

Congress of the United States
House of Representatives
Washington, DC 20515-3313

April 23, 2020

Administrator Jovita Carranza
U.S. Small Business Administration
409 Third Street, SW
Washington, DC 20416

Secretary Steven T. Mnuchin
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Secretary Mnuchin and Administrator Carranza:

On behalf of the thousands of businesses and their employees struggling to make ends meet as the COVID-19 pandemic takes its economic toll on our congressional districts, we thank you for your leadership in rolling out the Paycheck Protection Program (PPP), created by section 1102 of the CARES Act. At the same time, however, we write to call your attention to a misconstruction of the statutory eligibility rules for the PPP that is currently preventing thousands of our constituents from receiving paychecks. On behalf of these employees, who would rather keep their job than be laid off and forced to seek unemployment insurance, we respectfully request that you cure this oversight as you prepare to administer a second tranche of PPP funding, hopefully in the very near future.

Our concerns center around the impact of two recent regulatory decisions on community lenders and financing providers with fewer than 500 employees in our districts that are not participating as PPP lenders: first, the use of the Small Business Administration's pre-existing 7(a) Program rules as the eligibility rules of the PPP, a separate program; and second, the subsequent selective rollback of some 7(a) ineligibility rules for some types of businesses but not others. As you may know, in many parts of our districts (especially in our rural communities), our constituents' sole access to financial services is from small-size nonbanks—installment lenders, finance companies, factoring companies, and CDFIs, to name a few—and as a result have been designated “essential” businesses permitted to remain open notwithstanding generally applicable government orders to the contrary. Many of these companies have fewer than 500 employees; these predominantly consumer financing providers are not currently (and have no plans to become) PPP lenders themselves.

Yet these businesses have been shut out completely from the PPP, which has forced many of them to lay off their highly trained employees who would have preferred to keep their jobs than seek government unemployment assistance. While the PPP was statutorily “housed” in section 7(a) of the Small Business Act so that it could use 7(a) Program loan delivery infrastructure, eligibility for the PPP, a new and separate program, was intended to extend to “any business concern” that meets the applicable CARES Act employee thresholds.¹ The Small Business Administration (“SBA”) unduly narrowed the intended broad statutory scope of PPP eligibility when it by rule rendered ineligible for PPP any business ineligible to borrow under the 7(a)

¹ See CARES Act § 1102

Program, which includes lending and financing companies.² Compounding these businesses' frustration, Treasury and the SBA subsequently (and apparently selectively) rolled back the use of 7(a) Program ineligibility rules for some businesses—those with 50% of their revenue from gambling and, separately, religiously affiliated businesses—but not for others. The apparent malleability of PPP eligibility rules for some industries but not for others is not grounded in the CARES Act and has the unfortunate appearance of the government's picking winners and losers among businesses that all want to keep their employees on their payrolls.

Adding confusion, the complexities of the current PPP IFR eligibility rules appear inconsistent with separate Treasury-supplied FAQ guidance, upon which “borrowers and lenders may rely” with the comfort that the “U.S. government will not challenge lender PPP actions that conform” to the guidance.³ This guidance essentially restates the statutory definition of a PPP-eligible business from the CARES Act. To date, however, notwithstanding this FAQ guidance, small business community lenders and financing providers who have approached PPP lenders for loans to keep their employees on payroll have been denied PPP loans.

On behalf of the hardworking employees who work at lending and finance companies that are not themselves making PPP loans and are statutorily eligible to participate in the PPP, we respectfully request that you harmonize applicable PPP regulatory rules and guidance to ensure lenders have the comfort they need to extend PPP loans to these companies, provided the companies attest that they are not and will not seek to become PPP lenders themselves. The PPP—and more broadly, the entire CARES Act—was enacted with a premium focus on the continued employment of American workers. Keeping individuals who work at non-PPP financing providers employed during these difficult times will facilitate restoring America's productivity as soon as the health crisis dissipates.

We hope you and your families are healthy and safe. Thank you for your immediate attention to this matter, which we request be addressed before new funds are added to the PPP.

Sincerely,



Rep. Ted Budd
Member of Congress



Rep. Bill Huizenga
Member of Congress



Rep. Ann Wagner
Member of Congress



Rep. Blaine Luetkemeyer
Member of Congress



Rep. Steve Stivers
Member of Congress



Rep. French Hill
Member of Congress

² Business Loan Program Temporary Changes; Paycheck Protection Program Interim Final Rule 7-8 (Question 2(c)); see 13 C.F.R. § 120.110.

³ See Paycheck Protection Program Loans, Frequently Asked Questions, <https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf> (as of Apr. 17, 2020).



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