

# Insights

## New FAQ Addresses Eligibility of §115 Hospitals for PPP Loans

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On Sunday, May 3, 2020, the Small Business Administration ("SBA") added content to its Frequently Asked Questions ("FAQ") for the payroll protection program ("PPP") loans established under the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"). One added response dealt with the question of whether a hospital exempt from federal income tax under Section 115 of the Internal Revenue Code ("Code") is eligible to receive a PPP loan.

The CARES Act expressly provides that certain non-profit organizations, described in Section 501(c)(3) of the Code, may qualify for PPP loans. However, the CARES Act did not specifically address entities exempt from federal income tax under Section 115 of the Code. Section 115, related to tax exemption of governmental organizations, provides that, for federal income tax purposes, gross income does not include income derived from "the exercise of any essential governmental function...or income accruing to the government or any possession of the United States, or any political subdivision thereof."

According to the SBA's new FAQ guidance, the Administrator of the SBA, after consultation with the Secretary of Treasury, acknowledges that many state and local run hospitals exempt from federal income tax under Section 115 of the Code may meet the description set out in Section 501(c)(3) but have simply not sought recognition of such exemption by the IRS, given their full exemption under Section 115 of the Code. In recognition of this fact, the SBA has clarified that it will treat a nonprofit hospital, exempt under Section 115 of the Code, as a qualifying "nonprofit organization" under the CARES Act, provided the hospital reasonably determines, and documents in writing that, notwithstanding its lack of IRS recognition of such status, it is an organization described in Section 501(c)(3) of the Code. These governmental hospitals applying for PPP loans will be unable to certify eligibility under the PPP without first making this determination.