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CHURCH ALLIANCE

Acting on Behalf of Church Benefits Programs

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May 15, 2020

By electronic submission (<http://www.regulations.gov>)

Administrator Jovita Carranza
RE: Docket No. SBA–2020–0019
U.S. Small Business Administration
409 Third Street SW
Washington, DC 20416

Dear Administrator Carranza:

The Church Alliance would like to express its continued thanks for your leadership and the tremendous support demonstrated by the U.S. Small Business Administration (“SBA”) in helping nonprofits as they continue to work through the challenges being presented by COVID-19. We are submitting this comment letter in response to the request for comments on the interim final rule issued by the SBA under 13 C.F.R. Part 121 on April 15, 2020 regarding “Business Loan Program Temporary Changes; Paycheck Protection Program” (Docket No. SBA–2020–0019) (“Affiliation IFR”).

Background

The Church Alliance is a membership organization composed of thirty-seven church benefits organizations, covering mainline and evangelical Protestant denominations, Jewish entities, and Catholic schools and institutions. The Church Alliance members provide employee benefit plans, including retirement and/or health coverage, to approximately one million clergy, lay workers, and their families, serving over 155,000 churches, synagogues, and religious organizations throughout the country, such as crisis centers, disaster aid organizations, schools, universities, early childhood centers, nursing homes, children’s homes, homeless shelters, food banks, and other ministries.

Church Alliance members sponsor or administer and maintain retirement and welfare benefit programs, which are generally multiple-employer in nature, for eligible employees within the denomination. Having a program sponsored by one organization serving multiple

church employers helps provide continuity and consistency of benefits for employees, including pastors who may be asked to move between small, local churches with few employees.

Gratitude for Faith-Based Organization Affiliation Rules

First, we would like to thank you and your staff for the respect shown for the free exercise of religion by the revision of 13 CFR § 121.103(b), and the addition of Addendum A to part 121. These revisions appropriately exempt faith-based organizations from SBA affiliation rules when application of those rules would substantially burden such organizations' religious exercise. In particular, the exemption from the affiliation rules allows churches and other faith-based organizations to qualify for Paycheck Protection Program ("PPP") loans regardless of their "affiliation with other entities as an aspect of their religious practice." As noted in the Supplementary Information to the Affiliation IFR, the affiliation of certain religious organizations can be reflective of the polity of a given denomination and, in some cases, mandated. Allowing these entities to participate in the PPP as specified in the Affiliation IFR provides relief to such organizations that are struggling to pay their employees as they are ministering to their communities.

Application of Loan Limits for Single Corporate Groups

The Church Alliance would like to clarify the application of the guidance promulgated under the Interim Final Rule "Paycheck Protection Program—Requirements—Corporate Groups and Non-Bank and Non-Insured Depository Institution Lenders" (SBA Docket Number SBA-2020-0023). In particular, we would like to clarify whether the loan limit established for businesses that are part of a single corporate group would apply to faith-based organizations that only would be considered part of a single corporate group by disregarding the Affiliation IFR. We appreciate efforts by the SBA to ensure that the limited resources of the PPP are broadly distributed to assist as many small businesses as possible across the country. However, the Church Alliance urges that individual faith-based organizations not be excluded from receiving PPP funding due to this limitation if they would not have been excluded had the Affiliation IFR been applied. As discussed in SBA Docket Number SBA-2020-0019, "application of the affiliation rules, which, for example, provide for assessment of whether one faith-based organization 'controls or has the power to control' another organization, 13 CFR 121.103(a)(1), could involve SBA in questions of church governance concerning 'the allocation of power within a (hierarchical) church so as to decide . . . religious law (governing church polity),' . . . For example, 'the notion of corporate subsidiarity or affiliation in civil law is entirely foreign to the polity of religious organizations,' and there is a significant risk that civil authorities will 'mischaracterize or misinterpret the polity of a religious body.'" Given these concerns, the Church Alliance asks the SBA to clarify that the loan limit for a single corporate group applies to faith-based organizations only if the limit would be exceeded for a group of faith-based organizations after taking into account the Affiliation IFR.

Conclusion

Thank you for your consideration. We are happy to serve as a resource for you and your staff on these issues. I am available at (202) 778-9128 if you have any questions or wish to discuss any of the information in this letter further.

Sincerely,

A handwritten signature in black ink, appearing to read 'Karishma Shah Page', with a long horizontal flourish extending to the right.

Karishma Shah Page

Partner

K&L Gates LLP

On behalf of the Church Alliance