institutions.

3. **How will churches qualify if have not been informed of tax-exempt status by the IRS? Do organizations have to request and receive tax exempt status or just meet the requirements of 501(c)(3) status to be eligible?**

Churches (including temples, mosques, synagogues, and other houses of worship), integrated auxiliaries of churches, and conventions or associations of churches qualify for PPP and EIDL loans as long as they meet the requirements of Section 501(c)(3) of the Internal Revenue Code, and all other PPP and EIDL requirements. Such organizations are not required to apply to the IRS to receive tax-exempt status. See 26 U.S.C. § 508(c)(1)(A).

4. **Will my organization be sacrificing its autonomy or its First Amendment or statutory rights if it requests and receives a loan?**

No. Receipt of 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 of 1993 (RFRA), 42 U.S.C. § 2000b et seq., Section 702 of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-1(a), or the First Amendment.

Simply put, a faith-based organization that receives a loan will retain its independence, autonomy, right of expression, religious character, and authority over its governance, and no faith-based organization will be excluded from receiving funding because leadership with, membership in, or employment by that organization is limited to persons who share its religious faith and practice.

5. **What legal requirements will be imposed on my organization as a result of our receipt of this Federal financial assistance? Will those requirements cease to apply when the loan is either repaid in full or forgiven?**

Receipt of a loan through any SBA program constitutes Federal financial assistance and carries with it the application of certain nondiscrimination obligations. Any legal obligations that you incur through your receipt of this loan are not permanent, and once the loan is paid or forgiven, those nondiscrimination obligations will no longer apply.
Consistent with certain federal nondiscrimination laws, SBA regulations provide that the recipient may not discriminate on the basis of race, color, religion, sex, handicap, age, or national origin with regard to goods, services, or accommodations offered. 13 C.F.R. § 113.3(a). But SBA regulations also make clear that these nondiscrimination requirements do not limit a faith-based entity’s autonomy with respect to membership or employment decisions connected to its religious exercise. 13 CFR § 113.3-1(h). And as discussed in Question 4, SBA recognizes the various protections for religious freedom enshrined in the Constitution and federal law that are not altered or waived by receipt of Federal financial assistance.

SBA therefore clarifies that its 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. For example, SBA’s regulations will require a faith-based organization that operates a restaurant or thrift store open to the public to serve the public without regard to the protected traits listed above. But SBA’s regulations do not apply to limit a faith-based organization’s ability to distribute food or clothing exclusively to its own members or co-religionists. Indeed, SBA will not apply its nondiscrimination regulations in a way that imposes substantial burdens on the religious exercise of faith-based loan recipients, such as by applying those regulations to the performance of church ordinances, sacraments, or religious practices, unless such application is the least restrictive means of furthering a compelling governmental interest. Congress enacted the CARES Act to afford swift and sweeping stopgap relief to Americans who might otherwise lose their jobs or businesses because of the economic hardships wrought by the response to the COVID-19 public health emergency, and SBA has a compelling interest in fulfilling that mandate to provide assistance broadly.

6. Is my faith-based organization disqualified from any SBA loan programs because it is affiliated with other faith-based organizations, such as a local diocese?

Not necessarily. Under SBA’s regulations, an affiliation may arise among entities in various ways, including from common ownership, common management, or identity of interest. 13 C.F.R. §§ 121.103 and 121.301. These regulations are applicable to applicants for PPP loans. (They also apply to the EIDL program when determining certain loan terms, although aggregating the number of employees of affiliated organizations does not affect eligibility for EIDL loans.) Some faith-based organizations likely would qualify as “affiliated” with other entities under the applicable affiliation rules. Entities that are affiliated according to SBA’s affiliation rules must add up their employee numbers in determining whether they have 500 or fewer employees.

But regulations must be applied consistent with constitutional and statutory religious freedom protections. If the connection between your organization and another entity that would constitute an affiliation is based on a religious teaching or belief or is otherwise a part of the
exercise of religion, your organization qualifies for an exemption from the affiliation rules. For example, if your faith-based organization affiliates with another organization because of your organization’s religious beliefs about church authority or internal constitution, or because the legal, financial, or other structural relationships between your organization and other organizations reflect an expression of such beliefs, your organization would qualify for the exemption. If, however, your faith-based organization is affiliated with other organizations solely for non-religious reasons, such as administrative convenience, then your organization would be subject to the affiliation rules. SBA will not assess, and will not permit participating lenders to assess, the reasonableness of the faith-based organization’s good-faith determination that this exception applies.

7. Does my faith-based organization need to apply for this exemption or include any documentation of its religious beliefs or practices to fall within this affiliation exemption?

No specific process or detailed filing is necessary to claim the benefit of this exemption. If you believe that your organization qualifies for this exemption to the affiliation rules, you should submit with your loan application a separate sheet stating as much. That sheet may be identified as addendum A, and no further listing of the other organizations with which your organization is affiliated, or description of the relationship to those organizations, is required. You are not required to describe your religious beliefs.

A sample “Addendum A” is attached to this document, but you may choose to write your own. Your statement can be very simple.

8. How do I know where my organization fits in SBA’s size standards table? Should I use the table to determine whether my organization is a small business that is eligible to participate in the PPP program?

SBA’s size standards can be found at 13 CFR § 121.201. Under the CARES Act, a non-profit organization qualifies as small, and is eligible for assistance, if (1) it has no more than 500 employees or (2) the NAICS code associated with its primary industry has a higher employee-based size standard. Some industries—including “religious organizations”—are currently listed in the size standards table with a monetary cap on annual receipts rather than an employee-based size standards cap. For nonprofit organizations whose primary industry is listed with a monetary cap on annual receipts, the size standards table therefore cannot be used to determine eligibility for the PPP program. Faith-based nonprofit organizations that do not fall under a primary industry that is listed with an employee-based size standard must have 500 employees or fewer to be considered small.
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.”