

Congress of the United States
Washington, DC 20515

April 21, 2020

The Honorable Steven Mnuchin
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable Jovita Carranza
Administrator
U.S. Small Business Administration
403 3rd Street, SW
Washington, DC 20416

Dear Secretary Mnuchin and Administrator Carranza,

Thank you for your efforts to roll out the Paycheck Protection Program (PPP) mandated by the Coronavirus Aid, Relief, and Economic Stimulus (CARES) Act. We recognize it has been a complex task to complete a rollout of this size in an extremely short amount of time. We write today, however, regarding uncertainty surrounding loan forgiveness provisions in the current iteration of your agencies' guidance.

Participant PPP lenders and borrowers have begun to express concern that the current guidance pertaining to PPP loan forgiveness does not account for real world contingencies that could be produced by the program. Lenders and borrowers alike have raised questions surrounding loan forgiveness for two particular issues: 1. Employee retention; and 2. The use of 75 percent of the total PPP loan amount for payroll costs. We would like to see these issues addressed with as much immediacy as possible.

First, employers have become increasingly worried about employees who may have parted with the employer and may not return to the employer's payroll in a timely fashion. Initial guidance from the Department of Treasury states that to qualify for forgiveness, employers have until June 30, 2020 to restore full-time employment and salary levels for any changes made to staff and payroll between February 15, 2020 and April 26, 2020.¹ While we understand the intent behind this provision, employers are increasingly worried that the stagnating nature of the economy at this time will make restoration to pre-pandemic employment levels undoable on the timeline the forgiveness structure dictates. To accommodate for this concern, we recommend that Treasury and the Small Business Administration (SBA) work with Congress and stakeholders to update guidance that would allow for good-faith and documented efforts made by employers to rehire staff following a PPP loan to be satisfactory for the purposes of loan forgiveness under the program.

Second, and related, lenders and borrowers share a mutual concern about the specification that 75 percent of the total amount of a PPP loan be used toward payroll. Treasury's Interim Final Rule on Additional Eligibility Criteria stipulates that at least 75 percent of the PPP loan proceeds shall be used for payroll costs, and that 75 percent of the amount forgiven under the program

¹ Department of Treasury, "Paycheck Protection Program (PPP) Information Sheet: Borrowers," Pg. 3:
<https://home.treasury.gov/system/files/136/PPP--Fact-Sheet.pdf>

must be attributable to payroll costs.² This has caused confusion for business owners who borrowed the 2.5 multiple of their payroll costs, as prescribed by the implementing PPP Interim Final Rule from Treasury.³ They are worried that having borrowed at the 2.5 multiple will result in a failure to meet the 75 percent threshold in covering their payroll costs. This has left borrowers wondering what to do with the remainder of the loan if they fall short of the 75 percent threshold, especially if their payroll has shrunk from the February 15, 2020 start date as a result of not being able to rehire all former staff.

Borrowers are concerned that they might find themselves completely or partially disqualified for loan forgiveness under the current guidance, even though they have followed the guidelines to the best of their abilities. Borrowers, who took PPP loans with the understanding that the loan would be forgiven if they worked with their lenders to follow guidelines, would be left struggling to pay a large loan with restrictive terms. Additionally, financial institutions should not be left on the hook for loans that are no longer able to be repaid. These institutions processed PPP loans to borrowers using the guidance-specified formula with the understanding that Congress had assured them they would be forgiven. We strongly recommend that Treasury and the SBA address this issue by issuing guidance for loan excess in instances where payroll costs do not meet the 75 percent threshold, including: best practices around prepayment; allowing employers to use excess loan amounts to meet payroll costs beyond 8 weeks until the 75 percent threshold is reached; or other rational, statutorily authorized solutions that meet the Congressional intent that these loans be forgiven.

As the PPP moves past the initial loan funding stage, these issues will become more pressing and require answers. We encourage Treasury and the SBA to act now, and in explicit terms, to avoid greater confusion among small business owners, lenders, and government officials who will be responsible for forgiveness judgments.

We recognize that guidance on the PPP is still in the interim stage. We also recognize that the economic situation across the country is constantly changing. Given that reality, we encourage you to provide as much leniency and clarity as possible in future PPP guidance. Thank you for your attention to these matters.

Sincerely,



Ron Kind
Member of Congress



Scott Tipton
Member of Congress

² Small Business Administration, "Business Loan Program Temporary Changes; Paycheck Protection Program – Additional Eligibility Criteria and Requirements for Certain Pledges of Loans," Pg. 13: <https://home.treasury.gov/system/files/136/Interim-Final-Rule-Additional-Eligibility-Criteria-and-Requirements-for-Certain-Pledges-of-Loans.pdf>

³ Small Business Administration, "Business Loan Program Temporary Changes; Paycheck Protection Program," Pg. 14: <https://home.treasury.gov/system/files/136/PPP--IFRN%20FINAL.pdf>

THOMAS R. SUOZZI
Member of Congress

STEVE STIVERS
Member of Congress

BRADLEY S. SCHNEIDER
Member of Congress

LEE ZELDIN
Member of Congress

JIMMY PANETTA
Member of Congress

TIM WALBERG
Member of Congress

SUZAN DELBENE
Member of Congress

BRIAN FITZPATRICK
Member of Congress

JIM COOPER
Member of Congress

ANTHONY GONZALEZ
Member of Congress

DON BEYER
Member of Congress

PETER KING
Member of Congress

TERRI A. SEWELL
Member of Congress

DAVID B. MCKINLEY
Member of Congress

JIM COSTA
Member of Congress

BRAD R. WENSTRUP, D.P.M.
Member of Congress

DAN KILDEE
Member of Congress

CATHY MCMORRIS RODGERS
Member of Congress

DWIGHT EVANS
Member of Congress

TOM EMMER
Member of Congress

ANDRE CARSON
Member of Congress

DOUG LAMALFA
Member of Congress

KATHLEEN M. RICE
Member of Congress

LANCE GOODEN
Member of Congress

FILEMON VELA JR.
Member of Congress

ROGER MARSHALL, M.D.
Member of Congress

DARREN SOTO
Member of Congress

LOUIE GOHMERT
Member of Congress

ALBIO SIRES
Member of Congress

TROY BALDERSON
Member of Congress

VICENTE GONZALEZ JR.
Member of Congress

RON WRIGHT
Member of Congress

JULIA BROWNLEY
Member of Congress

RODNEY DAVIS
Member of Congress

VAN TAYLOR
Member of Congress

JACK BERGMAN
Member of Congress

FRED KELLER
Member of Congress

STEVE KING
Member of Congress