LEGAL IMPLICATIONS FOR CHURCHES DURING COVID-19

DESSERT SOUTHWEST ANNUAL CONFERENCE

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NOTE: The information in this outline is for informational purposes only. It is general in nature and addresses certain laws that are new and subject to future interpretation and regulations by government entities.

I. CARES ACT

A. Background

1. The “CARES Act” is the 880-page, $2.2 trillion Coronavirus Aid, Relief, and Economic Security (CARES) Act, which became law on March 27, 2020.

2. The Coronavirus Preparedness and Response Supplemental Appropriations Act became law on March 6, 2020. It provided $8.3 billion in emergency funding for federal agencies to respond to the coronavirus outbreak.

3. The Families First Coronavirus Response Act became law on March 18, 2020. It requires certain employers, including churches, to provide their employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19. These provisions, which can be fully reimbursed by the government, will apply from April 1, 2020, through December 31, 2020.

B. Forgivable Loan

1. The Act created a new SBA loan program—the Paycheck Protection Program (“PPP” or “Program”).

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a. It is for small employers of 500 employees or less, including nonprofits and churches (and annual conferences and general agencies).
b. Its purpose is to prevent workers from losing their jobs and to prevent small businesses from failing due to economic losses caused by the pandemic.

c. A PPP loan is an unsecured loan. No collateral is required. No personal guarantee is required. If the loan funds are used for a fraudulent purpose, then the U.S. government can pursue criminal charges.

2. Where To Get: From any lender approved to participate in SBA loans OR any additional lenders approved by the U.S. Department of the Treasury. The loan terms will be the same for everyone. Find a list of SBA lenders at: www.sba.gov. Chase already alerted its business customers regarding the Program. See Exhibit A, Chase email to Business Clients, dated March 31, 2020.

3. When To Get: Apply as soon as possible. A church can apply starting April 3, 2020, along with small businesses and sole proprietorships. Independent contractors and self-employed individuals can apply starting April 10, 2020. Other lenders will be able to make PPP loans as soon as they are approved and enrolled in the Program.

4. Eligibility: Must show that church has been harmed by the pandemic between February 15, 2020, and June 30, 2020. The church must make a good faith certification stating:
a. The loan is necessary due to the current economic conditions caused by COVID-19 to support the church’s ongoing operations;

b. The funds will be used to retain workers and maintain payroll, lease, and utility payments;

c. Duplicative funds for the same uses from another SBA program are not being received;

d. The church understands the rules of the Program; and

e. The documents and statements submitted are true and accurate.

5. Application Process: Complete the PPP loan application and submit it with required documentation, such as payroll documentation. The application must be processed by June 30, 2020.

6. Definition of “Payroll Costs”: The definition of “payroll costs” is broad:

a. Salary, wages, commissions, or tips (capped at $100,000 on an annualized basis for each employee);

b. Employee benefits, including costs for vacation, parental, family, medical, or sick leave; allowance for separation or dismissal; payments required for the provisions of group
health care benefits, including insurance premiums; and payment of any retirement benefit;

c. State and local taxes assessed on compensation; and

d. For a sole proprietor or independent contractor: wages, commissions, income, or net earnings from self-employment, capped at $100,000 on an annualized basis for each employee.

7. Maximum Loan Amount: 2 months of the church’s average monthly payroll costs from the last year, plus an additional 25% of that amount (up to $10 million). A seasonal or new business can use different applicable time periods.

8. Interest Rate: 0.50% fixed rate per U.S. Treasury

9. Interest Accrual: Interest begins to accrue at the time that the loan funds are received, even though loan payments are deferred.

10. Loan Maturity Date: 2 years after the loan starts.

11. No Prepayment Penalty or Fees: The church may repay the loan before its maturity date without penalty or fees.

12. Interrelationship With Employee Retention Credit: If an employer receives an employee retention credit (below), it is not eligible for this Program. Note: Most employers will choose the PPP.
13. Forgivable Portion of Loan: **Principal** amounts on the loan for the first 8-week period from the time that the loan was made if used to pay:

a. Compensation of less than $100,000 per employee and other payroll costs, including benefits;

b. Payment of interest on any obligation (limited to interest on mortgage loans incurred before February 15, 2020, by the U.S. Department of the Treasury);

c. Rent (limited to lease agreements in force before February 15, 2020, by the U.S. Department of the Treasury);

d. Utilities (for which service began before February 15, 2020, per the U.S. Department of the Treasury);

**AND** employee and compensation levels are maintained. The U.S. Department of the Treasury has stated: “Due to likely high subscription, it is anticipated that not more than 25% of the forgiven amount may be for non-payroll costs.” *Paycheck Protection Program (PPP) Information Sheet: Borrowers (U.S. Treasury).*

**Note:** The best practice is to open a checking account for the loan funds and then pay out of the account toward the permitted categories only. Then the church will be able to prove easily how the loan funds were used.
14. **Reduction in Forgiveness:** If the church’s workers or wages decline, then the amount of forgiveness declines. If there are declines between February 15, 2020, and April 26, 2020, they do not reduce the amount of loan forgiveness if the church returns to pre-decline levels by June 30, 2020.

   a. **Number of Staff:** If you reduce your full-time employee headcount.

   b. **Level of Payroll:** If you decrease salaries and wages by more than 25% for any employee that made less than $100,000 annualized in 2019.

   c. **Re-Hiring:** Full-time employment and salary levels for any changes made between February 15, 2020, and April 26, 2020, must be restored by June 30, 2020.

   *Paycheck Protection Program (PPP) Information Sheet: Borrowers (U.S. Treasury).*

15. **Portion Not Forgiven:** Any portion of a loan that is not forgiven is carried forward as a loan with a 10-year term at 4% interest.

16. **How To Request Forgiveness:** The process is:

   a. The church submits a request to the lender which is servicing the loan. *Note: It may not be the original lender.*
b. The request includes:

i. Documents that verify the number of full-time equivalent employees and pay rates;

ii. Payments on eligible mortgage, lease, and utility obligations;

iii. Certification that the documents are true and that the church used the forgiveness amount to keep employees and make eligible mortgage interest, rent, and utility payments.

c. The lender has 60 days to make a decision.

17. Retroactivity: This Program is retroactive to February 15, 2020, so that workers who have been laid off can be brought back onto payrolls. The loan period ends on June 30, 2020. 
Note: Apply as soon as possible. When the PPP money is gone, no more loans will be made.

18. Maximum Loan Amount: $10 million through December 31, 2020. A formula is used to determine the church’s maximum loan amount, based upon payroll costs. Note: Each church is limited to one PPP loan.

19. Deferment of Loan Payments: Loan payments can be deferred for 6-12 months. The U.S. Treasury has stated that all loan payments are deferred for a set deferment at 6 months. ld.
20. Interrelationship With Other Loans: The church does not need to look for loans elsewhere before applying under the Program. The church is allowed to have other loans or to get other loans in addition to the PPP loan.

21. The Small Business Administration will establish regulations for PPP loans.

22. Potential Constitutional Challenge: This Program may be challenged in court as an unconstitutional establishment of religion in violation of the First Amendment. That challenge probably will fail.

C. Employee Retention Credit—IF CHURCH DOES NOT TAKE A PPP LOAN.

1. Available to a church that either: (1) had to fully or partially suspend operations during a calendar quarter in 2020 “due to orders from an appropriate governmental authority limiting commerce, travel, or group meetings (for commercial, social, religious, or other purposes) due to the coronavirus disease 2019” or (2) experienced a decrease in gross receipts of more than 50% in a calendar quarter in 2020 when compared to the same calendar quarter in 2019.

2. The credit is taken against FICA taxes paid by the church.

4. Amount of credit is limited to 50% of up to the first $10,000 of wages paid to each employee during that time period.

5. Cannot be taken for wages relating to paid sick and paid family leave provided pursuant to the Families First Coronavirus Response Act.

D. Deferment Option for Payment of Church’s Share of FICA Taxes—

IF CHURCH DOES NOT TAKE A PPP LOAN.

1. Applies to FICA taxes incurred from March 27, 2020, through December 31, 2020.

2. A minimum of 50% of any deferred amounts must be paid by December 31, 2021. The remaining balance is due on December 31, 2022.

E. Expanded Unemployment Insurance Eligibility (Pandemic Unemployment Assistance Program)

1. “Covered individual” is someone:
   a. Not eligible for regular unemployment benefits; and
   b. Self-certifies as being otherwise able and available to work but is “unemployed, partially unemployed, or unable or unavailable to work because” of one of the 9 categories of reasons related to COVID-19 (very broad and both direct and indirect).
2. Not covered if:

   a. Can telework with pay; or

   b. Receiving paid sick leave or other benefits.

3. Applies to unemployment, partial unemployment, or inability to work between January 27, 2020, and December 31, 2020.

4. Amount of benefit will be the normal applicable amount, plus an additional $600 per week funded by the federal government.

5. Duration of unemployment benefits is extended up to a maximum of 39 weeks.

6. If a church does not participate in its state’s unemployment insurance system, then its employees generally are not eligible for unemployment benefits, unless the state allows the church to be a “reimbursing employer.” If a church does not participate, does the expanded unemployment insurance eligibility apply to its employees? There is no answer yet.

7. The federal government will reimburse the states for 50% of the benefits paid to individuals who were employed by certain nonprofits. States will pass on that reimbursement to the employers. Thus, churches which are subject to unemployment-related costs as a result of the Act will receive this partial reimbursement.
F. Rebates to Individuals

1. Who: All U.S. residents with adjusted gross income up to $75,000 ($150,000 married), who are not a dependent of another taxpayer and have a work eligible Social Security No. Even if the resident does not have any income or if the income comes entirely from non-taxable means-tested benefit programs, such as Supplemental Security Income (SSI) benefits. If an AGI exceeds the threshold, then the rebate amount is reduced by $5 for each $100 that the AGI exceeds the threshold. It is totally phased-out for AGIs of $99,000 for single filers, $146,500 for head of household filers with one child, and $198,000 for joint filers with no children.

2. Amount of Rebate: $1,200 ($2,400 married). An additional $500 per child.

3. How: If the citizen filed a 2019 (or 2018) tax return, the IRS will calculate the rebate automatically. The IRS will deposit the rebate directly to the bank account associated with the tax return. Otherwise, a check will be mailed out over the next few months.

4. Non-taxable Income: The rebate is not considered to be taxable income.

G. Other Individual Provisions

1. Waiver of the 10% early withdrawal penalty for distributions up to $100,000 from qualified retirement accounts for coronavirus-
related purposes made on or after January 1, 2020. Income attributable to such distributions would be subject to tax over 3 years, and the taxpayer may recontribute the funds to an eligible retirement plan within 3 years without regard to that year’s cap on contributions. **Note:** A withdrawal while the stock and bond markets are down would result in a hard loss. A withdrawal should be done only if necessary.

2. Increase in the amount available for personal loans from a qualified retirement plan from $50,000 to $100,000. **Note:** A loan while the stock and bond markets are down would result in a hard loss. A loan should be taken only if necessary.

3. Waiver of the required minimum distribution rules for certain defined contribution plans and IRAs for 2020. This provision gives relief to individuals who would otherwise be required to withdraw funds from such retirement accounts during the economic slowdown due to COVID-19.

H. Charitable Contributions

1. Act encourages Americans to contribute to churches and charitable organizations in 2020.

2. Permits taxpayer to deduct up to $300 of cash contributions, whether taxpayer itemizes his deductions or not.

3. Increases limitations on deductions for charitable contributions by taxpayers who itemize, as well as corporations.
a. For individuals, the 50% of AGI limitation is suspended for 2020.

b. For corporations, the 10% limitation is increased to 25% of taxable income.

I. Delay of Certain Deadlines

1. April 15 filing deadline is postponed to July 15. The extended payment filing date already was announced by the IRS.

2. All individuals may postpone estimated tax payments due from the date of enactment until October 15, 2020. There is no cap on the amount. **Note: This provision is especially relevant to pastors who typically use the estimated tax procedure to prepay their federal taxes, because they are exempt by law from income tax withholding.**

J. Education Provisions

1. Allows employers to provide a student loan repayment benefit to employees on a tax-free basis.

   a. An employer may contribute up to $5,250 annually toward an employee’s student loans, and that payment would be excluded from the employee’s income.

   b. The $5,250 cap applies to both the new student loan repayment benefit, as well as other educational assistance
(e.g., tuition, fees, books) provided by the employer under current law.

c. The provision applies to any student loan payments made by an employer on behalf of an employee after date of enactment and before January 1, 2021.

2. Temporarily suspends payments for federal student loans held by the federal Department of Education through September 30, 2020, and interest is waived for the duration of the suspension. Only loans held by the federal Department of Education are eligible, including loans made under the federal William Ford Direct Loan Program, and some loans made under the federal Family Education Loan Program.

3. The Secretary of Education shall exclude from a student’s Federal Pell Grant duration limit any semester (or equivalent) that the student does not complete due to a qualifying emergency.

4. Bars involuntary collections of student loans by offsetting an income tax refund or by other means.

K. Foreclosure Moratorium and Forbearance

1. Any homeowner who is experiencing financial hardship and who has a mortgage loan backed by the federal government or a federal agency is eligible for up to 6 months of forbearance on mortgage payments, with a possible extension for another 6 months.
2. At the end of the forbearance, the borrower can work within each agency’s existing programs to help them get back on track with payments, but the missed payments will need to be paid at some point during the loan. Thus, if a borrower can pay, he or she should do so.

3. A renter who has trouble paying rent has protections if he or she lives in a property that has a federal subsidy or federally backed loan. The owner cannot file an eviction or charge fees for nonpayment of rent for 120 days following enactment and cannot issue a renter a notice to leave the property before 150 days after enactment. After this period, the renter will be responsible for making payments and getting back on track, so he or she should continue to make payments if able to do so.

4. A renter who receive a housing subsidy, such as public housing or Section 8, and who has had his or her income fall should recertify that income with the public housing agency or property owner, because it may lower the rent owed.

5. The Act has a 60-day foreclosure moratorium starting on March 18, 2020, for all federally backed mortgage loans. There will be no foreclosure actions or removals from their homes due to foreclosure during that time.
L. “Real ID” Compliance

1. The deadline for Americans to obtain a Real ID-compliant identification (which will be required to board commercial airlines) is extended by 1 year. It is now October 1, 2021.

2. That identification will be obtained from a DMV.

M. Utility Shutoffs

1. Utility service is regulated by each state.

2. Many states have ordered their utility companies not to terminate service to customers during the crisis.