

SCHMITT SCHNECK

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SENT VIA EMAIL : jashmen@citygatenetwork.org

John Ashmen, President
Citygate Network
2153 Chuckwagon Drive , Ste. 100
Colorado Springs, 80919

Re: Members Religious Organization Considerations for CARES Act Funding

Dear John:

As discussed, concerns have been raised regarding Citygate Network member missions accessing funds under the CARES Act. This letter is intended to address some of those concerns at this moment in time. We recognize that things change and move regularly under the current paradigm of crisis legislation and its implementation. Guidance could be issued between the time you receive this letter and members are able to process its content. This letter addresses this moment in time.

1. Overall Intention of Legislation Expressed by Congress as Inclusive of Religious Entities.

As expressed in the letter of the House of Representatives Whips and the U.S. Senators' letter to the SBA Administrator, Congress intended and wanted religious organizations, including houses of worship to participate in provisions and to benefit from the CARES Act. Limitations or barriers imposed by SBA rules or execution of the CARES Act are inconsistent with the intent of the lawmakers in the law.

2. Current SBA Loan Application Civil Rights Attestation.

The current SBA loan application states the following:

Civil Rights (13 C.F.R. 112, 113, 117) – All businesses receiving SBA financial assistance must agree not to discriminate in any business practice, including employment practices and services to the public on the basis of categories cited in 13 C.F.R., parts 112, 113, 1 and 117 of SBA Regulations. All borrowers must display the “Equal Employment Opportunity Poster” prescribed by SBA.

Part 113 is the applicable regulations for missions to consider. Part 113 addresses nondiscrimination for protected reasons, including “religion.” These nondiscrimination

provisions include limitations on organizations that receive the loans under the CARES Act. The limitations are that organizations are not to “discriminate” on the basis of religion in employment practices and in provision of services.

2.1 Exception Provided in Part 113 for Religious Organizations.

The Part 113 regulations that prohibits discrimination based on religion has a religious entity exemption. It provides:

13 CFR 113. 3-1(h) Nothing in this part shall apply to a religious corporation, association, educational institution or society with respect to the membership or the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution or society of its religious activities.

This exemption is consistent with the Title VII religious organization exemption when applied to employment decisions made on the basis of religion. The Title VII religious organization exemption has been ruled by the Supreme Court to apply to all employees (even janitorial staff) of a religious organization. The phrase “in this part” appear to best be applied to the entire Part 113. This is consistent with the use of the same phrase “in this part” in the definitions section 13 CFR 113(a) which applies to the entire Part 113.

2.2 Limitation on Services to Secular Services.

The second limitation in Part 113, 13 C.F.R. 113.3(a) says recipients of this financial assistance may not limit goods, services, or accommodations on the basis of race, color, religion, sex, handicap, or national origin of a person. There are many of Citygate mission members that are open to providing services to whomever walks in looking for care. This regulation does not say you cannot provide religious services, it is saying that you cannot refuse services to someone because of these protected areas, including religion, or you cannot only provide services to certain persons because of a protected basis (e.g. religion). You can assess your mission with regard to this limitation and recognize that additional guidance may come.

3. Terms of the Loan are Expressed Contractually and Restricted with Documentation Language.

The terms under which organizations receive funds are expressed in the documentation associated with the loan. This includes the application and application process and documentation. The provisions represented in the loan application and references made (such as the Civil Rights regulations) are normally signed off on through documentation after approval and before distribution of funds. These are the terms under which you receive the funds.

Potential subsequent changes that would propose to alter the terms or impose additional or more stringent requirements are restricted. It would almost be like a bank coming in several years after a loan and trying to unilaterally increase the interest rate contrary to the terms of the loan. Modifications are restricted. The law wants to provide certainty for parties in knowing what they have agreed to and in the execution of the agreement.

Further, the loan term is definite and the terms of the loan are for the life of the loan. Recourse would primarily be limited to the compliance with the terms of the loan during the life of the loan. Most of the borrowers will be forgiven a vast majority of the loan since 75% of it must be used for payroll and that amount which is applied for defined expenses in an eight week period will be forgiven.

4. Concerns of Government Intrusion with Accepted Funds.

There is a clear understanding that with government funding comes government engagement and limitations. Religious organization's concerns about this have given many pause. We understand this. Government restrictions and limitations have existed. At the same time, cases such as *Trinity Lutheran v. Comer* have bolstered the opportunity for religious organizations to participate along with secular organizations in government programs and funding. HHS has proposed a rule regarding equal treatment of faith-based programs in HHS supported social service programs.

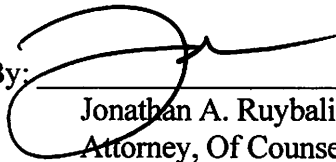
While acknowledging the civil rights rules discussed in paragraph 2 above, the primary government intrusion in the PPP loan of the CARES Act is known. The government is telling you what you can spend the money on. This is primarily because the intent of the legislation is to protect your payroll and your employees. The funds must be spent on payroll costs, paid sick, medical, or family leave, mortgage interest, interest on other debt obligations incurred before February 15, 2020, rent, and utilities.

We are not aware of any terms or recourse in the CARES Act or related regulations by which a religious IRC §501(c)(3) organization would lose its tax-exempt status.

We await any further guidance and regulations related to the CARES Act. We trust you will proceed in due course with your assessment of the applicability of this law for your organization. This should include consulting with your legal counsel. We are expressing our understanding on these terms but not providing you legal advice on which you and your organization should rely.

Sincerely,

SCHMITT SCHNECK
CASEY EVEN & WILLIAMS, P.C.

By: 
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Attorney, Of Counsel