

United States Senate

April 2, 2020

Jovita Carranza
Small Business Administration
409 Third Street, SW
Washington, DC 20416

Dear Administrator Carranza:

The Payroll Protection Act (PPA) section of the Coronavirus Aid, Relief, and Economic Security Act (CARES) temporarily extends eligibility to participate in section 7(a) of the Small Business Act to “nonprofit organizations,” including religious organizations. *See* CARES Act § 1102(a)(2). Congress enacted this extension because nonprofit organizations in need of section 7(a) loan assistance to make payroll during this crisis must be able to receive the same assistance as for-profit organizations.

But I am concerned that the section 7(a) program is currently being administered in a way that demands religious organizations make an unconscionable choice: forgo assistance or compromise their religious practices and values.

The Application Form that SBA released requires “[a]ll businesses receiving SBA financial assistance” to “agree not to discriminate in any business practice . . . on the basis of categories cited in 13 C.F.R. Parts 112, 113, and 117 of the SBA Regulations”—and those categories include, among others, religion. As a result, it appears that *all* organizations will have to certify that they will not make employment and other decisions based on religion, even though religious organizations have an express accommodation under existing regulations. *See* 13 C.F.R. § 113.3-1(h) (“[n]othing 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 . . . of its religious activities”). No religious organization should have to cast aside its religious convictions to receive help in this crisis. I urge you to make clear that the regulatory accommodation for religious organizations applies to those who receive SBA financial assistance.

The Application Form also requires that “[a]ll borrowers must display the ‘Equal Employment Opportunity Poster’ prescribed by SBA.” The poster states that the organization does “not discriminate on the ground of . . . religion . . . in the hiring, retention, or promotion of employees.” SBA Form 722. This is a true statement for the great majority of organizations that receive section 7(a) funds. But it is not true for religious organizations that must have—and do have—the right to consider religious faith when filling a religious position of employment. The SBA should accordingly modify the poster requirement for religious organization. These organizations should not have to choose between needed assistance and publicly posting a code of conduct that is both false as to them and renounces the importance of their employees’ religious faith.

Finally, I urge you to issue guidance or otherwise make clear that the ministerial exception applies to the section 7(a) loan program. In *Hosanna-Tabor Evangelical Lutheran Church & School v.*

EEOC, the Supreme Court held that the First Amendment demands a “ministerial exception” from anti-discrimination laws to protect the autonomy of a religion to determine “who can act as its ministers” and “personify its beliefs.” 565 U.S. 171 (2012). Religious organizations that accept funds from the section 7(a) program must also have the right to determine who acts as its ministers notwithstanding any other regulation purporting to impose limits on that decision.

The PPA extended the SBA section 7(a) loan program to non-profit organizations, including religious non-profits, because Congress determined that these organizations must have access to this program during this crisis. But religious organizations are put to an impossible choice if the price of participation is their religious freedom. I urge you to take immediate steps to ensure that religious organizations can both access the loan program and maintain their religious freedom.

Sincerely,



Ted Cruz