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United States Senate

COMMITTEE ON SMALL BUSINESS & ENTREPRENEURSHIP

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April 17, 2020

The Honorable Steven T. Mnuchin
Secretary
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

The Honorable Jovita Carranza
Administrator
U.S. Small Business Administration
409 3rd Street, SW
Washington, D.C. 20416

Dear Secretary Mnuchin and Administrator Carranza:

The successful operation of the Paycheck Protection Program (PPP) by the Department of Treasury (Treasury) and the Small Business Administration (SBA) has saved millions of jobs and hundreds of thousands of small businesses from bankruptcy. As our nation continues to endure economically painful public health restrictions and prepares to partially re-open, the task of helping support American small businesses, which are the backbone of our economy, is more urgent than ever.

It is unfortunate that partisanship by congressional Democrats is holding up new funds for PPP, putting the livelihoods of millions of Americans at risk. I am confident, however, that the American people will not tolerate this inexcusable Washington charade and Congress will agree to increased funding for PPP in the near future.

Once this partisan game is over, the serious work of saving jobs and small businesses can resume. Though funding for the authorization of PPP loans has been exhausted, the funding of your agencies' operating budgets in the *CARES Act* and other FY 2020 appropriations legislation has not yet been depleted, and should be used to continue to build capacity for PPP given its forthcoming increase in funds. During this unintended "pause" in the PPP program, I ask that you establish clear procedures and guidance in the following areas:

1. On-ramp new lenders. Recent communication from the SBA indicates that new lenders will not be approved during the lapse in funding. I urge that you reverse this decision. The most effective way to increase small businesses' access to critical PPP payroll support is to increase the number of participating lenders, so that banks, credit

unions, and “fintech” companies that small businesses have existing relationships with can provide them the financial support that they need.

2. Approve nonbank lenders that lend to underserved communities. Before the current lapse in funding began, “fintech” companies like PayPal and Square had just announced their approvals to become certified lenders. Nonbank lenders like these will significantly expand the program’s coverage to small businesses that may not have prior banking relationships. Community Development Financial Institutions (CDFIs) likewise should be approved at a greater rate in order to increase access for underserved small businesses. Regulations or guidance, including but not limited to, prior loan volume requirements and Bank Secrecy Act equivalent procedures, which prevents these critical lenders from access, should be reformed in order to allow their participation.
3. Continue building E-Tran capacity. SBA staff has worked hard to build capacity for the E-Tran system that processes loans. The E-Tran system processed approximately 66,000 loans for the entirety of FY 2019, and by contrast, processed 70,000 loans on April 3, 2020 alone. While the capacity built thus far is impressive, the SBA should continue to work to build capacity within the E-Tran system to allow more bank and nonbank lenders to submit applications in a timely manner, conduct fixes for common issues reported by users, and streamline the system to PPP specific inputs in preparation for additional funding. This should include continued access to some form of E-Tran for approved lenders during the lapse.
4. Issue loan forgiveness guidance. Lenders and borrowers alike continue to report concerns about the terms of forgiveness for PPP loans. Lenders have created their own notes and an SBA authorization is not required to close the loan, so they are moving forward to get small businesses much needed funds absent guidance from the agencies on the mechanics of the forgiveness process. SBA must swiftly work with Treasury to release guidance outlining the terms of forgiveness, while also acknowledging that lenders have acted in good faith to disburse loans absent such guidance.
5. Clarify the exemption for re-hires. PPP loans are designed to help businesses that have already had to lay workers off bring those workers back onto payroll. As our current economic crisis has worsened, many more businesses will find themselves in need of the exemption for re-hires that is included in statute. Section 1106(d)(5) of the *CARES Act*, “Exemption for re-hires,” exempts from the calculation of full-time equivalent employees, or salary or wages during the covered period, any reductions up until 30 days after enactment of the Act (April 26), so long as those reductions are restored by June 30. I urge that guidance be released to make this exemption clear in order to give small businesses additional flexibility to pay immediate fixed costs to keep their businesses running and bring their workers back onto payroll over an extended period of time.

6. Address liquidity issues. Lenders, especially community banks and nonbank lenders like CDFIs, are also concerned about their ability to meet the demand of their small business borrowers absent guidance on secondary market sales and a mechanism for those sales to enable them to recapitalize and make additional loans. I urge SBA and Treasury to release guidance governing secondary market sales and work with the Federal Reserve to identify an avenue for these sales to address liquidity issues for smaller institutions lending in rural and underserved communities.
7. Clarify disbursement parameters. The current FAQ governing the PPP requires lenders to disburse loans within 10 days. While I agree that these funds need to get into the hands of small businesses as soon as possible, I have also heard from lenders across the country who incurred a large pipeline of approved loans before this deadline was put in place, or who, between the volume and challenges of remote processing, fear they will be unable to meet the deadline and will ultimately be unable to fund these loans due to concerns about SBA honoring the guarantee if the 10 day disbursement requirement is not met. Small business borrowers should not be disadvantaged by arbitrary deadlines. SBA, in conjunction with Treasury, should clarify that lenders should endeavor to disburse loans as close to 10 days after the borrower application as possible.

The countless hours of work small businesses, lenders, and your staffs have completed in the last two weeks are the foundation of this program. You have my gratitude and the gratitude of millions of Americans. Now is the time to prepare for the next phase of America's small business recovery.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Rubio".

Marco Rubio
Chairman