

*New York City Office*

1385 Broadway, 12th Floor

New York, New York 10018

www.cbmslaw.com

**CLIENT GUIDANCE**

**THE CARES ACT’S PAYCHECK PROTECTION LOAN**

**GUIDELINES FOR CORPORATE APPROVALS**

Under the CARES Act, the Paycheck Protection Program[[1]](#footnote-1) (“PPP”) provides for $349 billion of forgivable Small Business Administration (“SBA”) loans to qualifying businesses. One such qualifying business eligible for SBA loans are non-profit organizations that: (a) are tax exempt under Section 501(c)(3) or Section 501(c)(19) of the U.S. Internal Revenue Code, and (b) have fewer than 500 employees. This would include certain religious and charitable corporations. Lenders will begin processing loan applications for such organizations, as soon as April 3, 2020. For the most current information, please refer to our website, www.cbmslaw.com.

If a non-profit organization or religious corporation seeks to proceed with applying and securing a loan as part of PPP, such corporation must consider the following items of corporate governance:

1. **Review Corporation Documents:**
   1. Confirm organization’s corporate documents, certificate of incorporation, bylaws, and/or constitution, are in possession and current.
2. **Determine Voting Requirements:**
   1. Confirm which corporate bodies (members/board) are required to vote on financial transactions of the corporation.
   2. Determine voting requirements of member vote (i.e. congregational vote) and board of directors/trustees vote.
3. **Determine Meeting Requirements:**
   1. Confirm the process for calling a meeting.
   2. Determine if the meeting can be conducted telephonically/electronically/remotely by reviewing the corporate documents.
   3. Determine what constitutes a quorum (the number of people necessary to attend).
   4. Determine how many votes are required to pass a resolution.
4. **Prepare corporate action:**
   1. Attached is proposed language for the necessary bodies to approve.
      1. Please note: this language is a sample and may need to be tailored to each corporation’s corporate documents[[2]](#footnote-2) and expanded upon.
      2. Those items left in brackets are for customization to the appropriate name/title/officer in connection with your corporation. Please replace the bracketed language with the appropriate language for your corporation.
5. **Consult with your lender:**
   1. Consult your lender if they require any other corporate documents and approvals including a formal certificate of Secretary. The attached language approves a subsequent certificate of Secretary, if required.

**PROPOSED RESOLUTION LANGUAGE**

**WHEREAS**, [***Entity Name***] has been adversely impacted by the COVID-19 pandemic (“COVID-19 Pandemic”) and desires to apply for financial assistance through a loan up to the maximum amount as permitted in the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”) under the “Paycheck Protection Program” as codified at Section 1102 of the CARES Act (the “PPP Loan”);

**NOW, THEREFORE**, be it

**RESOLVED,** that the undertaking of the PPP Loan is hereby approved and authorized, including the completion and submission of the application for the PPP Loan, attached as **Exhibit A**; and

**RESOLVED,** that the [***Officer Title / Pastor***], [***Additional Title***] and other officers of [***Entity Name***] (“Authorized Persons”) are, and each of them with full authority to act without the others hereby is, authorized to execute and deliver an application, and other related documents, instruments, certificates and affidavits required to secure a loan, including, without limitation, commitment letters, loan and credit agreements, promissory notes, security agreements, officers’ certificates, and take any other action as they consider appropriate, including to effect the purposes of the preceding resolutions, and the execution by any Authorized Persons of the instruments or documents, or the doing by them of any act in connection with the foregoing matters, shall conclusively establish his or her authority therefor from [***Corporate Body, i.e. Congregation/Board***] and the approval and ratification by the [***Corporate Body***] of the [***Entity Name***] of the instruments and documents so executed and the actions so taken; and

**RESOLVED,** that in connection with the PPP Loan contemplated in the preceding resolutions, the Secretary or the Assistant Secretary of [***Entity Name***] be, and hereby are, each authorized in the name and on behalf of [***Entity Name***], to certify any more formal or detailed resolutions as that officer may deem necessary, desirable, advisable or appropriate to consummate, effectuate, carry out or further the PPP Loan contemplated by and the intent and purposes of the foregoing resolutions and that, thereupon, those resolutions shall be deemed adopted as and for the resolutions of the [***Corporate Body***] as if set forth at length herein.

*[Remainder of Page Intentionally Left Blank]*

**EXHIBIT A**

**APPLICATION FOR LOAN**

<https://www.sba.gov/sites/default/files/2020-03/Borrower%20Paycheck%20Protection%20Program%20Application_0.pdf>

1. <https://home.treasury.gov/policy-issues/top-priorities/cares-act/assistance-for-small-businesses>. [↑](#footnote-ref-1)
2. **Disclaimer: Each entity, based on its specific circumstances, must determine whether to seek and secure an loan. In no way is Capell Barnett Matalon & Schoenfeld LLP advising that it is appropriate for you to seek a loan. If your religious corporation or non-profit organization requires assistance, please contact Renato Matos, Esq., at** [**rmatos@cbmslaw.com**](mailto:rmatos@cbmslaw.com)**.**  [↑](#footnote-ref-2)