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PAYCHECK PROTECTION PROGRAM: LOAN FORGIVENESS AND OTHER CHALLENGES

HEARING

BEFORE THE

COMMITTEE ON SMALL BUSINESS
UNITED STATES
HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTEENTH CONGRESS

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PAYCHECK PROTECTION PROGRAM: LOAN FORGIVENESS AND OTHER CHALLENGES

WEDNESDAY, JUNE 17, 2020

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,
Washington, DC.

The Committee met, pursuant to call, at 1:00 p.m., via Webex, Hon. Nydia M. Velázquez [chairwoman of the Committee] presiding.

Present: Representatives Velázquez, Finkenauer, Golden, Kim, Crow, Davids, Chu, Evans, Schneider, Delgado, Houlahan, Craig, Chabot, Radewagen, Balderson, Hern, Burchett, Spano, Joyce, and Bishop.

Chairwoman VELÁZQUEZ. Good afternoon. I call this hearing to order.

Without objection, the Chair is authorized to declare a recess at any time.

I want to thank everyone for joining us this afternoon for our Committee's second official remote hearing. I want to note some important requirements.

Let me begin by saying that standing House and Committee rules and practice will continue to apply during remote hearings. Members will be expected to continue to adhere to the rules of the Committee and the House.

All Members are reminded that they are expected to observe standing rules of Committee decorum when they are participating in any remote event. The technology we are utilizing today requires us to make some small modifications to ensure that the Members can fully participate in these proceedings.

During the covered period as designated by the Speaker, the Committee will operate in accordance with House Resolution 965, and the subsequent guidance from the Rules Committee in a manner that respects the rights of all Members to participate.

House regulations require Members to be visible through a video connection throughout the proceeding, so please keep your cameras on.

Also, if you have to participate in another proceeding, please exit this one and log back in later.

In the event a Member encounters technical issues that prevent them from being recognized for their questioning, I will move to the next available Member of the same party, and will recognize that Member at the next appropriate time slot, provided they have returned to the proceeding.

Should a Member's time be interrupted by technical issues, I will recognize that Member at the next appropriate spot for the remainder of their time once their issues have been resolved.

In the event a witness loses connectivity during testimony or questioning, I will preserve their time as staff address the technical issue. I may need to recess the proceedings to provide time for the witness to reconnect.

Finally, remember to remain muted until you are recognized to minimize background noise.

In accordance with the rules established under House Resolution 965, staff have been advised to mute participants only in the event there is inadvertent background noise. Should a Member wish to be recognized, they must unmute themselves and seek recognition at the appropriate time.

Before we get started, I wanted to offer a warm welcome to our newest Member, Representative Kweisi Mfume from Maryland. Mr. Mfume represented Maryland's 7th Congressional District for five terms, beginning in 1987 before leaving office in 1996, to take on the critical role of heading the Baltimore-based NAACP.

Being a Member of the Small Business Committee is nothing new, as he previously sat on the Committee and served as the Chair of the then-Subcommittee on Minority Enterprise, Finance, and Urban Development.

I look forward to continuing our work to elevate the needs of small businesses across the country. Welcome, Mr. Mfume, and we are all pleased to have you join us.

Over the last few months, the outbreak of COVID-19 has led to an unprecedented public health crisis. Congress took swift steps to address both, but, today, we will be focusing on the Paycheck Protection Program, created by the CARES Act.

The Paycheck Protection Program is a subprogram of the 7(a) loan guarantee program, and began with almost $350 billion for fully guaranteed forgivable loans designed to meet payroll costs and other business expenses. The goal of the program is to save as many small business jobs as possible, as quickly as possible.

To do so, SBA stood up the program within a week and has guaranteed over 50 times as many loans than it did in the entire 2019 fiscal year, all this in just a few short weeks. We appreciate all of the hard work by everyone at the SBA, and are equally grateful to the lending partners who participated in PPP for helping small businesses stay afloat during these uncertain times.

However, given the size and scope of PPP and the speed with which it was stood up, implementation was bound to be less than perfect. As Members of the Small Business Committee, we are tasked with assessing areas for improvements in all of SBA's programs, and the first run of Paycheck Protection Program funding exposed some of those areas.

For example, too many main street mom-and-pop shops were forced to sit on the sidelines as the program was first rolled out with larger, better-capitalized businesses receiving those loans. All they were left with was the hope that Congress will add more money to the program.

Eventually Congress did, and on April 24th, the Paycheck Protection Program and Healthcare Enhancement Act was signed into

law, providing an additional $310 billion in Paycheck Protection Program funding. Importantly, the additional funding included a set-aside of $60 million for small banks and credit unions, as well as CDFIs, MDIs, CDCs, and SBA micro loan intermediaries with the intent of furthering a greater portion of PPP funds to underserved business communities who struggle to access affordable capital.

This second round of funding has not drawn down as fast as the first, in part, I suspect, because of the lack of clear guidance with the forgiveness rule in the first several weeks of the program. Agency rules like this rule forced us to act yet again, and, on June 5th, the Paycheck Protection Program Flexibility Act was signed into law.

The Flexibility Act extended the covered period to use the loan from 8 weeks to 24 weeks, and up until December 31st. It also permitted borrowers to spend a greater portion of their loans on loan payroll costs and remain eligible for forgiveness.

That makes today's forum a timely one, as we will be able to hear from stakeholders about what has worked with the program, what hasn't worked, and how Congress can keep optimizing the program as our local economies slowly begin to reopen.

There were also a number of regulatory decisions made by SBA and Treasury in the early weeks of the program that may have limited the appeal of the loans to some prospective borrowers. For example, the agencies added a resource test to the program, and established a rule that required borrowers to spend 75 percent of proceeds on payroll costs in order to be eligible for full forgiveness.

This rule greatly restricted the ability of many different kinds of small businesses who spend their loan funds as needed and made the PPP product much less appealing for borrowers.

As the program enters the forgiveness phase, we must analyze the issues borrowers and lenders are currently facing. The primary concern we have heard about is the needlessly long and complex forgiveness application, which, according to experts, reads more like a tax form than a loan application. If loan forgiveness is the key feature of the program, applying for it should be as easy as possible.

We have also heard that minority-owned small businesses, micro businesses, and sole proprietors continue to struggle with accessing PPP loans, despite about $130 billion remaining in the program amount. Just last week, Secretary Mnuchin testified before our Senate counterparts that Treasury will not be publishing detailed loan information for PPP, robbing Congress and the public of the data we need to evaluate the program.

I look forward to hearing from our distinguished panelists today about how Congress can keep improving the Paycheck Protection Program, and whether Congress should consider further fixes before the second round of PPP funding expires, or the program closes on June 30th.

Again, I want to thank the panelists for joining us here today. I now yield to the Ranking Member, Mr. Chabot, for his opening statement.

Mr. CHABOT. Thank you, Madam Chair. Thank you for holding this hearing today, and I also want to extend our welcome to Mr.

Mfume. I was elected in 1994, and he left in 1996, so I had the honor and pleasure of serving one term with him, and, as you indicated, he is former Chair, and I believe his portrait is on our wall in the Committee room. So we want to welcome him back to the Committee. I am sure he will make a great contribution to small businesses, again, all over the country.

On a different note, I must, once again, register my concern on behalf of our side of the aisle about the continuing conducting of Committee meetings by virtual format. The House has important work that needs to be completed, yet we are forced to have these hearings virtually. With States and localities opening up, it is a concern that the House of Representatives remains a virtual entity. And I certainly don't hold the chair responsible for this. It is obviously above her pay grade, as I have said in the past. I do believe the Speaker and the Democratic leadership should make sure that Congress is in session, because we have a lot of work to do.

I am actually in Washington right now in the Capitol, the Visitors Center, because we are holding a hearing relative to the George Floyd killing and, you know, Congress' response to that, and there is obviously a number of legislation. The Senate has legislation. The administration offered their suggestions as to how we move forward in an executive order yesterday; so, we are all discussing this. So I am here in Washington. But unfortunately, other than that, the other committees are not in session, and we ought to be.

Now, relative to today's hearing, the Paycheck Protection Program application portal opened up on April 3rd, so it hasn't been that long. In just 2 months, the SBA approved and disbursed more than 4.5 million loans, totaling over half a trillion dollars. It has been a truly Herculean effort by the SBA, which is a relatively small government agency, which is really, you know, working extremely hard, and really it is incredible how much they have done, and, of course, they have more to do.

According to the May employment report released by the Bureau of Labor Statistics, nonfarm payroll employment rose by 2.5 million, so that is good news, and the unemployment rate declined to 13.3 percent.

Now, it is good news that it went down. It is unfortunate that it is still that high. So, we obviously have a lot of work to do to get that unemployment rate down and get the American economy moving again. There is clearly a long way to go in this recovery, but it appears that the PPP is having a major impact in saving many American jobs.

I have seen the enormous impact to these loans in my district back in southwestern Ohio, where I visited nearly two dozen businesses now that have utilized the PPP loan, so including restaurants and learning centers and manufacturers and medical practices and many others.

For example, on May 8th, I had the honor and pleasure of visiting Four Paws Animal Hospital in Lebanon, Ohio, and I asked the owner and head veterinarian, Rich Coleman, if he would share his experience with the PPP program with us, and he is going to be one of our witnesses here today, and we certainly welcome him. We will be introducing him shortly.

We know the program hasn't been perfect, especially early on. Congress made adjustments, including the Paycheck Protection Program Enhancement Act, and then the Flexibility Act, and these adjustments included—expanded the loan forgiveness from 8 weeks to 24 weeks at the option of the small business and what they determine is in their best interests. They now have that option of picking one or the other. That is going to help a lot of people.

Also, modifying the loan amount that must be spent on nonpayroll or payroll costs. We went from the 75/25 to 60/40. I have heard from a lot of folks that is going to help a lot, and other things that we did.

The PPP program is the result of tireless work between Congress and the administration. We hope to achieve a delicate balance between flexibility for lenders and loan recipients, protecting the integrity of the program's mission, and conducting needed oversight. Transparency continues to be a hallmark of all government programs. We must ensure that transparency, without compromising confidential information and personal information. I think that is very important.

Additionally, as small businesses move closer to the end of their forgiveness covered period, it will be instrumental for Members of Congress to examine how forgiveness is treated. Today's discussion will add value to this element of PPP.

We are all committed to making sure this program has a maximum impact for small businesses all across the country, and I want to thank all the witnesses today and the countless businesses that have provided feedback to me and to other Members of Congress, especially those on this Committee, about how the PPP program has worked with them. Their impact will have an immediate impact on the program and the Nation's economic recovery.

And, again, Madam Chair, I want to thank you for holding the hearing, and I yield back.

Chairwoman VELÁZQUEZ. Thank you, Mr. Chabot.

I would like to take a moment to explain how this hearing will proceed. Each witness will have 5 minutes to provide a statement, and each Committee Member will have 5 minutes for questions. Please ensure that your microphone is on when you begin speaking, and that you return to mute when finished. With that, I would like to thank our witnesses for taking time out of their busy schedule to join us.

Our first witness is Melissa Kelly, Executive Chef and Proprietor of Primo, a seasonal farm-to-table restaurant in Rockland, Maine. After an esteemed career in teaching across the world, she opened this restaurant in 2000 with the help of an SBA loan. Since then, she has partnered with JW Marriott, who opened two additional locations and has been recognized for excellence by numerous industry publications.

However, the outbreak of COVID-19 has put her restaurant in jeopardy, and she took out a PPP loan with the hopes that it will save her business.

Chef Kelly, thank you for joining us today.

Our second witness is Mr. Eduardo Sosa. He is the Senior Vice President of SBA Lending at Commerce National Bank, an independent community bank in the Austin, Texas area with about $5

billion in assets. The bank is the 7(a) preferred lender, owing to the years of experience with the program. His insight will, therefore, be helpful for the Committee as we evaluate implementation of the PPP.

Mr. Sosa, thank you for joining us today.

Our third witness is Ms. Ashley Harrington, the director of Federal Advocacy and Senior Counsel at the Center for Responsible Lending, a leading research and advocacy organization dedicated to a fair financial services market that provides meaningful opportunities for community asset building and economic security.

Ms. Harrington, thank you for joining us today.

Finally, I would like to turn it over to the Ranking Member, Mr. Chabot, to introduce our last witness.

Mr. CHABOT. Thank you, Madam Chair.

Our final witness today is Dr. Rich Coleman, owner of Four Paws Animal Hospital in Lebanon, Ohio. Dr. Rich completed his undergraduate studies at the University of Cincinnati before graduating from the Ohio State University, College in Veterinary Medicine, in 2002.

He took over Plum Veterinary Clinic, changed the name to Four Paws Animal Hospital in 2007, built a new facility in 2012, and began a remodel in March of 2019—so just last year—to allow for more growth and opportunities for his clientele, and obviously, none of us anticipated at that time of what was coming down the pike. So I am sure it would be interesting to hear how that has affected it.

Dr. Rich is a dedicated community servant, and sponsor of many local programs in Warren County. His wife, Jen, is a teacher at Lebanon City Schools, and when I visited, I had an opportunity to speak with her about what was going on in the school system up there at that time.

Also, it was delightful to meet his two delightful daughters and their two cats and two black labs, although I don't think I met all of those that day.

My staff and I visited Four Paws Animal Hospital last month to see how they have benefited from the PPP as they have, as I mentioned, many other businesses in our community.

So I want to thank you, Doctor, for having us, and your great animal care facility and for joining us here today. I look forward to your testimony, as I do all the other witnesses as well, and I yield back.

Chairwoman VELÁZQUEZ. Thank you, Mr. Chabot, and thank you all for being here.

I would now like to begin by recognizing Ms. Kelly for 5 minutes. Thank you.

STATEMENTS OF MELISSA KELLY, EXECUTIVE CHEF AND PROPRIETOR, PRIMO; EDUARDO SOSA, SENIOR VICE PRESIDENT, SBA LENDING, COMMERCE NATIONAL BANK; ASHLEY HARRINGTON, DIRECTOR OF FEDERAL ADVOCACY AND SENIOR COUNSEL, CENTER FOR RESPONSIBLE LENDING; AND DR. RICH COLEMAN, DVM, OWNER, FOUR PAWS ANIMAL HOSPITAL

STATEMENT OF MELISSA KELLY

Ms. KELLY. Good afternoon. I would like to thank Chairwoman Velázquez, Ranking Member Chabot, as well as the members of the Committee for this opportunity to represent and address the concerns of the hospitality industry.

I am Chef Melissa Kelly, owner of Primo Restaurant in Rockland, Maine. I am here in my kitchen, alone. In normal times, this kitchen would be filled with my staff, as we would be preparing for dinner service. Unfortunately the corona pandemic has changed all of that.

Today, I would like to share my thoughts and concerns in three areas: the people I work with, the industry at large, and the effectiveness of the PPP loan system. I am a chef. I believe that is my calling. The reason I do what I do is to help people eat healthy, delicious food that gives them nourishment and joy, and I believe that supporting the health of this planet is also part of my responsibility.

I own and operate a small farm, and a restaurant in Midcoast Maine, and this is where I bring my beliefs to life. We operate on a seasonal calendar, open for 9 months, closed for 3. This April was the beginning of my 21st season. Through hard work and dedication, the business has grown steadily over the years, and now I employ a team of 50 farmers, managers, cooks, dishwashers, servers, hosts, and office staff.

When the Governor of Maine wisely put our State on lockdown, we were preparing to open our doors. My first worry was my people. I had enough money in reserves to see them through a couple of payroll periods, but I didn't have any idea how long I would need to take to support—before we get back to work. I did not want to lay them off.

The team that I have assembled is the reason we are able to do great things that we do. I have won the James Beard Award for best chef Northeast twice, and my team is a big part of the reason why.

My restaurant seats 165 diners inside, and we normally serve over 32,000 meals a season. My staff of 50 have an average earning of $26 an hour. Our revenue is earned mostly between July and October. I am here today not only representing myself, but also as a spokesperson for the restaurant industry in general.

I operate in Maine, a State that is especially dependent on revenue from seasonal tourists. Many of my fellow restaurateurs are not going to make this. They are not going to survive the government-mandated restrictions on a restaurant operation due to COVID-19.

Regardless of State approved openings in industry, patrons may still have hesitance or face financial stresses of their own, which will take us time to recover. I worry for us all.

When the PPP was first offered, I thought long and hard about applying for it. Rules on eligibility periods for calculating the FTE count and the payroll meant that I was forced to use a base period when I had a very reduced operation. For example, my allowed FTE count was 24 when normally, when I am in season, I have 50 FTE.

I was also concerned with what expenses could be covered by PPP. There have been many added operating costs directly attributed to COVID-19, PPEs, staff training. I am building an outdoor area, and they cannot be reimbursed.

I closed on my PPP for $185,000 on the 17th of April. At the time of the closing, I was supposed to spend all of the money in 56 days. Given the 8-week timeframe, I was extremely concerned about being able to stay current of allowable costs to make the loan completely forgiven. The last thing I need is more debt.

For most of the period of the loan, the restaurant has been closed to dine-in operations by State mandate. We used the PPP loans funds to bring back staff, and to begin to offer takeout. Revenue from takeout has been less than 20 percent of what we would normally gross on normal operations.

On May 13th, the SBA issued a new ruling allowing seasonal businesses to use an alternative seasonal operation base period to calculate the maximum loan amount. For this calculation, I was eligible for up to $513,000, but I would have had only until June 30th to utilize the funds.

At that time, the restaurant was still closed for dine-in by our State orders. As such, it would have been a poor decision to obtain additional funds that almost certainly would not have been forgiven.

The recent passage of the Paycheck Protection Program Flexibility Act is a positive step in the right direction to provide necessary flexibility and assistance to businesses that are struggling during this pandemic. Upon passage, I applied to increase my loan to $400,000 to support operations as we continue to face significantly reduced revenue.

Unfortunately, I was soon notified that, because my local bank had filed an SBA form 1502 report on May 18th, the loan could not be increased due to SBA rules.

Given all of this and the ongoing future challenges faced by the hospitality business, I am recommending changes to the SBA rules regarding closing of a loan after form 1502 submission to allow for an increase in PPP loans for eligible businesses after——

Chairwoman VELAZQUEZ. Ms. Kelly, your time has expired. You could expand during the question and answers period.

I now recognize Mr. Sosa. Thank you.

STATEMENT OF EDUARDO SOSA

Mr. SOSA. Thank you for inviting me.

As a former migrant farm worker who has spent the last 25 years as an SBA lender, I am especially honored to be here. I am a senior vice president at Commerce National Bank in Austin,

Texas, where I helped to oversee our participation in PPP, making approximately 3,500 loans totaling over $477 million, supporting over 57,000 employees.

I am grateful for Congress' quick action to address the problem of unemployed Americans and understand why Congress and the agencies felt pressure to produce statute and guidance as fast as possible, and to have lenders implement the program immediately.

But lenders and borrowers are now paying the price for the speed, and we need to look for a middle ground that balances speed with common sense. Let me explain.

First, PPP guidance. Includes 19 interim final rules, and 48 FAQs which have frequently changed. I am an experienced lender, but I have never fully understood how to make a PPP loan from beginning to end. No one does. Forgiveness guidance was issued 7 weeks into the program after millions of borrowers signed contracts without lenders or borrowers knowing all the terms and conditions. We still don't know how eligibility and forgiveness decisions will be made. We need clear, complete guidance.

Next, the credit elsewhere confusion. Congress allowed loans up to $10 million, broadened size standards, relaxed affiliation rules, and eliminated the traditional 7(a) credit elsewhere test. We believe Congress intended most small businesses would be able to certify to the necessity of a loan. The law never said the business needed to first use other available capital, and need remains undefined. But, as the media began highlighting negative stories, attitudes shifted. FAQs and IFRs now require that borrower's self-assess need based on the eliminated credit elsewhere test.

I have watched my customers fearfully repay needed loans. Of my bank's $477 million in loans, $31 million were repaid because of contradictory guidance and perceived threats.

The saddest part is the majority of the loans repaid were the smallest, as low as $1,400. Imagine a borrower's fear when the government says it must return loan funds or face serious consequences. The Federal Government said, "We are here to help," and then changed its mind about who the program intends to help, threatening the very businesses that it invited to participate. Congress can require the agencies to acknowledge the credit elsewhere waiver, amend FAQs that directly contradict the statute, and cease threatening small businesses.

Next, forgiveness issues. Lenders still don't know how or where to submit their borrowers' forgiveness applications, and borrowers still don't know how to appeal adverse decisions. What guidance we do have isn't clear, and places a tremendous burden on borrowers, especially those whose—especially those with smaller loans.

We need a simplified forgiveness process. I strongly recommend that Congress provide statutory direction to create automatic forgiveness for borrowers with loans of 150,000 or less.

Next, lender liability. The law said lenders can rely on borrower documents and certifications, but the agencies confused this mandate. One FAQ says we can rely on a borrower's certification, but a recent IFR says lenders must review borrowers' calculations and documentation. If forgiveness applications are not appropriately documented, they can be denied.

Lenders are increasingly worried about participating when the rules are constantly changing. Should we be surprised that they are skeptical about any program expansion without complete guidance being provided first?

Congress required promptly paid lender processing fees, but only now are we starting to get paid. And we are just learning that the agencies will refuse to pay fees for loans if there is an after-the-fact determination of ineligibility based on new interpretations. That is unfair and unprincipled.

Despite these issues, here is why we chose to participate. We provided a loan to a husband-and-wife-owned bakery. Not only were they able to keep their 24 employees——

Chairwoman VELÁZQUEZ. Mr. Sosa, your time expired, so you will be able to expand during the question and answer period. Thank you.

Mr. SOSA. Thank you.

Chairwoman VELÁZQUEZ. Ms. Harrington, you are now recognized for 5 minutes.

STATEMENT OF ASHLEY HARRINGTON

Ms. HARRINGTON. Thank you.

Good afternoon, Chairwoman Velázquez, Ranking Member Chabot, and members of the Committee. My name is Ashley Harrington, and I am a Federal advocacy director and senior counsel at the Center for Responsible Lending. We are a nonprofit, nonpartisan research and policy organization working to advance economic opportunity. CRL is an affiliate of Self-Help, one of the Nation's largest community development financial institutions, CDFI.

A long-time Small Business Administration lender, Self-Help has focused on helping underserved applicants access the Paycheck Protection Program. The PPP is one of the largest taxpayer-funded, crisis relief programs in our Nation's history. The program's intention is good, and was built around an important premise: Provide a lifeboat for small business owners so that they and their employees can stay afloat during this pandemic.

But the execution and rollout of the PPP fell short, creating a barrier for small business owners of color to access relief, and that is what I hope to underscore for you today.

Since the start of the crisis, business owners of color had been especially and unfairly hard hit. Active black- and Latino-owned businesses have declined by 41 percent and 32 percent respectively. Asian American-owned business owners dropped by 26 percent. By comparison, active white business owners declined by 17 percent. These business owners of color are from the same communities that were the most adversely affected by the Great Recession, and unfortunately, they are the ones most likely to have been underserved by the PPP.

This program disadvantages the smallest businesses. Businesses owned by people of color on average have fewer employees than white-owned businesses. CRL's analysis of the latest government study shows that for 95 percent of black-owned businesses, and 91 percent of Latino-owned businesses, the owner is the only current employee as compared with 78 percent of white-owned businesses. These businesses are the least likely to be served by the PPP.

Business owners of color are less likely than white owners to have a relationship with a commercial lender. This puts them at a sharp disadvantage, especially during the first-come, first-served opening round of PPP, which caused serious fair lending concerns.

Businesses of color have historically lacked access to SBA loans and credit generally. A recent study found steep reductions in SBA 7(a) lending to black businesses between 2008 and 2016. In 2018 and 2019, only 5 percent of all SBA 7(a) loans were made to black-owned businesses, and only 9 percent were made to Latino-owned businesses.

Business owners of color are more likely than white business owners to feel discouraged from seeking loans. Minority depository institutions, MDIs, and CDFIs are helping to increase PPP access who have been hindered by unnecessary loan volume thresholds and other difficult requirements.

And, finally, the SBA's 11-page application for loan forgiveness, which largely tracks the documentation requirements under CARES, is so complex and cumbersome that businesses too small to afford an accountant or lawyer will find it extremely difficult to complete, turning what was supposed to be a grant into long-term debt.

This burden, too, will disproportionately fall on business owners of color. And, while the easy form released today is an improvement, it still requires extensive documentation.

Last month, the SBA inspector general reported that, despite a requirement in the CARES Act, SBA and the Treasury Department failed to issue guidance to lenders to ensure that they prioritized underserved markets, including rural, minority, and women-owned businesses. As of today, we are yet to see any guidance.

The IG also noted that the SBA did not collect standard demographic data on its PPP form. This failure made it unlikely that the SBA could determine whether funds reached underserved markets. Despite the SBA's failure to collect and release data, there is ample evidence that PPP has not equitably served businesses of color.

My written testimony provides more detail along with recommendations to address the problem and fully support business owners of color fully going forward.

As we know, recent people-led protests across our country decried the pain of communities long denied equal access to the most basic aspects of America's promise of justice and equal opportunity. These communities continue to suffer the consequences of Federal policy decisions that needlessly and unjustly make economic opportunities harder to access.

Right now, under your watch, the public is looking at you to address these inequalities, and they deserve a response. I urge you to seize this moment. CRL and other organizations are ready to help you. It is already too late for many small businesses, and those that remain can't wait any longer. The PPP is set to expire in 2 weeks. If it is not extended and reformed to serve these businesses, many will never recover.

Thank you. I look forward to your questions.

Chairwoman VELAZQUEZ. Thank you, Ms. Harrington. I now recognize Mr. Coleman for 5 minutes. Welcome.

STATEMENT OF DR. RICH COLEMAN

Dr. COLEMAN. Thank you very much.

Honorable Congresswomen and Congressmen, I am honored to be here, and thank you for allowing me to come before you today as a representative of small businesses across the country.

My wife Jen and I purchased a veterinary practice from another veterinarian and quickly made it our own in 2007. At the time of the purchase, the practice was a single doctor practice. We now have expanded to become a five doctor practice with 34 employees.

In 2012, we moved from a strip-mall store to our own state-of-the-art, 5,400-square-foot standalone building in the heart of the Lebanon business corridor. For the past few years, we have seen an amazing level of growth from client standpoint, as well as revenue standpoint. Over the past few years of prosperity, we have been able to give raises, purchase equipment, and add additional staff members.

In March, all that changed. COVID-19 hit the United States, and people were asked to stay home. Ohio was one of the earliest to shut down. Fortunately for us, we were deemed an essential business, and we were still able to operate as a veterinary hospital, but with severe restrictions in place.

Because of these restrictions, we went from monthly continuous growth numbers to being down 30 percent or more. We were fearful that, at any time, we would have to shut down the hospital if one of the staff members fell ill from coronavirus.

We first heard about the PPP loans on the national news. I immediately reached out to our local bank to start the wheels in motion. I stayed in contact with them and asked for any information they were getting as far as the loan application and what it would look like. I filled out sample applications, had my numbers confirmed by my accountant, and tried to get any documentation that was needed for when the loans would be approved by Congress, the SBA, and the President.

Once the bank let me know that the applications were ready, I filled them out, submitted them the next day, and the bank kept me in the loop where we stood with the application process, and the approval process occurred, and, quickly, we signed documents, and within a week, our PPP was funded.

I cannot say enough about the way that Congress and the SBA got such a huge undertaking done so quickly. The funds were exactly what our business needed to make up the shortfall in revenue, allow us to keep all of our employees. We did not lay off any of the staff, and everyone was able to keep their hours, especially if they were able to come to work.

A few staff members had to stay home for 2-week quarantines due to unknown nature of things in their early stages. We asked anyone with a fever or cough to stay at home for those 14 days, but no one in the hospital tested positive for COVID-19, and everyone was able to return to work.

The only concern that we had with the loan process was the loan documents that we signed did not have language in them that discussed the loan forgiveness. We were signing a loan with good faith that the government would honor their word and forgive the PPP loan.

I looked to the loan as a lifeboat that my business needed and to provide for my staff and my family. If the loan was forgiven, it would be a Godsend. If the loan was not, then I, at least, had a government loan with a reasonable term to help me get through this unusual time.

The loan was funded during the first phase, and we received $206,000. Now, I saw an interesting statistic that, during that first phase, the average loan was $206,000, so I joked with my wife that we owned the most average business in the United States.

Our 8-week loan period actually ends on June 17th, today. We have elected to extend to the 24 weeks as allowed by the new provisions passed 2 weeks ago. We opened an account that was only to be used for the PPP loan funds. That way, there was complete transparency with every dollar that was used.

Our business has rebounded, and we are digging out. We are still not practicing veterinary medicine the way I have the last 18 years, but we are currently doing car calls with clients staying in the hospital and only the pets coming in. It is a new business model, and my staff has been amazing in completely reinventing ourselves. I cannot thank them enough for getting our veterinary hospital and all of our patients and clients through these tough times.

In conclusion, again, I cannot thank Congress enough for providing the funds that all small businesses in the U.S. needed to survive this time of uncertainty. I feel that the loan process could not have gone any smoother than it did. Congress is known for doing things at glacial speed, and I was amazed at how quickly this came together. It was amazing that—what an accomplishment can happen when we all work together.

I would like to thank our local community bank, Lebanon Citizens National Bank, for making the process as easy as possible under the circumstances; my accountant, Pelfrey & Associates, for helping navigate through the application process.

Thank you again for having me today and allowing me to tell my story. Because of the bipartisan efforts of Congress, the 34 staff members at Four Paws Animal Hospital were able to go home every night knowing that they could pay their rent, feed their family, and, more importantly, feed the massive amounts of pets that they own.

Thank you.

Chairwoman VELÁZQUEZ. Thank you, Mr. Coleman.

I will begin by recognizing myself for 5 minutes.

Ms. Harrington, just last week, Secretary Mnuchin announced that no PPP loan data will be published. As we both know, this is in contradiction with conventional 7(a) practices, under which individual loan data is publicly accessible on the SBA website.

Can you expound on the issue of the lack of PPP loan data reporting and how it will impede the ability of Congress and the public to track the demographic breakdown of PPP access?

Ms. HARRINGTON. Absolutely. Thank you, Congresswoman.

It is definitely a big issue and departs from everything SBA has done previously, and all of the reporting it does for the 7(a) program. The demographic information is so important to know where these funds are going and which communities are being served.

We have already heard about all of the communities—the black—the businesses owned by people of color who are struggling and who have had—not had access to these programs, who have gone to institutions and been denied, or never heard anything about their application, and they are struggling. So, without this information from the SBA itself, we cannot hold this—hold the SBA accountable for the $660 billion taxpayer investment.

Chairwoman VELÁZQUEZ. Thank you.

Mr. Sosa, does the lending community have similar concerns with data reporting?

Mr. SOSA. The regular 7(a) program, you are correct. As far as I know, all of the information there is public information.

There might be some consideration as to some proprietary information on the PPP loan, but I don't want to get into any kind of political thing here, because I am not a politician. I support publicly available information or oversight. If somebody is not playing by the rules, they need to answer for that lack of rules.

Chairwoman VELÁZQUEZ. Thank you.

Ms. Kelly, how many of your employees have you been able to retain, and do you think you will be able to keep rehiring as your local economy slowly begins to reopen?

Ms. KELLY. I have been able to retain 16 employees at this moment. We have not opened the restaurant for indoor dining as of yet. Like I stated earlier, I am building an outdoor area because the State of Maine allows 50 guests inside and 50 outside. I intend to open inside slowly soon with caution, and, as soon as we get the outside area open, I will bring back my other employees, absolutely.

Chairwoman VELÁZQUEZ. Ms. Harrington, surveys have shown that the COVID-19 pandemic has disproportionately affected micro businesses and sole proprietors. In your view, what more needs to be done to ensure that PPP and other small business programs are assisting the smallest of small businesses?

Ms. HARRINGTON. We need to ensure that the remaining funds in the PPP program are getting to these really small businesses, the businesses who have not yet been served. There is over $100 billion left that is set to expire. The program needs to be extended, but also reformed, providing for things like a minimum origination fee, set-asides for CDFIs and MDIs. All of these things will help ensure that funding gets to the really small businesses and the businesses owned by people of color who have yet to be served by this program.

Chairwoman VELÁZQUEZ. So, at minimum, we should expect for the administration to provide data as to the demographics, similar to what any 7(a) lender or borrower has to provide when they apply for those loans. That is the only way that we could determine whether or not the smallest of the small businesses have been able to access the system that they need.

Should we consider automatic loan forgiveness for the minimum loan amounts, Ms. Harrington?

Ms. HARRINGTON. Absolutely. The forgiveness application as laid out, and the process as laid out, even this EZ form, is incredibly burdensome for the really small businesses. We advocate for a streamlined automatic forgiveness for loans under 100K, and this

will disproportionately serve the really small businesses. On average, these are businesses that will likely have 13 or fewer employees, the businesses that we really want to be able to survive and make it through this crisis.

Chairwoman VELÁZQUEZ. Thank you, Ms. Harrington.

My time has now expired. The Ranking Member, Mr. Chabot, is recognized for 5 minutes.

Mr. CHABOT. Thank you very much, Madam Chair.

Dr. Coleman, I will begin with you. What time and expense do you estimate that it might take to complete the PPP forgiveness application process?

Dr. COLEMAN. Well, did you say the time and expense? Well, you know, the key with small businesses, we are not Fortune 500 companies. We are—we don't have accountants on staff. So, you know, a caterer is going to make 400 sandwiches and then go do business. A mechanic may go change out a muffler, and then go do their business work. With me, I am going to go spay the family pet, and then come back, and now I have to do all this business work, and sometimes it is at the detriment of my family time.

The key here is, we have to outsource all these things, so streamlining it for these small businesses would be great, and it sounded like the SBA started that today with the EZ form, I have this 11-page document right here from what it was before. And, you know, I showed it to my wife last night, and it was, it was like a tax form. I—I am not going to lie to you. I missed a few of the words in there. I didn't know what they meant.

And so, I was concerned that this was going to be a massive undertaking and be something that would require me just going to the accountant and having the accountant do the entire work for me.

Mr. CHABOT. Let's see. I will go to Mr. Sosa next. Considering the kind of piecemeal issuing of guidance and FAQs, frequently asked questions, and the IFRs, interim financial rules, would some form of comprehensive program guide have been more, or would it be more helpful to lenders and recipients in your opinion?

Mr. Sosa, I think you are not muted. I think you are muted.

Chairwoman VELÁZQUEZ. You need to unmute.

Mr. SOSA. Thank you. I think that would be incredibly helpful. Under—we are a PPP lender under Amarillo National Bank, our ownership group, and, under that program, we have standard operating procedures that give us the guidelines for that.

You will—in my opinion, you would find that you would have lenders participating in greater numbers, and borrowers particularly less concerned and less scared by having definite guidelines of what rules they can follow, not only for the application, but as well, particularly for the forgiveness process.

That is an onerous process. Forgiveness, even under the simplified applications that were issued this morning, the—they are still quite onerous, as far as documentation is concerned. I think a standard automatic forgiveness at 150,000 would be called for.

Mr. CHABOT. Thank you very much.

Ms. Kelly, I will go to you next. Are there issues that you think the Congress should address as we consider policies for the long-term economic recovery that we are going to be working towards?

Ms. KELLY. I want to stress the need to revise and amend the PPP, like maybe call it a PPP 2.0 to provide additional funding to support restaurants and hospitality businesses in the weeks and months ahead, as we are still dealing with the impact of the virus.

I tried to give you a brief description today about my experience as a small business owner in Maine. I am very grateful to this Committee for all of the bipartisan work that you have done and continue to do, but I want you all to think about restaurants in a different way. After 30 years being in the business, our industry is in a crisis. Without additional support, we will lose the important sector and the dynamic contributions that we have in our local communities.

Our fray goes far and wide, all of the local businesses that we support, and we are in a crisis.

Mr. CHABOT. I think I have about one more question. I have got a lot of them, but one more.

Ms. Harrington, I will go to you now. As Congress examines the approximately 130 billion that we still have remaining in the PPP program, where should we concentrate our efforts, in your opinion, to produce the most impact for small businesses?

Ms. HARRINGTON. They should concentrate on ensuring that these funds get to the really small businesses with ten or fewer employees, that they are getting to businesses located in LMI Census tracts, that they are working with lenders who traditional serve underserved businesses, like CDFIs and MDIs, and also the first step, right, is extending the program to ensure that that $130 billion can actually get to the communities who have yet to be served.

It is great to hear that it has worked for some businesses, but I think the numbers about the nonactive business owners currently, 41 percent of black-owned businesses and 32 percent of Latino-owned businesses, speak for themselves that changes need to be made to this program for it to work for everyone.

Mr. CHABOT. Thank you very much.

My time has expired, Madam Chair, so I yield back.

Chairwoman VELAZQUEZ. Thank you. I now recognize the gentleman from Maine, Mr. Golden, for 5 minutes.

Mr. GOLDEN. Thank you, Madam Chair. I am just setting my clock and filling up my—that I need for questions. There we go.

I want to start with Mr. Sosa. I appreciate your sharing your experience from the lender perspective, some of the challenges of the PPP, and I have heard similar concerns from lenders and borrowers about the lack of clarity surrounding, loan procedures and how that complicated their decision making on whether or not to use the PPP. Hopefully those people are feeling like they have the information they need to come forward and [Inaudible] that $130 billion that remains.

[Inaudible] it is my view—and I think a lot of people do, that lenders and borrowers in Maine, in dealing with the forgiveness process, the streamlined, you know, kind of set up over the smaller business owners in particular, and you talked a little bit about the 3508 EZ.

I wanted to ask you if you knew any statistics—and I am sorry to put you on the spot, but, if the SBA were to follow your advice and grant automatic forgiveness for loans worth $150,000 or less,

roughly what proportion of your PPP clients do you think would benefit from that change?

Mr. SOSA. Thank you for the question.

Chairwoman VELÁZQUEZ. You need to unmute. Okay.

Mr. SOSA. At Commerce National Bank, currently 83 percent of our loans were below 150,000, so 83 percent of those borrowers—that is, 2,868 borrowers—would automatically be forgiven. On the national basis, which is really an impact, 86 percent of the business loans would be forgiven. That is somewhat significant, especially when you consider that only represents—that represents 86 percent of number of loans. That only represents approximately 27 percent of the dollars.

So there is still robust oversight availability on that—on the remaining dollars just at the bulk of the small businesses, those guys that, with the boot on the ground, with that 10 employees or less, would be forgiven.

Mr. GOLDEN. Yes. And I appreciate you pointing out the 10 employees or less.

How might you estimate the number of hours per client that might be saved in regards to how they spend their time and their focus?

Mr. SOSA. That is a tough math question. Well, it—jeez. If you just go back and you use the 3 hours that SBA estimates, which I sincerely and humbly submit is very, very low, the—and then multiply that out times how many loans, jeez. I know that there is 3 million loans just below $50,000. Just in that category is 3 million loans, so, if you multiply those 3 hours against that——

Mr. GOLDEN. That is a lot of work around the country.

Mr. SOSA. It is a lot of work saved, yes, sir.

Mr. GOLDEN. Well, thank you so much. I have got about a minute and a half left.

Ms. Kelly, so glad to have you joining us. People love your business in Maine. I have talked to a lot of businesses that share some of the, you know, same challenges that you have shared. As you think again about like the next 6 to 12 months, some of the unique challenges that you see lying ahead, talk more about what you need from Congress and the government to help you take the next step towards recovery and [inaudible]——

Ms. KELLY. Okay. Yeah. For me, a lot of the next 6 months ahead are very unknown. We—actually, we are approaching July, which I would have my whole team being trained and ready for the busiest peak of my season, July through October. I have lost all of my business that is in my farm. Weddings and everything has been canceled.

We need support. We need to figure out a way—the whole unemployment average of $600 has been like a little bit of a catch-22 for us, because we cannot—a lot of employees don't necessarily want to come home—back to work when they are making over $1,000 a week just staying home and golfing and things like that.

However, I think, if there was—I know the work share program, and those are really important and ways that we can have our employees come back, spark the economy, and we share in that cost to keep them at the level that they are used to, the money that

they are used to making, and I don't understand how we are going to get past this if we don't work together in that.

Chairwoman VELÁZQUEZ. Thank you. The gentleman's time has expired.

I now recognize the gentlelady from American Samoa, Ms. Radewagen.

Ms. Radewagen, you need to unmute.

Mrs. RADEWAGEN. Can you hear me now?

Chairwoman VELÁZQUEZ. Yes, we can.

Mrs. RADEWAGEN. Can you hear me now?

Chairwoman VELÁZQUEZ. Yes, we can.

Mrs. RADEWAGEN. Talofa lava. Good morning, or good afternoon, depending on where you may be. I feel sorry for all of you. You are all stuck on the continent, and I am getting to enjoy the sun in paradise.

But I want to thank Chairman Velázquez and Ranking Member Chabot for organizing this hearing, and thank you all for testifying today.

The PPP has been extremely helpful to the people of American Samoa, but, like many great things, we can always work to make it even better.

My question here is for Ms. Harrington: Do you believe small businesses were aware of the resources available to them within the SBA prior to COVID-19?

Ms. HARRINGTON. I think part of COVID-19, the SBA lending has not served businesses of color well. If you look at the data for 2018 and 2019 for the 7(a) program, which is the largest SBA lending program, only 5 percent went to business owners who were black, only 9 percent went to Latino business owners. I think there is a lot more we can do to support business owners of color, even beyond the PPP. I think historically communities, individuals and business owners of color have lacked access to credit through traditional means, even through the SBA, which is a government guaranteed program. And I think recognizing that and looking at the types of businesses who have not been served even before COVID is very important. That is why the data and the transparency is also important.

So I think that there are a number of ways to do this. It is not just about resources, it is about addressing the root causes of lack of access to credit in this country that extends to small business owners.

Mrs. RADEWAGEN. Mr. Sosa, can you provide for the committee a brief overview of how credit elsewhere has changed from the beginning of PPP to today? Mr. Sosa?

Mr. SOSA. Yes, I am here. Just had to remember to unmute.

The statute eliminated credit elsewhere for the PPP program. The agencies, it reinstituted the PPP credit elsewhere task by requiring small businesses to self-certify that they needed the money. And then they failed to provide a definition of what "need" is. It is completely undefined. Then they started criticizing those small businesses for applying and scared several of my borrowers away.

I had a borrower that paid off $2,200, a little $2,200 loan, just because he heard the threats from the government. "Or else," they said. He came from a country where the government regularly car-

ried out threats and acted on those threats. As an immigrant, he ran scared from the program. That is unfair. That is not our country. That upset me quite a bit and I think it is wrong.

We all need to remember that words mean something and not to threaten these poor small business people.

Mrs. RADEWAGEN. Thank you, Madam Chairwoman. I yield back.

Chairwoman VELÁZQUEZ. The gentlelady yields back. Now we recognize the gentleman from New Jersey, Mr. Kim, for 5 minutes.

Mr. KIM. Thank you, Madam Chair, for pulling together this very important hearing, which is one of the most issues that I hear constantly about in my district here in New Jersey. What we are talking about reforms in the Paycheck Protection Program and how we are making sure that funds are getting into the hands of those that need it the most. As I said, that is really the critical question. And Ms. Harrington, I thought you have really eloquently spoken to just the challenges that are faced, certainly by making sure that we are getting these funds to businesses owned by minority-owned businesses in communities of color, and other places where people are in dire need.

I have also been hearing from small businesses from various other industries, like nonprofits, after-school programs, and medical providers that were excluded from the program and are in dire need of aid. And a lot of their work very integral to different aspects to reopening.

So, I guess, Ms. Harrington, I wanted to ask you, as we are starting to think about upcoming stimulus bills and other additional efforts that we can do on the PPP, do you think it would be beneficial to expand the PPP to other types of businesses, like some of the ones that I mentioned?

Ms. HARRINGTON. I think, first, I want to reiterate it is very important to reform and extend the current PPP just until that funds run out. I think moving forward, we do need to think about programs that are not just loan programs. We need to think about traditional, straight-up grant programs that would benefit and be targeted to the small businesses and to the businesses that are located in low- and middle-income communities, low- and moderate-income communities. There are ways to do that. Also, thinking about which agencies we are working with. If it is a loan program, which lenders we are working with.

So, I think there are a number of ways to do it that, but I think you are absolutely right. We need to look at the sectors that haven't been served, the populations that haven't been served, and recognize that maybe the Paycheck Protection Program was helpful for some, but it doesn't work for all businesses, and, therefore, we have to think about more creative ways moving forward.

Mr. KIM. [Inaudible] having supportive data, and just needing to have that data, to, first of all, understand what sectors are getting hardest hit, and to be able to overlay on top of that, just when we think some of these different sectors will be able to get back on their feet, as we know there is asymmetry to that, and some sectors may be able to get back on their feet earlier than others.

And I think, Ms. Kelly, I just wanted to just turn to you here——

Chairwoman VELÁZQUEZ. I think we lost——

Ms. KELLY. I am here. Can you hear me?

Mr. KIM. [Inaudible] getting back open, in particular when it comes to seasonal issues here. My district is—my district is one where seasonal tourism is a huge part of the economy, especially out on the Jersey Shore; a lot of restaurants are in a similar situation to you. If you could elaborate a little bit more on the unique challenges that you are facing in terms of seasonality of your business, and the uncertainty of how the next couple of weeks and months will look when it comes to opening back up?

Ms. KELLY. Well, we are already in almost the kickoff of the season here in Maine. So it has been very daunting to have to be in this position at this point. I mean, we are living in a historic moment right now, where we need to expand—in my opinion, we need to expand the PPP, which may be the survival for small businesses who really depend on a certain window of time for the amount of revenue that they make. I think grants would be beneficial for different loans, but somehow, we have to capture this moment or the whole year for us is a wash.

Mr. KIM. Well, thank you for that. I have certainly been hearing from a lot of restaurants. I got to go visit a number of them in my district as they are starting with outdoor seating today—earlier this week. But we continue to hear the same thing that you are saying, which is restaurants cannot operate off of 30 percent capacity or 40 percent capacity, that the margins are already hard enough at peak levels.

So I certainly want to continue to work with you and others to see what we can do to try to get you the help that you need.

So with that, Madam Chair, I yield back.

Chairwoman VELAZQUEZ. The gentleman yields back.

I now recognize the gentleman from Ohio, Mr. Balderson.

Mr. BALDERSON. Madam Chair, thank you very much. Thank you for sitting in today, Ms. Kelly and Dr. Coleman. My first question is a few weeks ago, I joined many of my colleagues, including Mr. Burchett and Mr. Hern who also sit alongside me in this committee and requested a simplified PPP forgiveness application. In this letter to the SBA and Treasury, as well as the Senate leadership, we voiced our concerns of the complexity of the 11-page PPP loan, forgiveness application, and asked a new, simplified version be created, much like the IRS relies on the 1040-EZ form for some taxpayers.

Just this morning Treasury and SBA released 3508-EZ loan forgiveness application, which seeks to ease the forgiveness process for many small businesses. I think this is a step in the right direction. I want to thank the administration for making this update. Ms. Kelly and Dr. Coleman, have either of you had a chance to take a look at this new 3508-EZ form application?

Dr. COLEMAN. I apologize, I have not. I was working this morning, and came straight from appointments to this. I did get a notice by email from one of my colleagues that it had passed this morning by the SBA. And so, I have not had a chance to look at it. I am sure it is less daunting than the 11-page document that we have seen already. But unfortunately, I have not seen it yet.

Mr. BALDERSON. Dr. Coleman, I completely understand. I was on a flight this morning myself.

Ms. Kelly?

Ms. KELLY. Absolutely. Same as Dr. Rich, I was working this morning. And I did not have an opportunity to see it.

Mr. BALDERSON. Again, I understand completely. I was wondering if you had a chance to see it.

This is for Dr. Coleman. My next question is for Dr. Coleman, thank you. Is it vital to be working during this health crisis, care crisis, but today we are here to understand the economic impact this had on our Nation's small businesses ?

In your written testimony, you talk about the great faith agreement between small businesses applying for PPP, and the Federal Government, because the documents you signed didn't have forgiveness language included. Over the last few weeks, SBA and Treasury have worked together to release the language relevant to PPP forgiveness, as well as the application itself. Have you had an opportunity to look through this new information?

Dr. COLEMAN. Yes. Yes, I have.

Mr. BALDERSON. And if so, what are your thoughts?

Dr. COLEMAN. As far as the forgiveness, a couple of the big keys that I saw, and I actually made a list of them, the biggest change between the first one and second one, the first one [Inaudible] PPP weeks with the payroll was huge [Inaudible]. Our biggest issues that we had was, we were concerned about once we got funded, are we 8 weeks from that date? Well, if it occurred in the middle of a payroll cycle and so we were a little off on schedule, so that was a big one. The flexibility from the 8 weeks to the 24 weeks, we are going to extend to the 24 weeks, just because we are actually holding back 5 percent of our loan just as a precautionary. We don't know where COVID is going to go from here. So we are going to hold that back.

The 25 to 40 percent. We have been open the whole time, so our biggest deduction was from payroll. And, so, where Ms. Kelly may have had more of an issue with paying rent, paying everything else, because she didn't have as many employees on staff. I had 34 employees the entire time. So the 75, 25 was perfect for us; but for another business that may have been closed, that is going to be hugely beneficial to them because they are going to be able to grab that 40 percent and pay more to keep the actual standing business.

The extension to December 31st to rehire the FTEs is going to be important, because now you are going to be able keep the full-time equivalents. The hardest part right now is we have this extra $600 that people are making on unemployment and getting people back is the hardest part. People are coming back to work angry because they are making less money, but they have to come back to their job or they could lose their job.

So that expiring is going to help, but it gives us until December—until January to get that. And then, you know, the other one was the good faith of rehiring. That was going to be a massive thing. If I am trying to rehire, but I can't rehire, that is going to—if I can show, look, I have done all these interviews, I just can't get anybody in, that is going to be with a Godsend for some of these businesses that can't rehire, but they have been trying very hard to.

So those were just some examples I thought were fantastic. Yeah.

Chairwoman VELÁZQUEZ. Your time has expired.

Mr. BALDERSON. Thank you very much. I yield back, Madam Chair.

Chairwoman VELÁZQUEZ. The gentleman yields back. Now we recognize the gentlelady from California, Ms. Chu.

Ms. CHU. Thank you. Mr. Sosa, since the start of the COVID crisis, it has been a top priority of mine to ensure that SBA loans and resources are provided in non English languages. And I am thankful for all the work the committee has done to make that happen. The CARES Act provided $25 million for the SBA to develop these resources, and the agency has now posted several guides and translations in 17 languages, including Asian languages.

But it is key that the SBA also provides proactive outreach to small business owners with limited English proficiency, and supports the lenders that are responsible for processing their PPP applications.

So, I am interested in your perspective as a lender. Could you explain what processes you have to serve business owners who need service in non English languages? And can you discuss what guidance, if any, that SBA has provided to help you serve these businesses?

Mr. SOSA. Unfortunately, we have not received much guidance on the multiple languages available and documentation. In our footprint, the largest language is Spanish. We are very fortunate within our organization that we have several people that are Spanish speakers, and we are able to deploy their talents to be able to address the needs of the particular borrowers that needed that assistance.

Ms. CHU. Now, you said in your testimony that the PPP forgiveness application is so complex that small businesses would need to hire professionals to help them understand it. Do you believe the SBA's done enough to help limited English proficient business owners navigate these forgiveness applications?

Mr. SOSA. Well, you are exactly correct, my view on the former 11-page application is that it is extremely daunting. Now, the forgiveness application that came out this morning is a step in the right direction. I have had only an opportunity to review it cursory, so I can't speak to it in detail. But there are—like anything else, the devil is in the detail, and there are a couple of items in there that are still requiring all the documentation as before.

So my recommendation to this committee and to the Congress is an auto forgiveness legislation is passed to direct the agencies to set up a $150,000 automatic forgiveness of loans.

Ms. CHU. Yeah. Thank you.

Ms. Harrington, SBA was directed by Congress to prioritize underserved businesses, including those owned by minorities, women, and veterans in their administration of the PPP. However, when I chaired a forum last month with the SBA inspector general, he told me that SBA had not provided any formal guidance to lenders, but had merely emailed a few community banks and encouraged them to serve these businesses. Can you explain what specific type of

guidance SBA must ensure—provide lenders to ensure that they can adequately prioritize underserved businesses?

Ms. HARRINGTON. You are absolutely right and, we have yet to see any of that guidance. They should provide guidance about who they should be working with, and just guidance about how important this is. I think the fact that this was included in the CARES Act and was a stated express intent of Congress that these businesses and communities be served is important, and the fact that SBA did not reach out to lenders with specific information about how to reach these communities, different partners that they could work with. Also, the technical assistance that was provided in the Act was provided to universities, and not necessarily through community-based organizations. The guidance could have also included information about working with other community partners beyond the community-based organizations, like CDFIs and MDIs, who do a good job of serving these communities.

There is so much that SBA could have done to ensure that these communities were prioritized that they did not do. And some of it is, like, very simple things, and they just didn't take the steps to do so, in addition to not actually collecting the data to know what was happening with the lending itself.

Ms. CHU. Thank you. I yield back.

Chairwoman VELAZQUEZ. The gentlelady yields back. And now we now recognize the gentleman from Oklahoma, Mr. Hern, for 5 minutes.

Mr. HERN. Thank you, Madam Chairwoman. Thank you, Ranking Member Chabot. I appreciate you having this hearing today. It is great to see we have a hearing, and before we can have the hearing, the simplified form comes out. How about that for congressional work? You all ought to be happy about that. Don't we wish everything else could happen in that kind of speed.

I really sympathize with each of you being a small business owner for 35 years, and the majority of them in the restaurant industry. And it has been very, very difficult for everyone, but specifically those in the restaurant and hotel industry.

But I am also very thankful that we are able to find a way to get money to businesses very quickly by using our financial institutions out there, and thankful for what has all been done with the PPP loans and the auto loans to help as many businesses stay in business as possible. We know that there will be many that will file for bankruptcy, and it is tragic that COVID-19 pandemic has caused this to happen. The PPP loans, in my State, have been—the State of Oklahoma, 61,000 loans, and roughly $5 billion in loans to help small businesses, and I am greatly appreciative of that money to help the folks stay in business.

As we all know, and we sometimes forget, that we put about 15 to 20 years' worth of work that SBA normally does and shoved it into about a 12-week period. That is no easy task for any industry, for any business, or lending institution, much less the government institution. So I want to be recognizing of the hard work of the staff. And I know this is not to be critical of the staff, more of the institution, but I know the staff has worked long hours to make sure that businesses were saved.

The first question I have is really, because there has been minimal actual guidance, and instead the, SBA has had a series of released frequently asked questions that have been kind of leaked out, or just trickled out, if you will. The administrator to guide American business owners and employees in a hectic and confusing time.

And further adding confusion are the multiple releases of the interim final rules, that sometimes contradicted themselves.

Dr. Coleman, Ms. Kelly, each of you talked about this confusion in your testimony. And I was wondering if you could, as people that look at small business, I know none of us want to spend any time in the past, certainly not the last 4 months, but as we go forward, what are some of the solutions that both of you think the SBA could implement moving forward to perfect the PPP program, there is still roughly $90 billion out there, so that we could help with the money that we currently have authorized and appropriated that we can currently help the small businesses that are out there? Ms. Kelly, do you want to go first?

Ms. KELLY. Absolutely. You know the recent package of the PPP-FA was great. I applied to increase my loan, and unfortunately, I was notified by the bank that they basically changed the field goal. So I couldn't—they had already submitted their 1502. And I was approved for a certain amount of money, but then I was denied. I would like that to be revisited. I mean, many Mainers and small businesses are [Inaudible] and none of us thought that this was going to last more than 8 weeks, and here we are.

Mr. HERN. Dr. Coleman, could you give us your thoughts?

Chairwoman VELAZQUEZ. You need to unmute, sir.

Dr. COLEMAN. The 60 percent that is out there right now as far as what we use for payroll, I think one thing that is scaring some people is that cliff. Is that a cliff that is if I don't hit that 60 percent, am I going to still get my forgiveness?

So, maybe the Small Business Committee can come out and say, Look, if you use 55 percent, we will forgive 35 percent of your other one. So there is a little concern as far as that goes, because everybody is saying the same thing, the website actually said something a little bit different online. So making that a concrete. Look, here is where you are at, if you can't hit one of these markers you change that other marker now. That would be one of the big ones.

The other big concern I have is the taxation of the loan. I don't know if this is something to discuss here, but if we have to save 25 to 35 percent of the loan to repay on the taxes, because it is not currently deductible on our taxes, now we are concerned that okay, we get a loan for $200,000, so I need to keep $60,000 to $65,000 back to be able to pay that tax back.

Thank you very much.

Chairwoman VELAZQUEZ. We recognize the gentlelady from Kansas—Ms. Davids for 5 minutes.

Ms. DAVIDS. Thank you, Chairwoman Velázquez, and also would like to thank Ranking Member Chabot for holding this hearing today. Unfortunately, there have been many challenges for small businesses who tried to access the Paycheck Protection Program and the EIDL programs. And in more recent conversations with small businesses owners, one of their main concerns is com-

plexity around the loan forgiveness. I, of course, was glad to see, and others are too, that today, the SBA revised its forgiveness application and introduced a streamline application for smaller borrowers.

However, many challenges and questions about the process remain, and I am glad we have both small business owners and lenders on the panel today, because I would like to hear from both perspectives.

Do you believe that the rolling and piecemeal nature of the PPP guidance from the SBA has discouraged or disincentivized small businesses from entering the program?

Dr. COLEMAN. I can go first. That was the biggest thing I heard from my colleagues, the people that didn't get it was, this is something where I don't know the rules, and therefore, I don't want to take on that debt. Because it wasn't a slam dunk, this is what is going to happen, I would prefer not to take on any additional debt, because debt is scary to small business. We don't want debt. We have our mortgages, we have equipment loans already. So taking on additional debt without that concrete agreement and, hey, you do this, it is forgiven. That was the biggest concern, I would say.

Ms. HARRINGTON. I think it is definitely a major issue in terms of the rollout of the program and the confusion, particularly for the really small businesses and the businesses owned by people of color. There were so many hurdles throughout and changes to the process. The time it took to even figure out what forgiveness would look like, right? And you are right. So many business owners are afraid that this will not end up being a grant and be a debt they will have to pay back in just over 2 years.

We don't even know what next year will look like yet, because we are in the midst of a pandemic. And so the idea that they are going to have debt that they will have to pay back in the next 2 years is extremely scary for many of them. And just other things in the program that don't get talked about as much. The fact that for the first week, sole proprietors and self-employed couldn't even apply for the funding.

So all of these things indicate to people, and that is the vast majority of business owners of color who are self-employed, that this program is not for them, and that it will not work for them in the long run.

Ms. KELLY. I would like to say that since the PPP rules have changed, and the pandemic actually lasted longer than we expected, and all of this is compacted in a seasonal area where we depend on 36 million tourists a year, and we only have 1.5 million residents in our State. We need the PPP support, and we need change. And we also need to know what the rules are, because you are afraid if you do, you are afraid if you don't.

Ms. DAVIDS. Well, I appreciate that, and I appreciate the recognition of our small businesses, and sole proprietors, and particularly the small business owners who are from marginalized communities needing that certainty around the rules and the rollout. I know a lot of folks here in Kansas who are small business owners, who were really concerned about what felt like a very tumultuous and uncertain time with the rollout of the programs, even though

they recognized that they really did need the relief. So I appreciate the work you all are doing.

And with that, I will yield the balance of my time. Thank you, Chairwoman.

Chairwoman VELÁZQUEZ. The gentlelady yields back. We now recognize the gentleman from Tennessee, Mr. Burchett.

Mr. BURCHETT. [No response.]

Chairwoman VELÁZQUEZ. I guess that he just logged off. Now we recognize the gentleman from North Carolina, Mr. Bishop.

Mr. BISHOP. She just called me. I am ready to go.

I am en route, Madam Chair. If you can't, skip me——

Chairwoman VELÁZQUEZ. I see Mr. Burchett, the gentleman from Tennessee is recognized.

Mr. BURCHETT. Thank you, Chairlady. Sorry about that. I have been all over the Zoom today trying to figure this out. Can you hear me? I can't hear you, but I just read your lips, I think you said yes, we can. So I will go with that.

Well, thank y'all so much. I guess my question was, I want to tell Ms. Kelly that my nephew is a Culinary Institute of America graduate. But he was not alumni of the year as you were. But I assume one day he will aspire to that.

You know, I have heard from our small business lenders and folks in the district that we need simplification and a loan forgiveness process for the small lenders. And I was proud to join with our friend, Representative Andy Barr, in writing a letter to the Treasury and the SBA advocating a streamline forgiveness process for borrowers under a $350,000 threshold.

Also on a personal note, I hope everybody remembers Andy Barr and his two lovely little girls in their prayers. Andy lost his wife last night, and the little girls lost their mama. I know that is a tragedy. So if we can remember him in our prayers.

But, today, according to the SBA, also announced a new easy forgiveness application that I look forward to reviewing. Mr. Sosa, in your opinion, are there any roadblocks hindering a small business from obtaining a full loan forgiveness?

Mr. SOSA. I am sorry, I was having a little bit of difficulty unmuting there for a minute. Prior to the issuance of this morning's 3508-EZ form, which I, too, have not had an opportunity it review in depth, just the mere fact, like the doctor stated earlier, that it was 11 pages long scared most people. And now, while the appearance appears that we are in the step in the right direction, it also appears that what they have done on the EZ form is simply separated the instructions from the actual form. So it looks a lot simpler. But it still has some certifications and all the traditional documentation that was asked for in the first go-round to be included with that EZ form. That is highly disenfranchising, or highly difficult for small businesses to obtain.

I still think the best situation is to address, very much like what Ms. Kelly has said and very much like what doctor has said, that we need a sure forgiveness that says, you had a loan of $150,000 or less, you are forgiven, and the and the Congress has that ability to do that.

Mr. BURCHETT. Also Mr. Sosa, is there any way you can provide the committee an overview of how credit elsewhere has changed beginning of the PPP and today?

Mr. SOSA. Yes, sir. At the beginning, the statute eliminated credit elsewhere. It just, plain and simple, did that. Now they need to certify that they need the application, and no funds and nobody has defined what "need" is.

Mr. BURCHETT. Thank you. Chairlady, I yield back the rest of my time. It is all a pleasure seeing you.

Chairwoman VELAZQUEZ. Thank you. The gentleman yields back. Now we recognize the gentleman from Pennsylvania, Mr. Evans.

Mr. EVANS. Thank you, Madam Chairperson. Ms. Harrington, I want to follow up on something you said because it sounds like to me and I am not going to put words in your mouth, it sounds like we could lose a lot of black businesses specifically—obviously there is the pandemic, and then there is the unrest, and then there is the PPP. So tell me in a very specific way, what percentage of black businesses do you think we have lost?

Ms. HARRINGTON. I think we are definitely at risk of that. I think it is hard to tell, but the numbers we do know are very telling, and the stories that we are hearing are very telling. When we hear numbers like 41 percent of active black business owners have dropped by 41 percent. When we look at the unemployment numbers that are still so high and so much higher even in black communities and communities of color, right?

We know there are businesses that were already struggling before we even came to the pandemic. There were so many businesses that entered the pandemic with less than 3 weeks or so of reserves that could sustain them. And now, we don't know how long this is going to last. There is so much—there are so many other issues in this country. And so, we are watching as so many businesses that are inactive now, many of them probably won't reopen, and there are some that are still waiting on answers on PPP who may close and never reopen. And as this pandemic extends, that number will only increase. And that is why we have to think about not only how we fix the PPP, but fix small business credit and support in general, and how to make sure it works for the businesses in every community, not just [Inaudible].

Mr. EVANS. So take the next step, and tell me what specifically you think the kinds of things that should happen.

Ms. HARRINGTON. Absolutely. So with regard to the PPP, we advocate for creating a minimum origination fee, for creating that streamline automatic forgiveness for loans under 100k, which would save countless hours. 71 million hours of labor we estimate on behalf of business owners who would provide all of that documentation and go through all of those pieces of labor, and the lenders as well; data collection and transparency, so important; a reserve for CDFIs and MDIs who do the best job of serving businesses in these communities; requiring guidance on underserved markets, and making sure that you are targeting the funds to those small businesses, and the businesses in the low- to moderate-income census tract. And also thinking beyond just loan programs, grant programs that are provided directly through the Federal Gov-

ernment, so we can remove the intermediary and financial institution.

We recognize that there is already issues with accessing a program through a mainstream lender when we see the lack of access to credit that has plagued these communities for decades. So if we know that there is a barrier to accessing a program through intermediary, let's remove it.

Mr. EVANS. Are you talking about, for example, the EIDL program?

Ms. HARRINGTON. The EIDL program, absolutely, is one example. There have been grant programs through FEMA. You can do grant programs directly through the IRS and Treasury. There are a number of ways to do that that we should think about beyond just having the financial institution as intermediary. That already places a barrier for many of the businesses owned by people of color.

Mr. EVANS. I thank you, Madam Chair. I appreciate it. Thank you very much.

Chairwoman VELÁZQUEZ. Thank you. The gentleman yields back. Now we recognize the gentleman from North Carolina, Mr. Bishop.

Mr. BISHOP. Thank you, Madam Chairman. And Ranking Member Chabot and witnesses, thank you for joining us today for an important conversation on this Paycheck Protection Program. I am in the committee room, as I have been in the previous meeting, and was taken to task by the Chairwoman for having making people disinfect it, but I do it for a very important reason, which is to emphasize that we can be in Washington. There are two other people in this room, three other people. They are many, many feet away from me, but if we were closer, we could be wearing masks. We could do our business in Washington. And I think it would make the meeting more effective, and your testimony more effective, but thank you very much for being with us.

Fortunately, the hearing comes at a fitting moment as Democratic members of the Select Subcommittee on the Coronavirus Crisis have proceeded with another witch hunt, this time aimed at Secretary Mnuchin, Administrator Carranza, and PPP lenders.

When Congress overwhelmingly passed the Paycheck Protection Program, we did that in a bipartisan fashion. Last week, the Director of the Congressional Budget Office Phillip Swagel praised the Treasury Department and Small Business Administration for moving quickly and efficiently while also stating the stimulus to COVID-19 went out faster than the stimulus during the 2008 financial crisis.

Unfortunately my Democratic colleagues who helped design the Paycheck Protection Program fail to recognize the Trump administration's swift actions to save our economy. There is more work to be done, but Democrats would rather investigate, critique, and undermine the good work performed by the Trump administration than provide adequate recovery to Americans.

Make no mistake, Democrats' antics and sham investigations are not limited to the Trump administration. They also want to investigate PPP lenders who served as the conduit for providing small business relief. Lenders didn't ask for that role, but they delivered.

Prior to PPP going live in March, I heard from lenders throughout North Carolina about obstacles it would take to participate in the program. They were nervous and skeptical, but they stepped up to the plate to help small businesses in their communities.

Mr. Sosa, in your testimony, you worried about the way the Federal Government is treating lenders right now, that it might lead to less lending partners in the future. In fact, you used the term "threat." I wonder, would you agree that the same logic apply to Congress as it begins investigating lenders for their role in the PPP?

Mr. SOSA. You know, the difficulty that I face is that I am not a politician, so I don't really have an axe to grind either way. What I look at is that when we put out a program under the regular SBA program, we know what the rules are. We know how to put a loan on the books; we know how to take it through the process; we knew how to collect that loan. That is the process that assures that oversight is fair, that it is process that is trying to assure that lending is fair to our communities, and so if we could get something like that, I think you would have much more participation from all the lenders.

Mr. BISHOP. I appreciate that, Mr. Sosa. Let me just ask you this: If Amarillo National Bank were asked to turn over all communications with Treasury and the SBA related to administering PPP, would it serve as a disincentive to your bank as well as other lenders from doing business with the Federal Government in this situation?

Mr. SOSA. Let me ask you a question for clarification, please. You want to know—you are asking if we could give you all the documentation that SBA and Treasury used, or the agencies used to direct the program?

Mr. BISHOP. Well, no. Your correspondence, your bank's correspondence, if you had to—in the face of a retrospective request, to turn over all correspondence you had, so that someone's going to go through it with a fine-tooth comb, wouldn't that deter you from wanting to cooperate in a program like this?

Mr. SOSA. We have been participating in SBA lending for at least 15 years.

Mr. BISHOP. Okay.

Mr. SOSA. Our books are open. And it would be a simple task of printing all the FAQs and all the 2018, 2019 IFRs.

Mr. BISHOP. Very well. Thank you.

Ms. Kelly, you mentioned the Federal supplemental unemployment that caused you some difficulty getting your employees back. And I think you mentioned it was ending in July. If that were extended to December 31st, would that be harmful to you?

Chairwoman VELAZQUEZ. Excuse me, sorry. Your time has expired.

Mr. BISHOP. Thank you, Madam Chair.

Chairwoman VELAZQUEZ. We recognize the gentleman from Illinois, Mr. Schneider.

Mr. SCHNEIDER. Thank you, Madam Chairwoman. I want to thank you for holding this important hearing today. I also want to take a moment to thank you, the committee, and in particular, the committee staff, for really being at the forefront for standing up the

remote capabilities of our committee, allowing us to numerous briefings in hearings like this to do the business of the American people, to do what we have it to do to help America's small businesses in this very difficult time. The work of you and Ranking Member Chabot has been extraordinary, as have the members of this committee. So I just want to thank everyone for that.

PPP, for the country, and my district in particular, has been a lifeline for workers and businesses, but we have heard in this committee and we have heard from businesses, I hear about it almost on a daily basis, that they have had to wrangle not just the challenges of the COVID pandemic, but the lack of clarity from the SBA and Treasury on the program, the PPP program.

My offices work directly with our local SBA representatives, in my community, small business development center, to help businesses, providing them with up-to-date guidance on the SBA programs. I commend the incredible hard work of the SBA's local staff, who my team has found to be an incredibly valued resource and a group of dedicated employees. But the guidance coming from SBA and Treasury has been anything but clear. The SBA and Treasury have released 17 interim final rules on these programs and 47 or maybe 48 FAQs. The application for the loan forgiveness process was 11 pages, and released only a week before applicants became eligible.

This morning, the SBA did release a revamped, shortened application for the EZ process, but I am already hearing from lenders who say that neither of these actually simplify the process at all. I have already begun to hear from local banks in my districts, starting to receive loan forgiveness applications. And my staff has fielded innumerable questions about the complicated loan forgiveness process.

So, I want to focus on those two issues: simplification and clarity. First on simplification, as the committee knows, oftentimes, the accounting department of a small business is but one individual. When I had my own business with 10 employees, I was doing the accounting myself. There was a whole list of other tasks that these people have to do. It is critical that the loan forgiveness process, particularly for the smallest loans, be simple enough for the business owners to complete without having to rely on outside assistances, as witnesses have testified.

Looking to our two businesses owners on the panel, Ms. Kelly and Dr. Coleman, can you provide some context, not just how much funding you received, but you laid out, but the amount of energy and time that was invested to get the loan, and then as you are looking to go through the forgiveness process? Ms. Kelly, maybe we will start with you.

Ms. KELLY. Absolutely. I did spend quite a bit of time getting all of my ducks in a row [Inaudible] submit my application. I am fortunate I have a very good relationship with a local bank [Inaudible] was but it was very difficult. Unfortunately [Inaudible] necessary rule change with the ability to go back and borrow the original [Inaudible] as the financial need has changed, as we have progressed with this COVID-19 and it has made it very difficult. As far as [Inaudible] has gone, I was unable to have with the current restrictions on capacity of a restaurant and lost revenue [Inaudible]

season, I did not [Inaudible] it was very challenging for me to have the FTE count so my forgiveness seems impossible.

Chairwoman VELÁZQUEZ. Mr. Schneider, you need to mute.

Dr. COLEMAN. I thought the loan process went very well. I pride myself on being somebody that is ahead of the curve. I said in my testimony, I was really seeking out all the information I could seek out, and get everything together as soon as I could. Immediately I knew there was going to be a frenzy, so I got my loan application in. The first thing—I found the application, even as a business owner, pretty straightforward. I did require some help from my accountant to get the proper 941s and all those documents together. As far as the forgiveness, I am hoping I am on track for everything we are actually up in the 80s as far as our payroll percentage wise. So we have, hopefully, a good chance of getting forgiveness. We are holding back about 5 percent of our loan just in calamity down the road, if anything happens, if somebody gets sick or anything else, my business suffers. We are saving some back. And I am actually hoping to return that 5 percent, in the best-case scenario.

Mr. SCHNEIDER. Thank you. My time has expired. I want to thank Ms. Harrington and Mr. Sosa. Mr. Sosa, I appreciate your testimony, especially the story of the American Dream in 50 years, so I wish you all the best.

Chairwoman VELÁZQUEZ. The gentleman's time has expired. Now we recognize the gentlelady from Pennsylvania, Ms. Houlahan.

Ms. HOULAHAN. Hi, Madam Chair. And I want to echo Mr. Schneider's appreciation to you and to the staff for allowing this to be possible and making it look so easy. I also want to thank the folks who are testifying in front of us. I can actually palpably feel the tension and the pain, even remotely in your testimony, because I know how exasperating it is. As a former business owner and operator myself, and a former entrepreneur, I can feel the pain. And I hope that we can be at least helpful or a little bit more in alleviating that.

My questions have to do with the concept of forgiveness, automatic forgiveness. And I understand from Mr. Sosa, as well as Ms. Kelly, and as well as from a lot of other folks who testified, that $150,000, 100 or so thousand seems to be the line that people are drawing. And I understand that represents about 80 percent of the total loans, and about 20 or so percent of the amount. But getting back to some of the testimony about transparency, and the importance of data that has to do with where loans are going, I also think it is really, really important that we have transparency to understand where they were spent. Because I believe that this won't be the first or last time that we have to implement something like the Paycheck Protection Program.

I want it to be more expedient the next time that we do it, and we are more efficacious the next time we do it. And so if we just blanket forgive anybody under $150,000, $100,000, then we will have lost all the granularity of that data of where it went and how it was spent.

And so, if you guys wouldn't mind, I guess, maybe, if I could start with Mr. Sosa: What kind of effort could we do, undertake,

that would allow us to be able to capture some of that important data, but not take the hours and hours of time away from both the business people as well as the lenders to be able to allow to us to have that information?

Mr. SOSA. That is a challenge, Congresswoman. When you look at this, even if we just take the case of $50,000 or less, that is 3 million loans. That is a significant challenge for anyone to go through and do a review. $150,000 does, as you mentioned, does take care of the majority of the applicants out there. But there is nothing wrong with getting a simple certification from the folks, that yes, we spent the money, even if you ask for an estimation, but——

Ms. HOULAHAN. I guess that is what I am asking is couldn't we simply have, like, literally a chart that says I spent 20 percent on overhead, I spent 80 percent on salary certified by this organization. Is that not something that is practical?

Mr. SOSA. That would be very simple and very appropriate. We just need to be sure that the agencies are directed as such, so as to avoid the fact that they might continue on the road that they have even on the EZ program, EZ application. It needs to be simpler than that. Part of the concern is that if a small business person has this loan outstanding, and a year from now, 2 years from now, 3 years from now, somebody changes their mind and finds that they weren't eligible at that point——

Ms. HOULAHAN. I understand.

Mr. SOSA.—that is a very scary thought for a lot of small businesses.

Ms. HOULAHAN. I understand. I understand. I would like to hear from Ms. Harrington to know how important it is to track that data. Is there anything that we can implement by legislation that we can be helpful to make sure that we actually know where this money was spent, just as it is important knowing who got it, we are also trying to make sure we are good stewards to the taxpayers of where it got spent.

Ms. HARRINGTON. Absolutely. I think a simple certification form going to what Mr. Sosa was describing, we absolutely support. Certifying that they spent the money on eligible expenses, and a good faith certification, and a space to leave—to print their demographic data, a one-page form, very simple, easy to fill out. Also, making sure that SBA and the lenders themselves are directed that they can rely on these good faith certifications for these small dollar loans. I think it can be as simple as that, but it is something that Congress will have to do because their documentation requirements under the CARES Act are so extensive.

So I think there has to be direction from you, to borrowers, to SBA, to lenders that enables them to really take part of that. And this will absolutely benefit the smallest businesses, but, also, give you the transparency that you need to know where these funds are going.

Ms. HOULAHAN. Thank you. And I know my time has expired. And I was wondering if the Chair would allow me one more question, because I think I am the last person asking questions.

Chairwoman VELAZQUEZ. Yes, ma'am.

Ms. HOULAHAN. That would be terrific.

My question is to Ms. Kelly and to Mr. Coleman, I know right now, you are working to make sure that you can get your loans forgiven in an ideal scenario. What kind of—will be the biggest challenge for you to be able to do that? Do you feel is it now a matter of data or making sure you can track things? And how have you been keeping track of all the changes with SBA and the PPP program?

Ms. KELLY. I would like to say, similar to Dr. Rich, we initially set up separate bank accounts and really tracked everything we spent with that loan. So the problem with it was I couldn't speak up for lack of business because we are on State mandated shutdown, we couldn't bring back the proper count of FTE. So I felt like I knew I was not going to be forgiven for a loan either way I did it. It was helpful for a time period, but in the long run, it is not really that helpful if [Inaudible] after we did the recalculations to be able to go back and take a second bite at the apple was denied because of the filing of the 1502. So that became a big issue for me here with my business.

Ms. HOULAHAN. Thank you.

Dr. COLEMAN. As far as my concerns, most of my information actually came through from my accountant. He will send out a nice little newsletter once the—it was changed last week, we got a nice little newsletter saying, Hey, these are the changes. So that would be one place I would have the small businesses committee reach out to is the accountants and say, Hey, please send this information out to your clientele. It was simple email that they put together, but it gave me a massive amount of information and definitely put my mind at ease as far as where to go from here. What concerns——

Chairwoman VELÁZQUEZ. The gentlelady's time has expired.

Ms. HOULAHAN. I am sorry, my time has expired. I yield back and thank you, Madam Chair, for giving me an extra 5.

Chairwoman VELÁZQUEZ. Thank you. And thank you again to all the witnesses today for their testimony and for offering their views on the PPP. By sharing your experiences, we will be able to conduct more effective oversight, and continue to optimize the PPP program.

Though I am pleased the program appears to be saving small business jobs, as we intended, your testimonies have confirmed that there are still some issues that need to be addressed. I assure you we will continue to make the program work and be as accessible for borrowers and lenders as it can be. I ask unanimous consent that Members have 5 legislative days to submit statements and supportive materials for the record. Without objection, so ordered. And if there is no further business before the committee, we are adjourned.

[Whereupon, at 2:55 p.m., the committee was adjourned.]

APPENDIX

PRIMO
2 South Main Street
Rockland, ME 04841

www.primorestaurant.com
207-596-0770

I thank you for the opportunity to testify before the Committee on Small Business regarding the Paycheck Protection Program.

Background

I am Melissa Kelly, Chef and Owner of Primo Restaurant in Rockland, Maine. I am a chef; it is my calling. The reason I do what I do, is to help people eat healthy delicious food that gives them nourishment, joy, and good health. I also believe that supporting the health of this planet is part of my responsibility.

I own and operate a small farm and restaurant in Rockland, Maine where I bring those beliefs to life.

We operate on a seasonal calendar open for nine months and closed for three. This April was the beginning of our 21st season. The business has grown steadily over the years and now I employ a team of 50 farmers, managers, cooks, dishwashers, servers, hosts and office staff.

When Governor Mills wisely put our state on lock down, we were preparing to open our doors.

My first worry was my people. I had enough money in reserves to see them through a couple of payroll periods, but I did not have any idea how long we would need to support them before we could get back to work. I did not want to lay them off. The team that I have assembled is the reason we are able to do the great things that we do. I have won the James Beard Award best chef Northeast, twice, and my team is a big part of the reason why.

My restaurant seats 165 patrons inside, we normally serve 32,000 meals a season. My staff of 50 have an average earning of $26 per hour. Most of our revenue is earned July thru October.

I am here today not only representing myself but also as a spokesperson for the restaurant industry in general. I operate in Maine, a state that is especially dependent on revenue from seasonal tourists. Many of my fellow restaurateurs are not going to survive the government-mandated restrictions on restaurant operation. I worry for them, but also for myself.

Primo, like many small businesses, looked at the Paycheck Protection Program ("PPP") as more of a grant than a loan program as it was promoted as a "forgivable loan" upon rollout. Primo wants to do all it can to support its staff and the community while staying financially viable for the long term, while it is looking at its most challenging season in its history. We want to continue to create a positive economic impact on our community.

On April 17, Primo received a PPP loan of $185,050 to cover its 24 full time employees ("FTEs"), the maximum allowable loan at the time even though in-season employment is 50 FTEs. Primo applied for this amount under the original PPP rules, which allowed seasonal businesses to calculate their maximum loan amount based on their wages from February 15, 2019 through June 30, 2019 or January 1, 2020 through February 29, 2020. This funding was a big help in assisting with cash flows in a very uncertain time.

On May 13, SBA issued a new rule allowing seasonal businesses to use an alternative seasonal operation base period to calculate the maximum loan amount. Under this calculation, Primo was eligible for up to

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$513,000, but would have had until only June 30 to utilize the funds and achieve forgiveness for the whole amount. At this time, the restaurant was closed by state and local government orders. As such, it would have been a poor business decision to obtain additional loan funds at that time.

The Paycheck Protection Program Flexibility Act ("PPPFA") was a giant step in the right direction to assist more businesses struggling during the pandemic. Upon passage, Primo applied to increase its loan to $400,000. This funding would have greatly assisted in paying staff at a time when local and state COVID regulations restricted operations to allow a maximum of 40% capacity. After application, Primo was notified that the local bank had filed the SBA Form 1502 for the initial loan and the loan could not be increased by SBA rules. That means that we qualify for additional funds, but SBA rules will not permit us to access a second tranche of what we originally could have received. It is completely unfair that we cannot avail ourselves of extra funds based upon SBA's having changed its own rule and the new statute. Accordingly, Primo is requesting that Congress work with SBA to establish a reasonable modification to this rule to benefit eligible seasonal businesses, employees, and local economies across the nation. Primo is requesting the SBA rule regarding form 1502 be adjusted to allow for increases to PPP loans for eligible seasonal businesses after the 1502 filing.

Primo is requesting minor changes to the PPP program to allow:

- Seasonal businesses, if eligible, to increase their loan amounts if the Form 1502 has been submitted; and
- greater flexibility on items the proceeds can be spent on.

PPP Issues

Seasonal Businesses

Seasonal businesses have inherent challenges with cash flow and staffing. Paying for off-season fixed costs, such as rent and insurance, place a greater burden on seasonal business to generate profit in season and accurately project cash flows year-round. The insecurity caused by the Pandemic create more issues for seasonal businesses around cash availability at season end to cover the off-season expenses. Current restrictions on indoor capacity and lost revenue at the start of the season will make it very challenging for countless establishments to earn enough to cover off-season expenses.

The PPP aided seasonal businesses as it was a cash infusion at a much-needed time. It eased some of the concern in the short term by allowing businesses to pay salaries and some bills. However, it created its own uncertainties, such as how much of the loan could be used for expenses and how much would be forgiven, etc. The biggest pitfall for seasonal businesses was the requirement to hire staff in the middle of locally ordered closures. The PPPFA went a long way in attempting to rectify this.

The original PPP rules allowed for a maximum loan calculation that was substantially lower for seasonal businesses whose peak season is the summer months. This was yet another hurdle for seasonal businesses to overcome.

When the SBA released guidance on May 13 that allowed for seasonal businesses to change their base period and draw additional funds, the original forgiveness rules were still in place. Many of the known PPP pitfalls were highly published, such as forgiveness projections. At this point in time it would have

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been unwise to seek any additional funding. In addition, state regulations severely restricted operations.

Amending SBA rules will aid not only Primo, but countless seasonal businesses, their staff, and local economies across the country by allowing eligible seasonal businesses to draw additional PPP loan proceeds and create some certainty in such uncertain times.

Ever changing rules

One struggle that affects not only seasonal businesses, but all businesses that accepted a PPP loan, is the ever-changing rules and guidance. There have been multiple changes as to the interest rate, the term, the calculation period. Businesses prosper on certainty. Budgeting sales, staffing, and purchasing accurately require a fair amount of certainty. To accurately project future cash flows, it would be very beneficial for all businesses to know how much of their PPP loan will be forgiven and more importantly, how much will not be forgiven and what the monthly loan payment will be.

Process for Obtaining Loan

The PPP application process was not overly cumbersome for Primo. Primo has a very good working relationship with its local community bank, The First National Bank of Damariscotta and was further assisted by subject matter experts including a SCORE mentor and Opus Consulting Group. These relationships allowed for an expeditious application and a quick and smooth loan closing.

Primo realizes it is fortunate to have these relationships. Many businesses do not have experienced advisors and working relationships, making it harder to navigate complicated loan processes.

Loan Forgiveness Concerns

The PPPFA extended the period to spend loan proceeds from 8 to 24 weeks. This greatly increased flexibility. Most businesses should be able to spend their loan amounts on payroll related expenses in this time frame.

Currently, the largest concerns regarding loan forgiveness are meeting the Full Time Equivalent safe-harbor threshold and any future unforeseen changes to the program. Primo does not anticipate it will have a difficult time hiring 24 staff before December 31, nor will it have a difficult time hiring 37 staff, appropriate staffing at a $400,000 PPP loan. However, if it is forced to shut down due to an outbreak or changes in state or local restrictions it may have an issue meeting the threshold. Additionally, while most of the PPP changes have generally been for the better, there could be a change on the horizon that will make forgiveness more difficult.

Interaction with Federal $600/week Unemployment Benefit

Primo is not alone in facing difficulty bringing staff back on board. Many employees have not wanted to come back to work to risk their health for essentially the same pay they would receive in State and Federal unemployment compensation benefits. Additionally, until recently, the restaurant has been closed due to state and local orders. There is not enough work to be done to justify having 24 full time staff at a closed restaurant. The PPPFA has greatly benefitted restaurants and other businesses that received PPP loans while closed; it has taken the burden off the businesses to hire staff that do not want to work. As Primo reopens, it will likely not have as high of staff counts as it has in prior years due to

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local operating restrictions. The PPPFA will allow for greater forgiveness while still protecting the health and safety of our communities.

More Flexibility

Recently, Primo obtained a non-PPP loan to finance construction of a fresh air shelter on its property to allow it to have greater capacity. Restrictions in Maine allow for indoor dining of no more than 50 people at a given time. This outdoor seating will allow Primo to seat approximately 100, which is still fewer people than it could accommodate in pre-COVID times. Had the PPP allowed for other uses outside of payroll, rent, and utilities, Primo likely would have utilized PPP proceeds to finance the construction to allow it to operate under the "new normal." Primo knows it is not alone in requesting greater flexibility to spend PPP loan proceeds to cover other COVID related changes, be they greater operating expenses in the form of PPE or exterior spaces.

Conclusion

Primo is requesting the SBA rule regarding closing of a loan after form 1502 submission be adjusted to allow for increases to PPP loans for eligible seasonal businesses after the 1502 report filing. Primo is not asking for all closed PPP loans to be opened up, only those for seasonal businesses who were unable to take advantage of the alternative seasonal operation base period. Primo is also imploring the committee to understand the need for more money to create positive economic opportunities for businesses, their staff, and communities.

In addition to my testimony representing Primo, I am enclosing supporting statements (Attachments A and B) from two other well-known restaurateurs.

I've testified today about my experiences as a small business owner in Maine. I'm grateful to have the attention of this committee and for the bi-partisan work you have done, and I hope will continue to do, to support small businesses across our country. But let me take a moment to ask you to think about the restaurant business in a different way. I know after 30+ years of putting good food on plates how important independent restaurants are to our communities. These are the places where we convene to meet, to celebrate, to plan, to reflect. They are also a reflection of our larger American culture bringing together experiences of food from all the diverse places that make our country so special. By supporting independent restaurants, you are not just helping these business owners and their employees, you are making it possible for an important foundation of our culture to survive and once again to thrive.
Thank you.

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Attachment A
Supporting statement from Bill White

BILL WHITE

There are two components to the functionality of navigating this crisis that are often misunderstood. First are unemployment benefits. People mostly do not understand this program and think it is a government benefit. This is wrong. In a nutshell, unemployment insurance is a payroll tax paid solely by the employer, not the feds and not the employees. The state government Department of Workforce Services administers its distribution and processes claims. The claims filed in the previous period against the employers account and directly added to the payroll tax for the next period. Dollar for dollar. The system is not designed to handle ALL the employees filing claims at the same time, but that is what has happened. I am afraid of the headwinds and regulations governing our re-opening. I don't think many employers understand the potential impact on payroll taxes looming for 2021. (there is talk of adding an increased social cost to the SUTA rate, but that cost would be huge and ongoing)

The second issue that remains a toxic quagmire for restaurants is the PPP loans. These are a horrendous trap for many businesses that do not understand the nature of borrowing funds to pay for direct operational expenses especially while our demand is regulated to a fraction of our capacity.

Although these loans are potentially "forgivable" they are not designed for a business that has been forced to shutter. The loan amounts are calculated on a percentage of payroll. Although there have been some changes to the format, the original program required 70% of the loan amount to be spent on employees while 30% could be used for 3 things: rent, interest, and utilities. The fatal flaws with this program are the number of employees to be paid must be close to the number of people employed at the time of closure. Also, the PPP loan needed to be spent within 8 weeks of receiving the funds. With a mandated closure what good does this do to help the business weather the storm? It is a huge exposure for those that try to meet the standards then fail to meet the requirements. The PPP becomes a 2-year LOC due in full at the end of the term. This trap will sink many restaurants. Note that the rules continue to evolve but most restaurants that initially received these loans have already spent at least half of the amount and there are currently no other funds available to them.

The PPP program is well intentioned but flawed in many ways. The most glaring is the co-mingling the goals of the program. Is the goal to get money into the hands of employees or to help the business survive the crisis? Both are noble intentions but should be separated.

As it stands the employees get a paycheck for a brief period while the business gets to pay a small percentage of the loan proceeds for rent, utilities, and interest. There is no one size fits all fiscal stimulus package that works for all. Each business is different and has different needs to survive this terrible storm. My goal is to recognize surviving this tragic event is a marathon and not a sprint. I want to remain an employer, taxpayer, tenant, and entrepreneur that will continue to create jobs and add to the economy for years to come. I need long term, low interest financing (EIDL SBA loans) or straight up grant money to be able to make it through the crisis. Other businesses may need different structured loans/grants. The medium sized (500 employees $20million, asset-based balance sheet companies in growth mode need to have long term financing solutions. Hiring and paying employees will happen organically as the virus passes, restrictions are lifted and the fear passes. Combining a direct financial stimulus program to get dollars into the workers hands is myopic and a very ephemeral approach. What happens after the short-term loan proceeds are spent on payroll and the economy/fear/virus are still here and crushing our cash reserves and snuffing out the consumer demand that we built our business upon? What business can withstand 50-75% demand elimination while the costs of rent, debt, goods,

and labor remain at "pre-virus" levels? Not many. We need extremely favorable financing options if our intention is to survive the crisis.

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Attachment B
Supporting statement from Jody Adams



We know that restaurants are the hearts and souls of a community. They are the places where people celebrate joy and share sorrows; where fundraisers are held for politicians and local organizations; they help create the character and personality of a community. In addition, they employ 1 out of 10 people and send between 90 and 95 cents of every dollar back into the community. We need restaurants, yet their survival looks bleak. Without significant help, we will not survive. PPP and the new fixes built half the bridge; we need a stabilization fund—grants—to finish the bridge that will allow us to survive the new few years.

$120 billion Independent Restaurant Stabilization Fund, which would give us the resources and support we need for the challenging months – and years – ahead.

In fact, the Stabilization Fund would generate at least $248 billion in economic returns – more than twice the amount of the proposed grant.

On March 14 we closed all 7 of our restaurants. Five days later we opened one of our quick serve Greek restaurants, Saloniki, for takeout. We are doing 30-40% of our typical revenue and not quite breaking even.

Two weeks later we started doing up to 300 meals a day for front line hospital and restaurant workers from Porto, one of our full service restaurants, and were paid $10 per meal, which allowed us to employ some of our most vulnerable staff. This program is winding down.

We applied and received PPP for our 7 restaurants. With the original 8-week time frame and the unknown projections for how long COVID-19 will paralyze our businesses, PPP didn't work for us. We ran the risk of bringing our staff back, using the PPP up before we could re-open, and having to lay them off again. In addition, the statistics for COVID-19 cases in MA was scary and people did not want to come back to work. The $600 federal unemployment was a disincentive for some to not return to work. With that said, the majority of people who said they did not want to come back to work stated that they were concerned about the health of themselves and their families.

Last week, as MA moved to phase #2, we opened our large patio at Porto. We are doing 50% of our typical business. Our servers want to work only part time so that they can receive the $600. We won't open Trade, a full-service restaurant that serves lunch and dinner in the financial district, because people have not returned to their offices so we would not do enough business.

We have yet to start using our PPP as there still so many unknowns about this Pandemic. Moving the timeline for the PPP to 24 weeks is better than 8 weeks. With that said, we don't yet know when we will move to phase #3 when we can serve indoors. We don't know if there will be a resurgence in the fall.

We don't know what our revenue will be. December 31 would be a better date. What we really need is the Restaurant Stabilization Fund that the IRC is fighting for.

Jody Adams
Chef & Co-Owner
Porto Restaurant
Boston, MA

"Paycheck Protection Program: Loan Forgiveness and Other Challenges"

Testimony before the House Committee on Small Business

June 17, 2020

Submitted by
Eduardo Sosa, SBA Lending Senior Vice President
Amarillo National Bank
Austin, Texas

Chairwoman Velázquez, Ranking Member Chabot, and Members of the Committee—my name is Eduardo Sosa and I have been in SBA lending for the past 25 years. I currently serve as the Senior Vice President of Commerce National Bank in Austin, Texas. Commerce National is part of Amarillo National Bank, a 126 year-old family-owned small community bank headquartered in Amarillo, Texas, and we focus on small business borrowers in our community through both conventional and SBA lending. The majority of our footprint encompasses the Texas Panhandle and Central Texas. In my capacity, I have helped to oversee my institution's participation in the Paycheck Protection Program (PPP), making roughly 3,450 PPP loans totaling over $477 million in critical capital to support over 57,500 employees during these recent difficult few months.

Let me start by telling you a little about myself: I am the son of Mexican immigrants and, as a migrant farmworker, if you had told me that someday I would be invited to testify before a Committee of the United States Congress, I would not have believed you. When I say that I am honored to testify before this Committee today, those words carry great personal significance and encapsulate my story – the story of a boy that came from very little and who, in partnership with my wife of 50 years, worked very hard to contribute to my family, my community, and my country. In my career as a lender who specializes in SBA loans, I have had the great privilege of devoting decades to helping small business borrowers to whom a SBA loan can mean the difference between thriving and failing, and I have found fulfilment in helping those small businesses achieve the American Dream.

Now, we find ourselves in uncharted territory in response to the COVID-19 crisis. The unique circumstances resulting from the global pandemic brought businesses on Main Streets around the country to a crashing halt. As a lender watching the reaction of Congress in creating the PPP, I am grateful for the attention that was paid to the grave issue of unemployed Americans. The country's small businesses could not wait for Washington, D.C. to take its time—they were hurting and the stability of the small business economy was deteriorating quickly. These fearful small businesses were my clients, my neighbors, and my friends, and with the passage of *CARES Act*, I was hopeful our team of lenders would have an answer for them as to how they would be able to survive. It is because of this unusual landscape that I understand the clear pressure Congress and the agencies have felt to produce statute and guidance as quickly as possible, as well as the pressure on lenders to deliver PPP loans with an emphasis on speed to market. In many ways, speed was the cornerstone of the instructions to lenders from the get-go, underscored by Treasury's directive to attack the long queue of borrowers with a "first come, first serve" process. Lenders were called to duty with a fireman's mentality—suit up and start fighting the fire quickly.

But lenders and borrowers are now paying the price of this speed, and perhaps there was a middle ground to be had. Instead of promising all small businesses that they would receive a loan the very Friday after the *CARES Act* was signed into law, perhaps we could have issued a message to reassure them that the program was set up to help everyone quickly but it would take just slightly more than 5 business days to establish. Partial guidance was issued to lenders close to midnight the night before the program "went live" and my bank, as well as my peers, felt caught between two bad options—either deliver on something we didn't yet understand or face public shame for not churning out loans immediately to our clamoring customers. Perhaps we could have given this country's lenders a few days with a comprehensive rule book first. Rather than take an extra beat to lay out all the rules, terms, conditions, and processes for originating, forgiving, and servicing a PPP loan, speed to market pressure has created piecemeal guidance issued in small fragments, one after another, that often contradicts itself and is still not complete even today. This has left the industry confused and unable to trust the requirements that

have been issued for fear that they will change the next hour, day, or week, as they so often have and continue to do so. Yes, I understand speed to market and I wanted that for my clients—but, it seems to me, and many of my lending colleagues, that somewhere the implementation process lost sight of common-sense in the midst of this frenzy.

My testimony will focus on the main challenges that have arisen during the program's short, but impactful life. The intent is not to highlight the wrongs, but to paint a picture for the Committee of the hurdles that lenders and borrowers face, and to bring to life for you what kind of price we have paid due to the way in which this program is being implemented. The group of lenders at my bank have pulled off what feels like a miracle for thousands of borrowers, and I would not have a story of PPP participation to tell if not for the entire team that I stand with every day. I share my concerns with the Committee so that I may give voice to this team and the small businesses that feel like family in our community. Ultimately, my hope is that I help to contribute to the Committee's blueprint of how Congress can intervene and chart a better course forward for PPP lending, ensuring that we all continue to do right by the small business borrowers.

Guidance

So far, PPP has been implemented by 17 Interim Final Rules (IFRs) and 48 individual Frequently Asked Questions (FAQs), as well as additional guidance provided in several miscellaneous documents, all of which continue to be issued one at a time as we speak. I could stop right there and that would tell you how inappropriately guidance has been issued. Lenders and borrowers get a small glimpse one day as to the parameters for the application and eligibility for a PPP loan and a few days later, some of those rules change. Then the next week, we may learn a different eligibility requirement that contradicted the requirements issued the week before. Following that, maybe we learn part of the answer to the questions related to ownership, affiliation, or EIDL loans, but never the full story. We have received program guidance in slivers, but even as of today, we have never seen the whole pie. As an experienced lender, I've never once fully understood how to make a PPP loan from beginning to end—and still don't. No one does. I wonder sometimes whether even the agencies have it all figured out yet. Because, if they did, it would only make sense that they would provide full start to finish program guidance.

Forgiveness guidance was issued on May 22, seven weeks after millions of loans had been made. As a lender, I asked thousands of small business borrowers to sign on the dotted line on a contract outlining PPP terms and conditions, and neither myself, nor the borrower, ever knew, or still knows, the exact terms and conditions related to forgiveness or other critical aspects of a PPP loan. Let me stress this point: none of us knew how to achieve forgiveness of a loan centered on the concept of forgiveness when they were made. Are things better now that we have the forgiveness guidance? Absolutely not. Lenders still do not know where or how to even submit a loan forgiveness application to SBA and, at last week's Senate Small Business Committee hearing on PPP implementation, the officials responsible for delivering the PPP seemed to be hinting that even the requirements that have been issued may still be changed.

As a bank, this approach simply is not practical, comfortable, or even appropriate. Lenders are risk-averse institutions that operate based on a full understanding of what our roles and responsibilities are. We have an obligation to our borrowers to be transparent about the terms and conditions of any loan we make and we take that obligation very seriously. Is blindly offering a program to small businesses without knowing who is eligible, what any of the basic premises of the loan are at any given moment, or how borrowers will obtain loan forgiveness really what we want for our borrowers? Without clear guidance, we're doing a disservice to the small businesses we all want to protect.

From the very beginning, this contradictory and confusing guidance caused my bank to question whether we should even get involved. And in case you are not hearing this from other institutions—my peers have told me that they were having the exact same internal debates. There was significant caution, anxiousness, and more questions than answers—there still is. My small, community bank had to weigh the desire to help our borrowers with the very real possibility that making these loans could cause irreparable risk and damage to our institution should some or all of these loans, without any collateral or personal guaranty from the borrower, wind up not being forgiven and without the government guaranty honored due to some misunderstanding of the rules that were only revealed half way through the process. Ultimately, we answered the call to serve, but only because we felt it was our duty and not because we felt comfortable. This lack of complete guidance continues to be the primary challenge of the program and Congress could intervene by putting appropriate pressure on Treasury and SBA to deliver to their lending partners and borrowers the most basic starting point of any working relationship—a complete picture of what is expected and required that does not continue to change with the passing of every week.

Credit Elsewhere Confusion

The *CARES Act* parameters surprised veteran SBA lenders. The loan size could go up to $10 million, twice the size of a regular 7(a) loan, and per the formula established in the law to qualify for a loan of that size, the business had to average $4 million in average monthly payroll. That means that applicants for PPP loans were not just the small business borrowers that SBA lending typically reached; PPP applicants would also include substantially larger businesses, including those that financed their operations differently than most regular 7(a) borrowers. The traditional size standards were broadened and affiliation rules relaxed. Most notably, there was a complete waiver of the traditional 7(a) credit elsewhere test, meaning that *even if a small business could obtain credit conventionally because of their revenue, market valuation, or any other reason, the small business is still eligible for a PPP loan.* And finally, there was absolutely no prioritization ever outlined in law or guidance to focus on borrowers who met certain parameters, were a certain size, had a certain revenue, or any other means of identifying one borrower over another.

Sure, a borrower had to certify that "the uncertainty of the current economic conditions makes [the loan] necessary…to support the ongoing operations." But, in the midst of an unprecedented economic crisis and with the credit elsewhere test waived, lenders and borrowers believed that very few, if any, small businesses could not certify to the necessity of a loan to support payroll. The *CARES Act* and any subsequent guidance never mentioned that the business had to first draw on other means available to them before certifying to a "need." And the law or guidance never once told lenders or borrowers what they mean by "need"—in fact, no one knows what is meant by "need" to this day.

All these loosened requirements made complete sense in light of the demands of responding effectively to this kind of national tidal wave. Our goal was to get this payroll support out to all small businesses that qualified; typical restrictions need not apply during a global crisis. We got the message loud and clear.

But all of that has been walked back and in the most confusing way possible. The media began finding stories about publicly traded companies, and it seemed like neither Congress, nor the agencies, liked the negative attention. Lenders and borrowers alike began to experience the worst kind of whiplash as both Congress and the agencies started using these spotlighted examples to issue wide-sweeping threats and to distinctly change the tone used when talking about PPP, as well as the borrower eligibility requirements in guidance.

The agencies did this by first issuing FAQ #31, requiring borrowers to determine whether they had "other sources of liquidity sufficient to support their ongoing operations," but without defining what they meant by "sufficient." This was asking borrowers to determine credit elsewhere for themselves. I didn't know what to tell my borrowers.

Then came the news that there would be automatic reviews on all loans over $2 million. FAQ #39 stated that there would be reviews on these larger loans with additional reviews of loans of any size if deemed appropriate. Then FAQ #46 said that any borrower who received a loan less than $2 million would be deemed to have made the certification of need in good faith. Shortly thereafter, IFR #15 stated that SBA can review loans of any size at any time. Along the way, the FAQs also announced that borrowers should repay loans by May 18 that were not in fact "needed" in order to be considered in good standing by the federal government—or else. The zig-zagging was painful to convey to borrowers and worrisome for lenders. Panic ensued. And as a lender on the frontlines, I watched my customers nervously and fearfully repay loans that were very much needed – and which I believe should have been found eligible for a PPP loan.

Out of the $477 million in PPP loans made by our bank, $31 million in PPP loans were cancelled or repaid as a result of this bizarre sequence of contradictory guidance and threats. To my knowledge, my bank did not make one loan to a publicly traded company or to any recognizable brand name. In fact, 83% of my bank's total PPP loans are $150,000 or less, and 92% are $350,000 or less (which is the threshold that we traditionally refer to as a "small" loan in SBA lending). Only 0.008% of all PPP loans in my bank's portfolio are $2 million and over. And this is indicative of the overall PPP portfolio, with 85.8% of PPP loans $150,000 and under and 93.9% of PPP loans $350,000 and under (as of June 12, 2020). Sadly, the majority of the $31 million in cancelled or repaid PPP loans at my bank were small loans that fit every possible parameter of the program and that would have certainly been deemed "necessary" for the borrower.

If Congress or the agencies think the rhetoric around criticizing PPP loan recipients applies just to the nationally recognized companies or companies with a certain valuation—both of which are, in fact, eligible for PPP loans per the law—stops there, that simply is not true. There is a very sad domino effect that must be acknowledged. I've had to watch as borrowers have repaid very small PPP loans—one for $1,400, several for $2,200 and one for $3,300 all repaid out of fear. The recipient of one of the repaid loans for $2,200 was an immigrant from a country whose government was in the practice of threatening its citizens regularly. Imagine that borrower's fear when he saw the announcements and public rhetoric from Congress and the agencies requiring a borrower to return its loan funds if it can't prove a never once defined need, or otherwise face serious consequences from the federal government. The United States of America suddenly reminded him of a government he had left for a better life, and in panic, he ran away from the help he needed. Imagine being the lender who feels helpless to convince him otherwise. This wasn't oversight and transparency—this seems to be buyers' remorse on the part of Congress and the agencies for a law that failed to say what they apparently meant, mixed with government threats of the worst, ambiguous sort. I don't like to think of the federal government saying to a small business, "We're here to help you weather these difficult times," and then, mid-way through, seeming to change its mind as to just who it intends to help, subsequently going after those whom it had invited to participate in the beginning. Help me explain this to my borrowers because I'm at a loss.

I proudly support oversight and transparency. If there is fraud, we need to go after it. If there is abuse, we need to deal with it. But instead of dealing with concerning applications on an individual basis, the agencies seemed to take the tact of threatening small businesses and scaring off lenders. Congress can help here, and it starts with the kinds of threats and warnings issued by Congress itself. I'd like to ask

Congress to acknowledge that the very law it passed not only permitted, but invited some of the companies now being criticized to receive PPP loans. I'd like to think we could rely on Congress to say that if they had hoped for PPP loans to go to a certain portion of the small business population that the law never mentioned or required, that it will resolve to do better next time to make sure to include that kind of prioritization in law and not pretend that it is there when it is not. And, just as important, I'd like to ask Congress to require that the agencies properly reflect the waiver of credit elsewhere, amend the FAQs that brought back the credit elsewhere requirement in direct contradiction with the statute, and cease blanket threats of small businesses. Doing right by the small business borrowers depends on this change in tactic.

Forgiveness Process

As I've noted above, no lender or borrower understood the forgiveness process when millions of loans were being made. It was not until May 15 that lenders and borrowers had the forgiveness application form and instructions, and May 22 when the Interim Final Rules that filled in a few more holes in the forgiveness process were issued. However, as of today, we are still waiting for more guidance as promised by those IFRs. Lenders still don't know how to present their borrowers' forgiveness applications to SBA, and borrowers still don't have any guidance about how they will be able to appeal adverse decisions related to their loan eligibility or their forgiveness applications.

Even what we have regarding forgiveness guidance is not clear and places a tremendous burden on borrowers, especially when it comes to the smaller loans. The Loan Forgiveness Application is 11 pages long, and all but ensures that Main Street's small business borrowers will have to hire accountants or lawyers in order to properly complete it. While the form estimates that it will take only 3 hours to complete, my borrowers have struggled tremendously with completing the form. What makes this even more difficult is that as lenders, we face enormous liability concerns that make it very difficult, if not impossible, for us to provide the kind of assistance borrowers will need to complete forms that are then submitted for the lender's review.

While it appears that the agencies have the ability to simplify the forms, I urge Congress to insist on it—otherwise, the agencies may not chose a different path than the one they already have created. It is especially egregious that borrowers that received relatively small loans should have the same onerous requirements as borrower that received loans of multiple millions of dollars. There must be serious consideration given to that glaring inequity. In addition, I would strongly recommend that Congress provide statutory directives to the agencies that they provide automatic forgiveness for borrowers with loans of $150,000 or below. If the goal is to provide the country's small businesses with what are essentially grants to support payroll to prevent unemployment from skyrocketing, then by all means, let's collectively agree to make that possible. We shouldn't be okay with a process meant to help small businesses in need that is not only onerous, but set up in a way that scares off borrowers and is rife with "gotcha" moments that could lead to failure to achieve forgiveness. That isn't the goal of the PPP that I understand, and I don't think it's the goal that Congress or the agencies intend either.

Lenders' Roles and Responsibilities

The *CARES Act* included a hold harmless section that seemed to intend that lenders would be able to rely upon documentation presented by the borrower that certified it to be true and correct. Initially, agency

guidance appeared that it would follow suit. Both the lender and borrower applications frame the required documentation and certifications from the borrower in a way that seems very clear—the borrower must represent certain information to the lender, the borrower must provide documentation to the lender that is presented in good faith, and the borrower must certify as to the veracity of the submitted information.

But, as is true for most elements of the program, the implementation guidance has been anything but clear. FAQ #1 asked lenders to perform a "good faith review," but that remains vague, undefined, and not a requirement. Almost three weeks later, FAQ #31 states that when it comes to a borrower's attestation of need, the lender "may rely on a borrower's certification." And then, a month later, IFR #15 requires that lenders perform a review of the borrower's calculations and any supporting documentation to obtain forgiveness. And the consequences are significant—if forgiveness applications are not appropriately documented, the agencies have now stated that forgiveness could be denied entirely, leaving borrowers with a loan to repay in a very short amount of time and lenders with loans on their books that have no collateral and no personal guaranties, thus making these difficult loans for lenders to stomach. What is perhaps even worse is that lenders do not know for certain how these requirements apply to the millions of loans already made prior to the requirements first announced in IFR #15.

The question of a lender's role and responsibilities in a program are among the most basic components of a program. Millions of PPP loans have been made by thousands of lenders, and only now are we discovering what is expected of us. This is exactly what my bank was worried about when it came to participating in the PPP from the start. Should anyone be surprised that thousands of lenders who just learned that what will be required of them during the forgiveness process is very different from what they had been led to believe are increasingly worried about having participated in a program that seems to constantly pull the rug out from under the players? It also should not be a surprise that lenders are now increasingly skeptical about participating in any extension or expansion of the PPP unless fair and comprehensive guidance is provided first.

Congress can help by including a strengthened hold harmless provision than what currently exists in the *CARES Act* in any future, upcoming legislation to ensure that lenders feel confident in participating in the program going forward.

Processing Fee Delays & Threats of Fee Claw Backs

The *CARES Act* was very clear in the provisions concerning fees to reimburse lenders for processing PPP loans. The law also states that these fees are required to be paid to lenders "not later than 5 days after the disbursement" of the PPP loan. While it was uncertain how this timing could be satisfied given that SBA only knows that a loan has been disbursed when a lender submits a monthly report to SBA which gives the status of all of the loans in its portfolio, my bank and my lending peers waited to hear how SBA would handle this. But no guidance came on this front as the floodgate of loans were approved and disbursed. We were using our own capital to fund more loans in two and a half months than we had done in 34 years, and with mandatory payment deferments, my bank began wondering how we would be compensated by the government to ultimately support the payroll of <u>our</u> employees at our very own family-run small business that is our bank.

Finally, on May 21, almost two months after the passage of the *CARES Act*, SBA released a notice (SBA Procedural Notice 5000-20028) that provided guidance on how lenders would be required to report PPP loans to SBA and how they would be paid the processing fees outlined in law. But even here there are

shortcomings—the notice only began the process for lenders to receive reimbursement. Based on my experience and that of my peers, payments are now being made on a piecemeal basis, but we believe that there is a long way to go before all of the earned fees are fully paid.

What is most concerning for my community bank are the new concepts in this May 21 procedural notice and in IFR #15 that had never been previously communicated to participating lenders and were not included in statute. The agencies announced that they did not need to compensate lenders for work that they had done to process and disburse loans that were cancelled prior to disbursement or voluntarily repaid early, and that for a period of one year after loan disbursement, they would have the right to require the return of fees paid to lenders on loans that were subsequently determined by SBA to have been ineligible because the borrower's self-assessment of "need" was found to have been flawed. I'm at a loss as to how to explain to my bank why it will not be compensated after doing the work and incurring all of the significant related costs of making PPP loans simply because the agencies may do a review and find that they deem the loan ineligible based on guidance entirely unknown to us at the time the loan was made or guidance that remains vague, confusing, or even impossible to understand. I have been doing SBA lending for a quarter of a century, and I can honestly say that no lender, including me, is confident about who is even eligible for a PPP loan given that eligibility requirements have been changing on a near weekly basis. I can honestly say that no lender, including me, and no borrower understands what the agencies mean when they asked loan applicants to self-assess their needs for PPP loans since that concept continues to be undefined. And I can honestly say that no lender, including me, feels confident with any aspect of the guidance on any component of the PPP loan process. Yet, the agencies will refuse to compensate lenders based on reviews that will deem whether loans should have been made based on all these elements of the program that no lender or borrower understands.

Put yourself in the shoes of the thousands of lenders that participated in PPP lending in good faith, wanting only to help small businesses survive, and without any clear rules of engagement. And now we have learned that, based on the agencies' changing and future interpretation of loan eligibility, they can refuse, at any time over the next year, to pay lenders for the work they undertook to process and disburse PPP loans. Not many things in life can be couched in such plain and sure terms as this: this claw back of fees is unfair and unprincipled. And now I hear that there are proposals to expand another round of PPP loans, and the government wants the same lenders they are taking advantage of and treating in a way unworthy of calling a working relationship to continue to participate. I have to say that my bank would have to think long and hard about whether we would jump in.

I hesitate to make this point for fear of how it will be perceived, but the reality is this: banks are businesses that also need support during this global crisis, and in the case of most community banks, they are small businesses with anywhere from a few dozen to a few hundred employees. Banks like mine need to make sure we can still make payroll for our employees. If banks, especially our small, community banks, are not stable and able to pay their employees during this crisis in order to turn around and help our small business borrowers, then what good are special loan programs like the PPP?

Please understand this—delivering this loan program was not a simple feat for the lenders. I often hear congratulatory remarks paid to Treasury and SBA for standing up a new program in such a short period of time—I rarely, if ever, hear anyone from Congress or the agencies say the same to the banks. Lenders had to create new IT systems, new infrastructure, new processes and systems, new teams of lenders working around the clock in a 24/7 environment to simply get set-up to start making the first loan. Yes, SBA stood up a new program in an astoundingly short period of time and I think that is to be commended. But in listening to the Senate Small Business Committee hearing on implementation last week, I never heard any mention of the lenders who performed the same herculean feat. The government created a

solution for this crisis, but they weren't delivering it—they turned to lenders to do that. Sure, a pat on the back would be nice. But what I am most concerned about is making sure that when we work in good faith with the federal government based on an understanding at the time that the work is compensated fairly. Otherwise, the federal government may find itself with less and less lending partners in any subsequent efforts.

Congress can once again help here—the Committee could lead the way in requiring that the agencies amend their guidance so that if lenders have made a loan in good faith that they are fairly compensated as the law requires. Surely, this can be a basic principle of working together that we all can agree upon.

Recent Legislative Changes

Less than two weeks ago, new legislative changes were enacted through the *Paycheck Protection Program Flexibility Act*, which provided some much needed flexibilities for the small business borrower by recognizing that our country's small businesses are not a one-size-fits-all model. These flexibilities include the relaxation of an agency-created guideline requiring 75% of PPP proceeds to go toward payroll and 25% on non-payroll—statute now allows for a 60%-40% breakdown, which will help many more small businesses survive and remain eligible for forgiveness. In addition, the 8 week period set out in the law during which a borrower must use PPP proceeds and refer to as the period related to forgiveness was extended to 24 weeks. Many small businesses desperately need this extension, especially those in certain industries like food-service, entertainment, and tourism that are still far from operating at full capacity and need the extra time to utilize the PPP funds. This is especially true because it was only after enactment of the *CARES Act* that we became aware of the true extent that the pandemic would have on America's businesses.

However, questions have been swirling at my bank and among my peers about many aspects of these recent changes. For example, are we, expected to amend over 4 million loan notes (that is, the contract between the lender and the borrower outlining terms and conditions of the loan), to reflect a significant change in deferment periods? In addition, I understand the new law includes a provision permitting borrowers who received a PPP loan prior to the date of enactment of the *Paycheck Protection Program Flexibility Act* to elect for themselves whether or not they will continue to utilize the 8 week period or use the new 24 week period. However, are borrowers able to apply for forgiveness at <u>any</u> time after using PPP proceeds at their discretion, *or* are existing borrowers given a binary choice between 8 weeks and 24 weeks with new borrowers only permitted to utilize and wait a full 24 weeks? The legislation would suggest the latter to many of my peers, yet we heard the Secretary of the Treasury testify in front of the Senate Small Business Committee the former was the case. Countless number of borrowers wanted the 24 week extension—but there are just as many small businesses that do not want to be *required* to wait the full 24 weeks either, and my bank is at a loss as to how to proceed with our borrowers. We need clarifications on these points and others as quickly as possible.

These questions are also an important reminder that whenever a program's core premises are changed half-way through the game, there is going to be messiness that ensues, no matter how well-intentioned or needed the changes are. If this Committee is going to move forward to consider further changes, I urge you to fully examine all of the angles of unintended consequences and the domino effect that always results from these kinds of course corrections.

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In an average year, Commerce National Bank makes close to $20 million in regular 7(a) loans. Yet, in two and a half months, my small, community bank will have done several times larger than that in PPP loans alone. We answered what we saw as a call to duty.

We did this in order to help borrowers like my client in Austin, Texas that had just re-opened his Mexican restaurant in late January after renovations. Following that re-opening, he experienced an immediate surge in business, including standing-room-only availability in the restaurant through mid-March. And then, like all restaurants across the country, he faced the devastation of COVID-19. While the business was still able to do take-out and drive-through, this limited business barely covered food costs. The owner, an immigrant who had come to the United States at 14 years old and worked his way up the industry ladder, was forced to lay off his 40 employees. But, his $77,174 PPP loan enabled him to pay his employees, and while not yet profitable, most of his employees are back to work—and his American Dream kept intact. His story is why we made PPP loans.

I also think about the minority woman-owned day care that decided to remain open in a safe and healthy way during shelter-in-place orders so that she could specifically help care for the children of essential workers in the community that still had to go to work during an otherwise quarantined period. Unable to access PPP during the first round of funding, she worked with us to be one of the first to apply in the second round. Her $37,100 PPP loan enabled her to pay her 7 employees and remain open—but it also enabled her to continue dedicating herself to act as a pillar of the community during local families' most difficult days. Her story is why we made PPP loans.

And then there is our small business borrower in Amarillo, a mom and pop bakery that has been serving the community since 1965. When shelter-in-place orders were issued locally, revenues dropped 65%. The husband and wife team that currently own the business received a $104,800 PPP loan to pay their 24 employees. But their story doesn't end there. Not only were they able to keep their employees paid, but the bakery started offering eggs, milk, and bread to the older residents of the community. Then, they started providing sack lunches to feed the local homeless. Like so many small businesses that all SBA lenders know and serve, this borrower didn't just help keep Americans employed—they served their neighbors in countless selfless acts of kindness. Without the PPP loan, I'm not sure that this business would have been able to turn around and help their community in a time of need to the extent that they did. This husband and wife story is why we made PPP loans.

But participating in the PPP came at a cost. Some of our clients have fled from the program out of fear. Many are confused about how to follow the rules that keep changing. As an institution, we are just as concerned that the guidelines today will not be the guidelines tomorrow because that is exactly what has happened since the very start of this program—and that negatively affects the bank and our borrowers. As a lender, I worry about whether the changing rules will make it difficult for some borrowers to obtain the forgiveness they were relying upon. I worry about how we will explain to the borrower that things keep changing mid-game because I know that if I were in their shoes, that explanation just wouldn't cut it.

How this program is implemented affects the livelihoods of my clients, my neighbors, and my community. I want to be proud of my participation in this recovery effort, and God willing, it will be the last crisis I see in my long lending career. And while I am proud of the countless stories of hope that have already come out of this program, my own hope is clouded with more anxiousness than optimism at the moment. Your role in ensuring that borrowers receive the help they need and that we do not face years of confusing, conflicting oversight is critical. Lenders and small business borrowers are relying on you.

Testimony of Ashley C. Harrington

Federal Advocacy Director and Senior Counsel

Center for Responsible Lending

Before the United States House Committee on Small Business

"Paycheck Protection Program: Loan Forgiveness and Other Challenges"

June 17, 2020

I. Introduction

Good afternoon Chairwoman Velazquez, Ranking Member Chabot and Members of the United States House Committee on Small Business. Thank you for the opportunity to provide testimony today about the need to address the challenges posed by the Paycheck Protection Program (PPP). My name is Ashley Harrington, and I am Federal Advocacy Director and a senior policy counsel at the Center for Responsible Lending (CRL). CRL is a non-profit, nonpartisan research and policy organization dedicated to protecting homeownership and family wealth by working to eliminate abusive financial practices. The organization is an affiliate of Self-Help, one of the nation's largest community development financial institutions. For forty years, Self-Help has focused on creating asset-building opportunities for families of color, women, rural residents and low-income people and communities, primarily through financing safe, affordable home loans and small business loans. In total, Self-Help has provided more than $7 billion in financing to 87,000 homebuyers, small businesses and non-profit organizations and serves more than 80,000 mostly low-income families through more than 40 retail credit union branches in North Carolina, California, Florida, Illinois, South Carolina, Virginia, and Wisconsin.

CRL and Self-Help have seen firsthand the potential for the PPP to serve as a lifeline to small businesses as they navigate the current economic crisis. As a long-time SBA lender, Self-Help began accepting Paycheck Protection Program (PPP) applications on April 6. As of June 13, Self-Help has received SBA approval for $170 million in loans to 1,395 small businesses and non-profits across the country. These loans have been a lifeline for our borrowers, allowing them to continue employing over 18,000 people through the current economic uncertainty. Self-Help's PPP efforts have focused on assisting underserved applicants: by dollar amount, fifty-three percent of the loans are to small businesses and entities led by people of color, and sixty-seven percent are to non-profits. With a median loan amount of less than $28,000, these loans primarily serve truly small businesses: sixty-five percent of the loans are under $50,000, and eighty-three percent are under $150,000.

Preserving businesses owned by people of color is paramount to an equitable recovery. Employer businesses owned by people color are a substantial source of income and employment—accounting for more than 8.9 million jobs at total annual payroll of $295 billion, and $1.4 trillion in revenue.[1] Yet many of these businesses as well as non-employer or self-employed businesses were likely excluded from the first round of funding in the PPP. Business ownership is also a proven mechanism for wealth-building, with economic benefits that extend beyond the individual business to the entire community. Ensuring that federal small business relief works for small businesses owned by people of color is essential to an inclusive economic recovery.

As a result of the devastating economic impacts of an already catastrophic public health emergency, Congress rightfully moved quickly to provide some of the desperately needed financial support to families and businesses. This crisis comes even as the effects of the last recession continue to be felt in many communities, especially communities of color. The Great Recession resulted in more than 8.7 million lost jobs, 8 million homes foreclosed, and 500 community banks shuttered.[2] This does not include the non-direct financial harms of the crisis, such as the estimated 95 million households who lost

[1] 2018 Annual Business Survey

[2] Calhoun, Michael. "Lessons from the Financial Crisis: The Central Importance of a Sustainable, Affordable and Inclusive Housing Market." *Brookings* (blog), September 5, 2018. https://www.brookings.edu/research/lessons-from-the-financial-crisis-the-central-importance-of-a-sustainable-affordable-and-inclusive-housing-market/.

home equity due to surrounding foreclosures; this lost wealth totaled $2 trillion with $1 trillion coming from communities of color.[3] Just as the last recession widened the racial wealth gap even further, we are already on track to see disparities drastically increase because of COVID-19.

My testimony today will:

- Provide an overview of the disproportionate economic impacts of the COVID-19 health crisis.
- Discuss issues with the structure and implementation of the PPP and how they served to limit access for the smallest businesses and businesses owned by people of color.
- Highlight the challenges posed by the current requirements to access PPP forgiveness.
- Provide policy recommendations to ensure 1) the remaining PPP funds reach the smallest businesses and businesses owned by people of color; 2) the forgiveness process is streamlined and workable for the smallest businesses and their lenders; and 3) equitable small business relief, beyond the PPP, is available as we enter the recovery period.

II. The Economic Effects of the COVID-19 Public Health Crisis Have Fallen Disproportionately on Communities of Color

A. The Disproportionate Economic Effects of the COVID-19 Public Health Crisis

Unemployment rates have skyrocketed, well exceeding the rates seen during the financial crisis, but they have been highest for communities of color. In May 2020, unemployment hit 17.6% for Hispanic or Latino workers, 16.8% for Black workers, 15.0% for Asian workers and 12.4% for white workers.[4] The recent spike in unemployment, however, masks the persistently high rates in these communities, many of which took years to return to even pre-financial crisis levels. The 2007 pre-financial crisis lowest unemployment rate among Black workers was 7.6% in August 2007, a rate that was only slightly lower than the peak financial crisis unemployment rates among white workers of 9.2% in October 2009 (Figure 1). The severity of the current unemployment crisis can also be measured in the rate of increase. The lowest pre-financial crisis unemployment rates occurred in early- to mid-2007, with the peak crisis unemployment rates in most communities not occurring until the end of 2009, nearly two and a half years later. In contrast, in 2020, unemployment figures by race and ethnic group jumped between 149% and 255% from March 2020 to April 2020 (Figure 1).

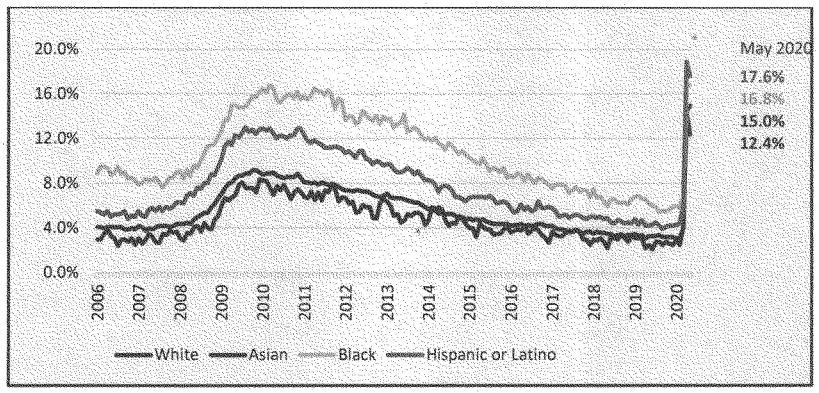
Unlike the last financial crisis and accompanying unemployment levels, this unemployment rate increase and recession are driven by federal and state policies effectuated in response to a health pandemic. As such, the federal and state response must equitably restore and make whole those who are disproportionately impacted. It is imperative that we take steps now to make sure relief and recovery efforts reach all communities.

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[3] Bocian, Debbie Gruenstein, Peter Smith, and Wei Li. "Collateral Damage: The Spillover Costs of Foreclosures." Center for Responsible Lending, October 2012. https://www.responsiblelending.org/mortgage-lending/research-analysis/collateral-damage.pdf.

[4] Bureau of Labor Statistics Current Population Survey, Table A-2 and A-3.

Figure 1. Monthly unemployment rate from 2006 to present, seasonally adjusted



Source: Bureau of Labor Statistics Current Population Survey, Table A-2 and A-3.

B. The Impact of the Crisis on Small Businesses

The effect of the crisis on small businesses has been profound—more than half of small businesses said the crisis has had a large negative effect on their businesses and 50.3% of small businesses said they have had a decrease in operating revenues in the last week. In late April, temporary closings impacted 41.5% of small businesses, and 26.5% were impacted in late May. These impacts were far worse for some hardest-hit sectors, including education, foodservice and accommodations, and recreation.[5]

The crisis has impacted industry sectors differently, with widely varying responses to two key measures of hardship measured by the U.S. Census Small Business Pulse Survey. For example, small business owners in the accommodation and food service sector were 15 times more likely to say that the crisis has had a large negative effect on their business than owners of utilities. Variation is likely due to the extent that the business is subject to a temporary shutdown order or other factors that have resulted in a steep decline in revenue. Industry sectors with higher than average ownership by people of color averaged higher response rates to two key measures of hardship, however. On average, 50.7% of business owners in sectors with above-average ownership by people of color said that the crisis had a large negative impact on their business compared to 34.3% of business owners in sectors with below average ownership by people of color. Likewise, 12.4% of business owners in sectors with above-average ownership by people of color said that their businesses were unlikely to return to a normal level of operations relative to one year ago compared to 7.5% of business owners in sectors with below-average ownership by people of color (Appendix A).[6]

C. Federal Relief for Small Businesses was Quick but Inequitable

[5] "Small Business Pulse Survey – May 31 to June 6," June 11, 2020. https://portal.census.gov/pulse/data/#data. The survey target population was all nonfarm, single nonfarm, single-location employer businesses with between 1-499 employees and receipts of $1,000 or more in the 50 states, District of Columbia, and Puerto Rico. Some industries were excluded, a complete list is provided in the survey methodology available at https://portal.census.gov/pulse/data/#methodology. The Small Business Pulse Survey The Small Business Pulse Survey may be subject to non-response bias, as businesses that have closed due to COVID-19 may not be receiving the invitation to participate and unable to respond.

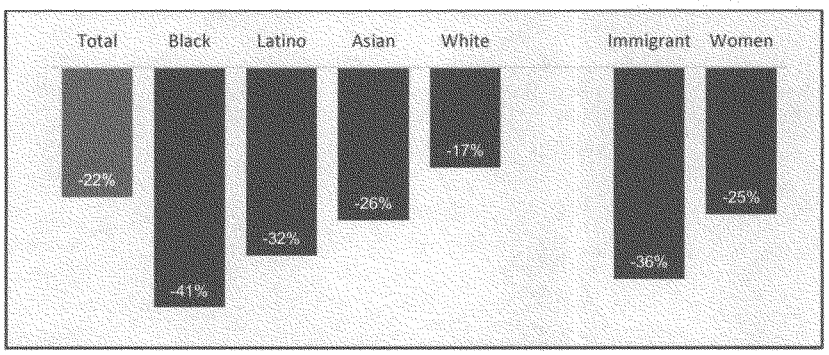
[6] See "Small Business Pulse Survey Questionnaire." Small Business Administration. Accessed June 14, 2020. https://www.census.gov/content/dam/Census/data/experimental-data-products/small-business-pulse-survey/small-business-pulse-survey-questionnaire.pdf.

One of the largest economic support components of the federal response to this pandemic has been the PPP, representing a $670 billion investment in small businesses which serve as the backbone to the American economy. According to the Small Business Administration (SBA), as of June 12, 2020, the program has dispersed 4.6 million loans totaling over more than $512 billion.[7] However, despite this substantial investment, it is clear that many small businesses have not been able to access this vital relief.

At the outset of the program and during the first round of funding from April 3 to April 16, 2020, it was clear that structural inequities were built-in to the administration of the program, the application process, and the fee structure. These structural inequities made it extremely difficult for small businesses—and particularly businesses owned by people of color--to qualify for assistance or receive it in time to save their businesses and the jobs of the employees that depend on them. The expected effects of these policies have already borne out.

Using data from the April 2020 Current Population Survey, recent research found that the number of active business owners in the United States decreased by 3.3 million or 22 percent from February to April 2020. This decline was the largest on record and spanned nearly all industries. Business owners of color, women-owned businesses, and business owned by immigrants were especially hard hit. Black and Latino business owners declined by 41% and 32%, respectively. Asian business owners dropped by 26%. Active white business owners, comparatively, declined by 17%. Immigrant business owners declined by 36%, and women business owners declined by 25%.[8]

Figure 2. Active businesses owners of color declined sharply since February



Source: Fairlie, Robert. "The Impact of Covid-19 on Small Business Owners: Evidence of Early-Stage Losses from the April 2020 Current Population Survey."

As businesses of color struggle to get the same access to federal relief dollars as white businesses, they are busy keeping their businesses alive just as businesses all across this country are doing. As Black

[7] "Paycheck Protection Program (PPP) Report Approvals through 06/12/2020." Small Business Administration. Accessed June 16, 2020. https://www.sba.gov/sites/default/files/2020-06/PPP_Report_20200612-508.pdf.

[8] Fairlie, Robert. "The Impact of Covid-19 on Small Business Owners: Evidence of Early-Stage Losses from the April 2020 Current Population Survey." Stanford Institute for Economic Policy Research, May 23, 2020. https://siepr.stanford.edu/research/publications/impact-covid-19-small-business-owners-evidence-early-stage-losses-april-2020.

businesses owners and other business owners of color innovate, re-organize, and work tirelessly to be successful, just as they have done despite years of marginalization, they will not have as much aid in their recovery as white-led businesses who benefitted from billions of dollars of relief. We must collectively work to ensure the entrepreneurial spirit of this nation's businesses owners is fully supported and that support does not fall along the same lines of historical discrimination for communities of color.

III. The structure and implementation of the Paycheck Protection Program continue to disadvantage to smaller businesses, including the self-employed. Businesses of color were more likely than White-owned businesses to be disadvantaged by the structural limitations built into the PPP program.

Several issues were baked into the structure of the PPP from its inception and launch. Minority-owned small businesses, already hardest hit by the pandemic, were also hardest hit by these structural limitations. To fully understand the impact of the inequities, it is imperative to have a full picture of the make-up of small businesses in this country and how ownership and success is directly tied to historic exclusionary policies and ongoing racial discrimination.

Businesses owned by people of color are likely to have fewer employees and less revenue than white-owned businesses. As a result, they were less likely to qualify for larger loans that would yield the higher fees that would make them a priority for lenders at the outset of the program. Businesses owned by people of color are even more likely to have no employees, putting them at an even greater disadvantage to larger businesses that could garner higher fees. Further, businesses of color have historically lacked access to SBA loans and credit generally, just as individuals and communities of color writ large. Thus, by creating a program that relied on traditional mainstream financial institutions as its intermediary, it effectively ensured that business owners of color were likely to face barriers in accessing critical PPP loans. Other exclusionary and administrative hurdles also resulted in long delays in the distribution of funding and small businesses and businesses owned by people of color had to wait to receive critical PPP loans to retain their employees and stabilize their businesses. These unnecessary delays amount to perilous pressures for the smallest of businesses and businesses of color in particular during a period of economic uncertainty coupled with very real dual public health emergencies of COVID-19 and racism.

A. The PPP fee structure heavily discourages small loans to smaller businesses and non-employer firms. Businesses owned by people of color are likely to have fewer employees, less revenue, and to lack a relationship with a commercial lender.

The PPP fee structure heavily incentivizes loans to larger firms that can garner higher fees. PPP loans are capped at 2.5 times average monthly payroll, resulting in smaller maximum loan amounts for very small businesses, businesses employing lower-wage workers, and non-employer businesses. Lenders earn an origination fee equal to 5% of the loan balance for loans under $350,000, 3% for loans between $350,000 and $2,000,000, and 1% for loans above $2,000,000. For a loan of $25,000, a lender would make just $1,250, while the $10 million loan given to Shake Shack and later returned, would have

garnered $100,000 in fees.[9] This fee structure created a powerful incentive to make larger loans to larger firms and put very small businesses, businesses in critical but lower-paid sectors, and non-employer businesses at a distinct disadvantage.

Businesses headed by people of color are less likely to have employees, have fewer employees when they do, and have less revenue compared to white-owned businesses. These disparities are the result of structural inequities resulting from less wealth compared with whites who were able to accumulate wealth with the support of public policies. White-owned businesses are twice as likely to be employers and hire 50% more employees than businesses owned by people of color.[10] This made businesses of color less likely to garner the higher lender fees that would make them attractive borrowers at the outset of the program.

In addition to the over 5.7 million businesses with fewer than 500 employees, there are over 26 million non-employer firms.[11] Though this was created as a payroll protection plan, two thirds (63%) of non-employers rely on their businesses as their primary source of income, and 20% of non-employers started their businesses because they lacked other options.[12] Non-employer businesses are far more likely to be owned by people of color. Nearly 95% of Black-owned firms were non-employers, and 91% of Latino-owned firms were non-employers. In comparison, 78% of white firms are non-employer businesses.[13] Of all small businesses, businesses without employees were the most likely to face challenges accessing PPP funds in the initial round.[14] Along with other very small businesses with few employees, the PPP fee structure continues to ensure that these businesses may face challenges finding lenders willing to make small, but critical loans.

B. **While access to PPP funding is heavily dependent on traditional financial institutions and prior banking relationships, business owners of color have historically lacked access to credit through these channels and are more likely to not have these relationships.**

To receive a PPP loan, applicants must apply with an eligible SBA-approved lender, almost all of which are conventional banks. While additional financial institutions were allowed to become PPP lenders, the process to approve these additional lenders took several weeks. By requiring applicants to go through an SBA-approved lender, rather than directly applying to the PPP program, the program ensured that those businesses with existing conventional lending relationships were more likely to access PPP funds quickly and efficiently, especially in a program where "speed" was the first priority.

There are profound disparities in how business owners fund their enterprises. Research from the Federal Reserve found that in the previous five years, 46% of white-owned businesses with employees accessed credit from a bank, and 6% accessed credit from a credit union. During that same time, just 23% of Black-owned employer firms accessed credit from a bank, and 8% from a credit union and 32% of

[9] "Shake Shack Will Return Its $10 Million Loan Amid Furor Over Stimulus Program - The New York Times." https://www.nytimes.com/2020/04/20/business/shake-shack-returning-loan-ppp-coronavirus.html.
[10] McManus, Michael. "Minority Business Ownership: Data from the 2012 Survey of Business Owners." US Small Business Administration, September 14, 2016. https://cdn.advocacy.sba.gov/wp-content/uploads/2016/09/07141514/Minority-Owned-Businesses-in-the-US.pdf.
[11] See U.S. Census Bureau 2018 Annual Business Survey (ABS) and 2018 Nonemployer Statistics (NES)
[12] "Small Business Credit Survey: Report on Nonemployer Firms." Washington, DC: Board of Governors of the Federal Reserve System, 2019. https://www.fedsmallbusiness.org/medialibrary/fedsmallbusiness/files/2019/sbcs-nonemployer-firms-report-19.pdf.
[13] McManus, 2016.
[14] The availability of Pandemic Unemployment Assistance does not solve the problem of lack of access to the PPP program, for many small businesses. While the PUA gives states the option to offer expanded unemployment assistance to self-employed business owners, it should not be considered a substitute for the critical lifeline provided to businesses through the PPP program, which replaces considerably more lost income.

Latino-owned employer firms accessed credit from a bank and 4% from a credit union.[15] Lacking access to credit can be harmful in the normal course of business, but these disparities also put them at a distinct disadvantage when accessing PPP funds through banks at a time when so many were already on precarious financial footing. In the period April 26 to May 2, the U.S. Census reported that 30.1% of businesses had less than two weeks of cash on hand for business operations and 48% had less than four weeks. While the cash on hand position for many businesses has improved as of the period May 31 to June 6, with 16% reporting two weeks or less, 33.9% of businesses still reported that they had four weeks or less of cash on hand.[16]

Relationship banking may have also played a role in lenders' application processing decisions, and thus pre-existing disparities in access to capital have posed further disadvantages for business owners of color. These disparities made it less likely that they would have the commercial lending relationships necessary to access the PPP program and discouraged many from applying. A recent study by the National Community Reinvestment Coalition found steep reductions in SBA 7(A) lending to Black businesses between 2008 and 2016. That same study also found that Black and Hispanic testers when applying for loans were required to produce more documentation to support their loan application and received less information about fees, and less friendly service when visiting a small business lender.[17] Additional research found that business owners of color are more likely than white business owners to feel discouraged from seeking loans.[18] Research from the Federal Reserve also found that business owners of color were more likely to rely on personal funds and personal credit scores to finance their business. Twenty-eight percent of Black and Asian owners and 29% of Latino owners relied on personal funds as the primary funding source for their business, compared to 16% of white business owners. Black and Latino business owners were also more likely to use their personal credit scores when obtaining financing with 52% and 51% doing so, respectively, compared to 45% of white and 43% of Asian business owners.[19] In addition, in SBA's fiscal years ending September 30, 2019 and 2018, for all SBA 7(a) loans made, only 5% were made to Black-owned businesses, and only 9% were made to Hispanic-owned businesses.[20]

C. SBA and Treasury failed to take steps to ensure businesses owned by people of color would be able to access the PPP. In fact, several administrative decisions actively prevented many owners of color from participating in the program.

Despite a Congressional requirement in the CARES Act, the SBA and Treasury failed to issue guidance to lenders about prioritizing borrowers in underserved and rural markets. A report by the SBA Inspector General did not find any evidence that the SBA issued guidance to lenders to ensure that they prioritized

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[15] "Small Business Credit Survey: Report on Employer Firms," 2020.
https://www.fedsmallbusiness.org/medialibrary/FedSmallBusiness/files/2020/2020-sbcs-employer-firms-report.
[16] "Small Business Pulse Survey, April 26 to May and May 31 to June 6. https://portal.census.gov/pulse/data/#data
[17] "Disinvestment, Discouragement and Inequity in Small Business Lending." National Community Reinvestment Coalition, 2019.
https://ncrc.org/wp-content/uploads/2019/09/NCRC-Small-Business-Research-FINAL.pdf.
[18] See McManus, 2016. ("Research also finds that minority business owners are more likely to feel discouraged from seeking private loans. In a Census survey, only 16% of nonminorities felt discouraged from seeking a loan, while almost 30% of minorities felt the same way. These, in combination with other reasons, may be why minority business owners have a heavier reliance on personal finances.") (citing Christine Kymn, January 2014, "Access to Capital for Women- and Minority-owned Businesses: Revisiting Key Variables." U.S. Small Business Administration, Office of Advocacy, available at https://www.sba.gov/sites/default/files/Issue%20Brief%203%20Access%20to%20Capital.pdf)
[19] "Small Business Credit Survey: Report on Minority-Owned Firms." Federal Reserve, 2019.
https://www.fedsmallbusiness.org/medialibrary/fedsmallbusiness/files/2019/20191211-ced-minority-owned-firms-report.pdf.
[20] "SBA Business Loan Approval Activity Comparisons for Fiscal Years 2012 to 2019, for the Period Ending 08-30-2019." Small Business Administration. Accessed June 16, 2020. https://www.sba.gov/sites/default/files/aboutsbaarticle/WebsiteReport_asof_20190830.pdf.

underserved markets, including rural, minority, and women-owned businesses.[21] As of today, SBA has announced that this guidance is "forthcoming."

The SBA and Treasury also did not collect demographic data on the initial application to determine if lenders prioritized, or even served, underserved markets and businesses. The SBA Inspector General noted that the SBA did not include the "optional standard demographic information for principals" on its PPP loan application form. As a result of this failure to collect data, the SBA Inspector General found that it was unlikely that the SBA would be able to determine whether funds reached underserved markets.[22] Without the data, it will also be hard to measure the full impact of the PPP and provide the necessary oversight of this $660 billion taxpayer funded lifeline.

More than just inaction, the unnecessary hurdles and delays created for non-employer firms disproportionately impacted businesses owned by people of color. For instance, non-employer businesses, which represent 95% of black-owned firms and 91% of Latino-owned firms, were forced to sit on the sidelines for days, while billions of dollars went to large and well-connected businesses. PPP rules prevented non-employer firms, such as the self-employed, from applying for loans until April 10, one week after the program opened to other businesses.[23] As of April 13, 2020, almost $250 billion of the initial $350 billion had already been allocated.[24] The first round of PPP funding was depleted entirely by April 16, 2020. This delay likely caused irreparable harm to smaller businesses with no employees, which had to wait to receive PPP funds more than 10 days for the second round to start.

Non-employer firms were also forced to provide tax documentation not required for employer firms. SBA guidance for the program requires non-employer firms that file their business taxes on IRS 1040 Schedule C (the most common option for non-employer firms) to submit a draft or filed copy of their 2019 IRS 1040 Schedule C. Although Congress extended the tax filing deadline to July 15th as a result of the COVID-19 crisis, non-employer firms were forced to prepare their 2019 taxes in order to be eligible for a PPP loan – incurring additional costs and delays to which employer firms were not subjected.

Second, though community development financial institutions (CDFIs) and minority-depository institutions (MDIs) have historically best-served businesses and communities of color, many CDFIs and MDIs were unable to participate in the first round of PPP funding. Non-depository institutions that have not had a loan volume of $50 million within the last three years were unable to serve as lenders during the first round, despite the fact that size of the loans needed for most small businesses does not require a loan volume capacity of anywhere close to that level. Almost half of CDFIs are loan funds that do not take deposits. Many of these CDFIs had loan volumes below $50 million but also demonstrated significant lending capacity.[25] Treasury did not revise this rule until April 30, 2020.[26] The revision, however, only lowered the volume threshold to $10 million. This threshold still excluded many CDFIs

[21] "Flash Report Small Business Administration's Implementation of the Paycheck Protection Program Requirements." Washington, DC: SBA Inspector General, May 8, 2020. https://www.sba.gov/sites/default/files/2020-05/SBA_OIG_Report_20-14_508.pdf.
[22] SBA Inspector General, 2020.
[23] "Small Business Paycheck Protection Program." US Department of Treasury. https://home.treasury.gov/system/files/136/PPP%20--%20Overview.pdf
[24] "Paycheck Protection Program (PPP) Report Approvals through 4/13/2020." Small Business Administration, April 13, 2020. https://www.sba.gov/sites/default/files/2020-04/PPP%20Report%20SBA%204.14.20%20%20-%20%20Read-Only.pdf.
[25] According to an analysis by the Hope Policy Institute of 2017 CDFI Fund Awardee reports (the most recent available), in 2017, there were 315 Awardees, 212 of which reported originating commercial loans during the year. Twenty-seven of those CDFIs (13%) did more than $50 million in commercial loan originations that year. However, 146 of CDFIs who did commercial lending (67%) did more than $1 million in commercial loan originations.
[26] https://home.treasury.gov/system/files/136/IFR--Corporate-Groups-and-Non-Bank-and-Non-Insured-Depository-Institution-Lenders.pdf

that had received CDFI Fund Awards. Further, recognizing that many financial institutions would need additional liquidity in order to serve as lenders through the PPP, on April 8, 2020, the Federal Reserve Board of Governors voted to create a lending facility for eligible PPP lenders.[27] The facility became operational on April 16. However, eligibility was limited to depository institutions. Many non-depository CDFIS also faced liquidity issues, yet the facility was not extended to all PPP lenders, including non-depository CDFIs (that met the other Treasury eligibility requirements) until April 30.[28]

The program also out-right excluded people based on many forms of criminal legal system involvement, including people who have been charged, but not tried or convicted of a crime. Given the myriad of barriers some system-involved individuals already face to employment, self-employment is a major source of income and opportunity, strengthening family incomes.[29] This program, however, excludes business owners with past felony convictions, penalizing those who have already served their sentences and have returned to their communities for a fresh start. Additionally, employees of these business owners also suffer from this restriction to access of the PPP program, given that system-involved individuals are not eligible. Racial disparities in all aspects of the criminal justice system are well-documented, and there is some evidence that this provision in the PPP has already negatively impacted business owners of color, their employees, and their communities.[30] While this particular barrier was effectively removed earlier this week, with only $100 billion and 2 weeks left in the program, it is unlikely that the businesses that have already been irreparably harmed by this exclusion will be made whole.

D. Second-round funding remains available and some improvements have been made, but structural issues remain that continue to limit PPP access for owners of the smallest businesses and business owners of color. The negative impact on business' long-term prospects may be difficult to reverse.

There is growing evidence that the structural barriers at the outset of the program and carried over to the second round resulted in either no access or delayed access to critical PPP funding.

At the end of the first round of funding on April 16, 2020, the average loan size was $206,000. Second round funding averaged $72,296 as of May 12, 2020[31] and the average loan size for both rounds of the program to date was $112,126 as of June 12, 2020.[32] Smaller businesses that were pushed to the end of the line by larger and more connected businesses at the outset of the program, however, were forced to go weeks without critical support to keep their employees on payroll and their businesses afloat.

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[27] https://www.federalreserve.gov/publications/files/paycheck-protection-program-lending-facility-4-16-20.pdf

[28] https://www.federalreserve.gov/newsevents/pressreleases/monetary20200430b.htm

[29] The program excludes businesses for which "An owner of 20 percent or more of the equity of the applicant is incarcerated, on probation, on parole; presently subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction; or has been convicted of a felony within the last five years; has been convicted of a felony within the last five years." SBA Business Loan Program Temporary Changes; Paycheck Protection Program, Interim Final Rule, 85 FR 20811, https://www.federalregister.gov/documents/2020/04/15/2020-07672/business-loan-program-temporary-changes-paycheck-protection-program

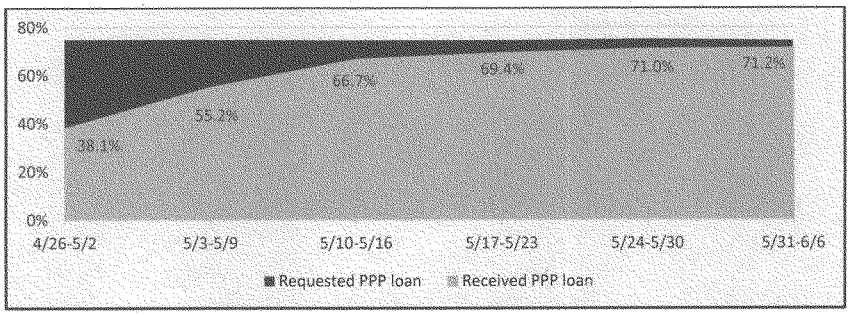
[30] Brooks, Khristopher. "A Criminal Past Means No Paycheck Protection Program Loan." *CBS News*, April 21, 2020. https://www.cbsnews.com/news/paycheck-protection-program-loans-small-business-owners-criminal-convictions-excluded-coronavirus/.

[31] See "Paycheck Protection Program (PPP) Report Approvals through 12 PM EST 4/16/2020." Small Business Association: 4/16/2020, "Paycheck Protection Program (PPP) Report: Second Round Approvals from 4/27/2020 through 05/01/2020." Small Business Administration, 2020. https://home.treasury.gov/system/files/136/PPP2-Data-05012020.pdf and "Summary of Paycheck Protection Program Round 2 Data as of 5:00 P.m. EDT, Wednesday, May 6, 2020." Small Business Administration. https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program#section-header-11.

[32] "Paycheck Protection Program (PPP) Report Approvals through 05/30/2020." Small Business Administration, May 30, 2020. https://www.sba.gov/sites/default/files/2020-06/PPP_Report_200530-508.pdf.

The U.S. Census Small Business Pulse Survey, a weekly survey of small businesses with 500 or fewer employees in certain sectors, provides some insight into the early delays small businesses faced accessing PPP funds.[33] Businesses with no other employees other than the owner are not included and no information on the race, ethnicity, gender or veteran status of the business owner is available. Since late April, approximately 75% of small businesses with 500 or fewer employees responded that they had requested funds from the PPP program. As of the first week of the survey, which follows the end of the first round and the beginning of the second round of PPP funding, only 38.1% of businesses responded that they had received funding. Two weeks later, 66.7% of businesses responded that they had received funding. Not until a month after the beginning of the survey did the received rate begin to track the application rate (Figure 4).

Figure 4. Business owners faced long delays at the outset of the program



Source: U.S. Census Small Business Pulse Survey weekly data 4/26 to 6/6.

In May 2020, Color of Change and UnidosUS released a survey conducted by Global Strategy Group, documenting the challenges that Black and Latino business owners faced when attempting to access PPP loans.[34] The survey found that 51% of Black and Latino small business owners who sought assistance applied for less than $20,000, with only 12% responding that they received the full amount of assistance requested. In all 41% of Black and Latino business owners responded that they had been denied assistance. As of the date the survey was fielded, 21% indicated that they were still waiting to hear if they will receive any assistance. As discussed in the prior section, PPP applicants faced long delays at the outset of the program. Of the Black and Latino business owners who received either partial or full assistance, 45% responded that they had to wait more than two weeks to receive their funds.[35]

[33] For details on the survey methodology, see United States Census Bureau. "Small Business Pulse Survey Data - About the Data." Accessed June 14, 2020. https://portal.census.gov/pulse/data/#about

[34] Global Strategy Group conducted a national online survey of 500 Black and Latinx small business owners, 609 Black workers, and 610 Latinx workers, from April 30 through May 11, 2020 on behalf of Color of Change and UnidosUS. The precision of online surveys is measured using a credibility interval. In the case of the surveyed population of Black and Latinx small business owners the interval is +/-4.4% when analyzed in aggregate. Complete findings are available at https://colorofchange.org/press_release/first-covid-19-survey-of-black-and-latino-small-business-owners-reveals-dire-economic-future/ and https://colorofchange.org/press_release/first-covid-19-survey-of-black-and-latino-small-business-owners-reveals-dire-economic-future/.

[35] Global Strategy Group

This same survey also found that 56% Black and Latino business owners said that they strongly support direct federal assistance to prevent mass layoffs and keep them afloat so they can quickly and safely restart and rehire their workers.[36]

In a survey conducted by Goldman Sachs of more than 1,700 small business owners, Black-owned firms were less likely to apply for and less likely to be approved for PPP during the first round of funding. While 91% of all firms in the survey applied for funding, just 79% of Black-owned firms applied. Of those that applied, just 40% of black-owned firms were approved for funding, while 52% of total firms were approved. Black-owned firms were more likely to indicate that their finances had been hurt and that they had less than one month's cash reserves on hand.[37] Even these disparities in application and approval are likely understated. The study was based on a convenience sample of firms participating in the Goldman Sachs *10,000 Small Businesses Program*, suggesting these firms may have advantages and connections not readily available to most small businesses.

While funding is still available in round two, the lost opportunity for prompt relief may have compounded financial hardship for many businesses and may increase the amount of assistance required to get them back on their feet. Given that the number of business owners of color has declined sharply since the beginning of the crisis, falling on communities hardest hit by the Great Recession that have yet to fully recover.

Ensuring these firms were fully supported at the outset of the crisis should have been a top priority. Among non-employers, those firms with no employees besides the owner, 71% have plans to expand, and one in four (24%) plan to hire employees in the next 12 months.[38] According to the SBA, the number of non-employer firms increased 58% between 1997 and 2015 and owners of non-employer firms are younger and more diverse than employer firms.[39] Barring them from funds at the outset of the program may have imposed additional long-term challenges to economic growth, future hiring, and entrepreneurship opportunities for some firms. These harms should be considered in assessing the extent of necessary further relief.

IV. <u>The loan forgiveness requirements present substantial challenges to small businesses whose survival depends on PPP loan forgiveness rather than conversion to long-term debt.</u>

PPP loans are, of course, intended to be forgivable if the proceeds are used for payroll and other eligible expenses. But for those micro-businesses that were fortunate enough to obtain a PPP loan, the process they must go through to obtain forgiveness is so complex and time-consuming, it may strain those businesses to the breaking point. And for the lenders who made these loans, the process they must go through before submitting the forgiveness application will cost far more than the origination fees they received.

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[36] Global Strategy Group

[37] "Survey: US Small Business Owners Need More Funding and Immediate Legislative Action." Goldman Sachs, 2020. https://www.goldmansachs.com/citizenship/10000-small-businesses/US/infographic-small-business-relief/.

[38] "Small Business Credit Survey: Report on Nonemployer Firms." Washington, DC: Board of Governors of the Federal Reserve System, 2019. https://www.fedsmallbusiness.org/medialibrary/fedsmallbusiness/files/2019/sbcs-nonemployer-firms-report-19.pdf.

[39] "A Look at Nonemployer Businesses." Small Business Administration, August 2018. https://www.sba.gov/sites/default/files/advocacy/Nonemployer-Fact-Sheet.pdf.

A. The forgiveness application is unnecessarily burdensome and complicated, especially for the smallest businesses.

The loan forgiveness application process is set forth in an eleven-page packet of instructions and forms issued by the SBA "in consultation with" the Treasury Department. The forms require borrowers, among other things, to calculate the amount paid to each employee during the "Covered Period" or the "Alternative Payroll Covered Period," and, for each employee who also was employed during the first calendar quarter of 2020, the amount paid during that period. The borrower also must calculate the average number of full-time equivalent employees during the Covered Period or Alternative Payroll Covered Period and during the "chosen reference period," which can be either the period from February 15 to June 30, 2019, or the period from January 1 to February 29, 2020. In the case of seasonal employees, it can be any consecutive twelve-week period between May 1, 2019, and September 15, 2019. As to all of this, the borrower must certify – under penalty of what amounts to perjury and threat of civil and criminal penalties including significant fees and jail time – that the borrower has accurately verified the amounts claimed and made all applicable reductions.

Further, the borrower must submit with a loan forgiveness application documentation verifying the amount paid to each employee during the Covered Period or Alternative Payroll Covered Period, and the amount paid for non-cash benefit payments, including bank statement or payroll service provider reports; tax forms or equivalent reports; and payment receipts, canceled checks, or account statements documenting contributions for health insurance and retirement plans. Borrowers seeking forgiveness for amounts spent on mortgage or rent must submit additional documentation. Documentation requirements for mortgage payments must show the amount of the payments attributable to interest separate from principal, and rental payment documentation must show the amount of rent that was due under the lease and the amount that was paid. Borrowers seeking forgiveness for amounts spent on utilities must submit invoices and receipts or canceled checks verifying those payments. When submitting the application, the borrower must certify – again under penalty of what amounts to perjury -- that it has submitted all the required documentation.

Additionally, the instructions list four other categories for which the borrower must maintain documents for six years, including documentation supporting the listing of each individual employee in PPP Schedule A Worksheet Table 1 and Table 2.

These complex instructions were issued on May 15, 2020. Three weeks later, Congress enacted changes to the PPP, which created welcome exceptions to some of the provisions of the CARES Act governing the calculation of loan forgiveness. However, those exceptions will only add to the complexity of the application process. Borrowers may now be required to submit – in addition to all the other documentation requirements – documents verifying efforts to recall or replace laid-off employees or verifying the business' inability to return to its prior level of business activity for reasons related to worker or customer safety requirements related to COVID-19. While these are welcome exceptions, in all likelihood, the eleven-page application package will soon grow even bigger and more complex.

Despite SBA's estimate that the complex, eleven-page form should take 3 hours to complete, recent research by AQN Strategies estimates that the time necessary to complete the forgiveness form ranges from 20 hours to 100 hours at the high end.[40] For large businesses with well-staffed human resources

[40] Sabloff, Ben, Jason Ford, and Gaby Garcia. "Is It Easier to Ask for Forgiveness Than Permission? Not for PPP Loans Under $150K." AQN Strategies, June 1, 2020. https://bpi.com/wp-content/uploads/2020/06/CBA-BPI-Letter-Forgiveness-Proposal-6.2.20.pdf.

and finance functions, these requirements, while burdensome, would not be prohibitively difficult. But for the small businesses the PPP was designed to serve – and especially for micro-businesses with a handful of employees – it is simply not realistic to expect the business to do all these calculations and assemble all the required papers while still attempting to operate their business in a challenging business environment. Combined, the complexity of the form and the related civil and criminal penalties for inaccuracies are tantamount to a requirement that these small firms pay significant fees to accountants or financial advisors to assist in completing their forgiveness application – funds these businesses need instead for their ongoing operations. Moreover, businesses that might otherwise have applied for PPP loans in round two have been discouraged from doing so because of the gauntlet of paperwork they would have to navigate to obtain forgiveness.

B. Lenders who well serve small businesses will also be burdened by unduly application and documentation requirements for small loans.

For the lenders who made these loans, the burden is equally crushing. The SBA has issued an Interim Final Rule which requires lenders to review each borrower's forgiveness application and "Confirm receipt of the documentation borrowers must submit ... as specified in the Loan Forgiveness Application Form," and, after "reviewing the documentation," "Confirm the borrower's calculations on the Loan Forgiveness Application, including the dollar amount ... claimed on Lines 1,4,6,7,8 and 9 on PPP Schedule A and ... on Lines 2, 3, and 4 on the PPP Calculation Form." The regulation allows for "minimal review of calculations based on a payroll report by a recognized third-party payroll processor." But where the borrower is not big enough to use such a processor – which will be true for the smallest of the businesses which obtained PPP loans -- "more extensive review of calculations and data would be appropriate." Based on all this, the lender must decide whether "the borrower is entitled to forgiveness of some or all of the amount applied for under the statute and applicable regulations."[41]

Simply to state these requirements is to make plain the problem. Perhaps for those lenders whose average PPP loan exceeded $200,000 – and who thus were paid, on average, $10,000 per loan – it is economically feasible to undertake this kind of review. However, the regulations will surely discourage even those lenders from making smaller loans going forward. But for the PPP lenders who have been making loans averaging $50,000 or less – most of whom are themselves small businesses with limited staff and who averaged only $2,500 or so per loan – processing these loan forgiveness applications will be prohibitively difficult. Without changes to the forgiveness process and requirements, many lenders will likely conclude that they cannot afford to continue in the program.

C. Despite Congressional intent, some borrowers will also have their forgiveness amount reduced due to receipt of an EIDL Advance.

It was the intention of this Congress when it drafted the CARES Act to expedite the delivery of EIDL loan proceeds by providing advances of up to $10,000 in the form of grants to loan applicants. The EIDL advance was meant to be received within days, but the actual execution took much longer. If the Small Business Administration ultimately approved the EIDL loan, then the lender would enter a loan agreement with the borrower and release the remaining loan amount if it exceeded $10,000. As a grant, the $10,000 advance portion was not meant to be repaid even if the SBA ultimately denied the EIDL loan. SBA reference materials have consistently said that EIDL advances did not need to be repaid, and

[41] 85 Fed. Register 33010, 33013 (June 1, 2020).

many borrowers entered into these agreements with that expectation. Borrowers deserve better than a bait and switch in emergency assistance.

Further, the CARES Act clearly permitted borrowers to seek both an EIDL and a PPP loan. If the EIDL loan were utilized for payroll, it was required to be refinanced into its PPP loan. Since the entire amount could then be forgiven as a PPP loan, the PPP forgiveness amount would be reduced by any EIDL advance. Should the borrower choose to use its EIDL for other purposes, it would not have to refinance its EIDL into the PPP loan. In that case especially, reducing PPP forgiveness by the amount of an EIDL advance used for other business purposes creates an unfair disadvantage for businesses that permissibly obtained emergency loans to help them survive. However, even in the case of an EIDL grant used for payroll expenses there is little justification for decreasing PPP forgiveness by the EIDL amount. If these funds were used according to the express purpose of the program, there should not be a penalty for seeking support that was available quicker and with fewer hurdles for some borrowers.

To date, we have seen numerous cases of PPP loans that should be considered for full forgiveness as they were spent on eligible expenses. Instead, PPP borrowers will be saddled with repaying their EIDL advances in 2-5 years, instead of receiving the advance as the promised grant.

V. Improvements to the Paycheck Protection Program are necessary for more businesses to access to relief and recover.

To date, SBA has already spent more through the PPP program than through all of its lending over the past three decades. As one of the largest government small business programs ever and a key component of the federal government's pandemic relief program, it is imperative that the funding and benefits are distributed equitably and that communities are not left out of our relief and recovery going forward. Several key fixes are critically important for ensuring that the smallest and most vulnerable businesses, including those owned by people of color, have sufficient access to PPP funding and forgiveness. To address these issues, we recommend the following:

A. Ensure remaining funding reaches businesses that were previously unable to access the PPP.

- **Congress should immediately extend the origination period and separate the PPP from other SBA 7(a) programs.** Over $100 billion remains in the second PPP allocation. Congress should ensure that these funds are available for PPP loans to new borrowers until they are exhausted. Currently, the PPP is set to expire at the end of this month whether or not funds remain.

- **Institute a minimum origination fee of the lesser of $2,500 or 50% of the loan amount.** A minimum fee is required to address the higher cost of reaching and serving underserved borrowers and to incentivize more lenders to serve smaller businesses.

- **Provide adequate support and resources for community development financial institutions (CDFIs) and minority-depository institutions (MDIs) (not to include bank-affiliated CDFIs).** Reserve $10 billion of the remaining PPP small business loan funding for loans by CDFIs and MDIs of which $5 billion should be[?] reserved for loans of up to $75,000. Congress should also make a $1 billion emergency allocation to the CDFI Fund. Though Treasury recently created a set-aside for CDFIs, it did not include MDIs and the allocation only included $7 billion in new funding.

The changes made between Round 1 and Round 2 of the PPP somewhat increased CDFIs' and MDIs' access to deploying PPP funds. For example, since May 8, CDFI lending more doubled, and as of June 12, MDI lending exceeds $10 billion.[42] Minority-led financial institutions in particular are "uniquely positioned to cater to the needs of their communities, which are often people of color."[43] These institutions "have significant social capital within the communities they serve. Through close ties and engagement, they are able to develop and deploy financial products that address the needs of their communities."[44] The nation's largest MDI decided to become a PPP lender in Round 2 because of the extent to which Black businesses were locked out of access in Round 1.[45] This is promising evidence of their capacity to supporting the survival and growth of small businesses of color. It is not, however, enough to fully address the reality of businesses of color being locked out by program design and the exclusionary way in which banks deployed the overwhelming majority of the PPP dollars. Now and in the future, more support will be needed to ensure CDFIs, particularly minority-led CDFIs, and MDIs have sufficient resources to adequately meet the depths of the needs of small businesses of color harmed by this crisis and unserved by the federal relief dollars that have flowed from it.

- **Require SBA and Treasury to immediately issue guidance to lenders on prioritizing underserved markets and businesses with fewer than ten employees located in low- and moderate-income census tracts.**

- **Expand the list of eligible expenses that can be used to determine loan amount and forgiveness.** Include necessary ongoing business costs, such as business insurance, inventory, costs associated with vehicles and equipment (loan payments, insurance, maintenance), costs needed to adapt to the pandemic, including safety equipment, retrofitting spaces, and payments to IRS Form 1099 independent contractors, on whom small businesses rely.

- **Revise existing guidance that prohibits businesses from including documented IRS Form 1099 payments to independent contractors in their PPP loan amount calculations and forgiveness requests.** By requiring independent contractors to apply for their own, necessarily smaller, PPP loans, SBA has made it less likely that independent contractors will receive funding[?], and less likely that the small businesses that rely on independent contractors will be able to continue to operate.

- **Allocate funding for outreach and enrollment assistance:** $30 million in funding for grants to Community Development Corporations and community-based organizations for outreach, enrollment assistance, and technical support for compliance and loan forgiveness, for eligible businesses. Many of the eligible borrowers that have not yet accessed the PPP do not have a "preferred" banking relationship or lawyers and accountants to assist them in

[42] "Paycheck Protection Program (PPP) Report Approvals through 06/12/2020." Small Business Administration. Accessed June 16, 2020. https://www.sba.gov/sites/default/files/2020-06/PPP_Report_20200612-508.pdf.
[43] Kiyadh Burt, Hope Policy Institute, Closing the CDFI Asset Gap, http://hopepolicy.org/blog/closing-the-cdfi-asset-gap/
[44] Id.
[45] 'That was it—silence': As bailout funds evaporate, minority-owned businesses say they've been shut out, https://www.fastcompany.com/90498767/that-was-it-silence-as-bailout-funds-evaporate-minority-owned-businesses-say-theyve-been-shut-out ("Due to the minority underbanking crisis, especially since African-American and Hispanic communities have been hardest hit by the coronavirus, Williams says that her bank decided over the weekend to participate as a lender in the second round of the program").

understanding the program. The time and resources needed to reach out to underserved businesses and support them through the application and loan forgiveness process will be significantly greater than for larger businesses. To expand their reach, many CDFI and MDI lenders are engaging non-profit "agents," including community-based organizations, that have experience working with underserved borrowers, and particularly those that provide culturally and linguistically relevant services to business owners of color.

B. **Provide automatic forgiveness with safe harbor treatment for any loan under $100,000 based on a simple certification from the business owner.** Although CRL believes that SBA has the discretion to reduce the burden imposed by its loan application forgiveness requirements, we also believe that a full solution requires Congressional action. Specifically, we urge Congress to enact a streamlined set of forgiveness requirements for loans under 100,000 and, for such loans, a safe harbor which permits lenders to rely on borrowers' certification without having to review and confirm borrower calculations. To receive forgiveness on a loan, a borrower need only submit a simple form including demographic information, a statement of the total amount spent on payroll and the total amount spent on eligible non-payroll expenses with a cap on the latter relative to the former, and an attestation that the information is true to the best of the applicant's knowledge. In addition, now that the covered period for expenses is 24 weeks, Congress, SBA and Treasury should also ensure that borrowers are able to apply for forgiveness as soon as they have exhausted the funding.

As of May 30, 79.2% of PPP loans originated were for amounts of less than $100,000, representing 19.6% of the total dollars lent.[46] The average loan size was $114,000. The smallest PPP loans are being provided to microbusinesses and sole proprietors that have the least capacity and resources to engage in a complex process with their financial institution and the SBA and that should not be saddled with debt or ongoing audit risk as a result of participating in the PPP program. Applying automatic PPP loan forgiveness for loans of $100,000 or less would likely exempt firms with, on average, 13 or fewer employees and save 71 million hours of small business staff time (Figure 5). Based on the average monthly payroll per employee of $3,108 for smaller firms (1-9 employees) and the PPP application formula, a firm that qualified for a $100,000 loan would likely have a monthly payroll of $40,000 supporting, on average 13 employees.[47] Firms with 1 to 9 employees make up 68% of total businesses with employees, and firms with 1-19 employees make up 78% of total businesses with employees.[48]

[46] "Paycheck Protection Program (PPP) Report Approvals through 05/23/2020." Small Business Administration, May 23, 2020. https://www.sba.gov/sites/default/files/2020-05/PPP__200523.pdf.

[47] Annual Business Survey: Employment Size of Firm Statistics for Employer Firms by Sector, Sex, Ethnicity, Race, and Veteran Status for the U.S., States and Metro Areas: 2017. Estimated monthly payroll represents the total PPP loan amount divided by 2.5. Average payroll of $37,299 annually per employee is based on the total payroll for all firms with 1-9 employees divided by the total number of employees for all firms with 1-9 employees. Using the same method, the next employee category of 1 to 19 employees results in an annual average payroll per employee of $37,944 or $3,162 per month. Firms reporting payroll but no employees in the pay period that included March 12 of the reference year were excluded to determine the annual and monthly payroll per employee. For more information on the Annual Business Survey see https://www.census.gov/programs-surveys/abs/about.html.

[48] 2017 Annual Business Survey.

Figure 5. Automatic loan forgiveness for small loans would benefit small firms and save millions of hours of labor

	$100,000 or less	$350,000 or less
PPP loans as of May 30[49]		
Count	3,544,335 (79.2%)	4,196,555 (93.8%)
Dollars lent	$100,003,285,235 (19.6%)	$217,574,329,726 (42.6%)
Number of employees based on average payroll per employee[50]	13 (based on average payroll per employee for firms with 1-9 employees)	42 (based on average payroll per employee for firms with 20-49 employees)
Percent of total employer firms[51]	~68 to 78% of employer firms	~86% of employer firms
Hours of labor saved[52]	71 million hours	84 million hours

C. **Expressly permit lender and SBA reliance on good faith borrower certification –** For PPP loans under $2,000,000, borrowers should submit a forgiveness application and basic documentation. The application should include a good faith certification that all PPP funds have been used on eligible expenses and per the statutory guidelines. It must be made clear that lenders submitting forgiveness applications on behalf of borrowers to SBA may rely on the borrower's certification, absent outside evidence of fraud, as sufficient to establish the borrower's eligibility for forgiveness without lender review and re-calculation of the forgiveness amount, and the amount of forgiveness to which the borrower is entitled shall be based on such borrower certification. The SBA, likewise, may rely on all information submitted by the lenders for these loans absent outside evidence of fraud. Without the ability to rely on these certifications, borrowers will still be subject to extensive documentation requirements and costs for the lender to review, whether or not that documentation must then be sent to the SBA.

[49] "Paycheck Protection Program (PPP) Report Approvals through 05/30/2020." Small Business Administration, May 30, 2020. https://www.sba.gov/sites/default/files/2020-06/PPP_Report_200530-508.pdf.

[50] Annual Business Survey: Employment Size of Firm Statistics for Employer Firms by Sector, Sex, Ethnicity, Race, and Veteran Status for the U.S., States and Metro Areas: 2017. Estimated monthly payroll represents the total PPP loan amount divided by 2.5. Average payroll of $37,299 annually per employee is based on the total payroll for all firms with 1-9 employees divided by the total number of employees for all firms with 1-9 employees. Using the same method, the next employee category of 1 to 19 employees results in an annual average payroll per employee of $37,944 or $3,162 per month and the annual average payroll for firms of 20-49 employees is $40,796 or $3,400 per month. Firms reporting payroll but no employees in the pay period that included March 12 of the reference year were excluded to determine the annual and monthly payroll per employee. For more information on the Annual Business Survey see https://www.census.gov/programs-surveys/abs/about.html.

[51] Percent of total employer firms exempted under each automatic loan forgiveness threshold based on the number of employer firms with 1-9, 1-19, or 1-49 employees. Based on the maximum per employee payroll eligible for PPP payroll calculations, it is likely that non-employer firms that received PPP funds would be included as well.

[52] Based on the estimate of 20 hours saved per loan subject to automatic loan forgiveness. See Sabloff, Ben, Jason Ford, and Gaby Garcia. "Is It Easier to Ask for Forgiveness Than Permission? Not for PPP Loans Under $150K." AQN Strategies, June 1, 2020. https://bpi.com/wp-content/uploads/2020/06/CBA-BPI-Letter-Forgiveness-Proposal-6.2.20.pdf.

D. **Require all lenders who receive support from any federal lending facility or program to offer technical assistance to small and micro businesses.** To date, the federal government has provided billions of dollars in relief and incentives to financial institutions and large corporate entities. These companies can and should play a critical role in supporting small businesses and the economy.

E. **Implement and require a robust data collection and public reporting process for all PPP loans.** SBA should collect and report demographic information on race, national origin, and gender of principal owners of each applicant and each approved loan, and require SBA to publicly release data on applications and approvals by race, national origin, and gender by lender. As reported by the SBA Inspector General in its Flash Report of May 8, 2020, the SBA has not implemented the program in a way that aligns with the provisions of the CARES Act. The report specifically identified four areas that need strengthening: prioritizing underserved and rural markets, providing clear guidance for forgiveness, providing guidance on loan deferments, and establishing a registry of loans. Transparency is essential to this program, and true transparency and impact can only be determined if data is collected and analyzed. Data tells the American public which businesses are being served with public dollars. Businesses of color deserve their fair share. We estimated that more than 90% of businesses of color were unlikely to access the original $349 billion. Further, SBA loan programs, in general have a poor track record of serving Black and Latino businesses in particular.[53]

F. **Ensure robust data collection on small business lending going forward.** Even before the transparency issues with this massive influx of government support, the dearth of data on small business lending has been a major obstacle for ensuring equity for decades. The limited data masks the lack of equitable investment of taxpayer-supported funds and access to business capital for communities of color and those in rural markets. In fact, in addition to data collection being one of the much-needed improvements to the PPP program, robust data collection is also needed for existing laws enacted to incentivize community investment and job creation through access to business capital. Without publicly available data, it is difficult to prove or disprove, or adequately address, inequities in small business lending.

   The Community Reinvestment Act (CRA), enacted in 1977 to encourage federally regulated depository institutions to meet the credit needs of all families and communities, mandates some small business data disclosure, but CRA data only provides the aggregate dollar volume of loans originated to businesses with revenues less than $1 million, not individual loan amount or type of loan, and is only required from institutions with assets over $1.2 billion (as of 2019).[54] In fact, ten years ago, Congress took steps to address this issue through Section 1071 of The Wall Street Reform and Consumer Protection Act, requiring much more comprehensive data collection for small business loans. However, Section 1071 has yet to be implemented by the Consumer Financial Protection Bureau. Congress should urge an immediate rulemaking under Section 1071 of Dodd-Frank for the overall business lending market.

   A recently released Office of the Comptroller of the Currency final rule took steps to weaken the effectiveness of the Community Reinvestment Act and its ability to encourage lending in low-

[53] In FY2019, SBA 7a program approvals were 6.3% Hispanic and 3.3% African American. https://fas.org/sgp/crs/misc/R41146.pdf
[54] "Disinvestment, Discouragement and Inequity in Small Business Lending." National Community Reinvestment Coalition, 2019. https://ncrc.org/wp-content/uploads/2019/09/NCRC-Small-Business-Research-FINAL.pdf.

and moderate-income communities and to small business owners and did not sufficiently improve the disclosure of small business data. The final rule will not require the collection of data on race and ethnicity.

VI. Conclusion: Congress, Treasury and the SBA must ensure all small businesses owners can participate in the coming economic recovery.

During this major economic and public health disruption, we must take care not to continue a legacy of discrimination and harmful outcomes laid upon communities of color, who are already suffering disproportionate health effects from COVID-19. The Great Recession drained communities of color of a trillion dollars of wealth that they have yet to recover and now these same communities are experiencing the brunt of this pandemic, including higher levels of lives lost, illnesses, and job losses. Despite this, there is already overwhelming evidence that one of the largest COVID-19 relief programs has excluded businesses of color and exacerbated the underlying racial wealth gap.

To ameliorate some of this damage, at a minimum, we must ensure that those excluded are more easily able to access the remaining PPP funds; that the loan forgiveness process is not overly burdensome; and that data on recipients of PPP loans is collected and made available.

In a time of economic uncertainty, as we continue to reckon with our nation's history and racial injustice permeates every facet of our society, we should be taking every step to ensure that individuals and communities of color are well served and supported going forward.

While the above fixes are necessary to ensure that at least some relief reaches communities of color, much more will be needed. Bold new policies and programs are needed to create equity in small business lending and ensure that business owners have access to the credit and relief they deserve. We also must move towards solutions that are not reliant on credit and financial intermediaries, such as providing grant funding for micro businesses. These grants could be distributed monthly directly by the IRS, SBA or FEMA, in an amount sufficient to cover payroll and other expenses until the business is able to reopen and return to normal or similar operations. There must also be dedicated efforts and targeted help for underserved communities to curb the effects of this pandemic on income and wealth inequality. The current wealth and public health disparities did not occur by happenstance. We cannot allow federal policies and investments to continue the centuries old practice of excluding people of color.

Appendix A. Industry sectors with above-average small business ownership by people of color hard hit by the crisis

Industry Sector	Percent of small businesses majority-owned by people of color	Crisis has had a large negative effect	I do not believe this business will return to its normal level of operations relative to one year ago
Accommodation and food service	34.4%	73.7%	19.2%
Other services (except Public administration)	23.2%	52.6%	14.5%
Health care and social assistance	22.5%	55.7%	10.8%
Retail trade	22.4%	39.8%	9.6%
Transportation and warehousing	19.4%	42.5%	11.6%
Wholesale trade	18.1%	40.5%	8.8%
Firms with <500 employees, all sectors	**17.6%**	**41.3%**	**10.1%**
Administrative and support and waste management and remediation services	15.3%	35.0%	8.3%
Professional, scientific, and technical services	14.0%	28.1%	7.6%
Educational services	12.8%	58.9%	14.3%
Information	12.0%	38.0%	8.3%
Construction	10.8%	20.6%	6.3%
Finance and insurance	10.5%	18.2%	6.1%
Real estate and rental	10.0%	37.0%	8.1%
Manufacturing	9.8%	37.1%	7.3%
Arts, entertainment, and recreation	7.0%	71.7%	14.1%
Mining, quarrying, and oil/gas extraction	4.3%	44.3%	9.9%
Management of companies and enterprises	4.0%	17.8%	0.0%
Utilities	3.1%	4.7%	0.0%
Above average concentration of small business owners of color		**50.8%**	**12.4%**
Below average concentration of small business owners of color		**34.3%**	**7.5%**

Source: 2018 Annual Business Survey (ABS) and U.S. Census Small Business Pulse Survey (SBPS). Responses to SBPS questions: "Overall, how has this business been affected by the COVID-19 pandemic?" and "In your opinion, how much time do you think will pass before this business returns to its normal level of operations relative to one year ago?" NAICS industry codes from the Annual Business Survey are included where U.S. Census SBPS data is available. Percent majority ownership by people of color determined based on all sectors available in the ABS for businesses with fewer than 500 employees. Majority ownership by people of color determined using the ABS minority ownership status defined as firms classified as any race and ethnicity combination other than non-Hispanic and white. Technical documentation is available at https://www.census.gov/programs-surveys/abs/technical-documentation/methodology0.html.

Appendix B. Business owners describe their experience with the Paycheck Protection Program

1. Rahama Wright, a business owner in Washington, DC, was preparing to shut Shea Yeleen, her beauty supply business down, when she failed to get a PPP loan in the first round. She furloughed her entire staff of five, before finally receiving a loan in the second round. "I 100% feel like I got lucky," Wright said, who estimates the funding will give her a three to four month runout and allow her to bring back three of her staff members. Her storefront will remain closed as she boosts her online presence.[55]

2. Calvin Stevens, President of Bernard Irby Electric in Charlotte, North Carolina says the PPP loan received by Irby, a Black veteran-owned business, will allow him to maintain the entire staff of 30 employees.[56]

3. Bernard Loyd, a native of Chicago, Illinois's Bronzeville neighborhood, attributes the success of his community economic development organization Urban Juncture in receiving a PPP loan to his financial services background, and points out that many Black-owned enterprises in Chicago haven't been as lucky: he estimates that of the community businesses he's worked with, 90% were unable to access the first round of PPP loans.[57]

4. Pastors and clergy across America have also been finding mixed success through the PPP process: "We applied when the program first became public, but we did not receive any funding," said Rev. James Perkins, the pastor of Greater Christ Baptist Church, in Detroit, Michigan. Perkins was forced to lay off most of his nine church employees, and he has asked the remaining staff to take salary cuts. When the process has been successful, it has been extremely helpful: "It's a huge boon for us," said Father Carl Beekman, parish priest at the Church of St. Mary, which serves about 1,300 families in Sycamore, Illinois.[58]

5. Claudia Garza owns Bright and Early Productions in Dallas, Texas with her husband. The company, a photography and videography company, serves the real estate industry. To keep safe from COVID-19 they are currently only photographing unoccupied homes. The business has suffered as a result and had to reduce their employees' hours. Claudia Garza described struggling to get their bank, Wells Fargo, on the phone, and then when she did, she was not satisfied. "It feels like I'm a small fish... maybe they have people who have larger accounts or maybe contacts within the bank. They got the help a lot faster than I did. I don't have contacts at Wells Fargo," she said.[59]

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[55] Presha, Alex. ABC News. "DC small business owner struggling to get PPP funds during coronavirus crisis", accessible at https://abcnews.go.com/Business/dc-small-business-owner-struggling-ppp-funds-oronavirus/story?id=70842196.
[56] Triangle Business Journal. "Opinion: How PPP helped minority-owned firms across the nation", accessible at https://www.bizjournals.com/triangle/news/2020/06/05/how-ppp-helped-minority-owned-businesses.html.
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[58] Gjelten, Tom. National Public Radio. "Black Pastors Say They Have Trouble Accessing SBA Loan Program", accessible at https://www.npr.org/2020/04/25/844802957/black-pastors-say-they-have-trouble-accessing-sba-loan-program
[59] Flahive, Paul. Texas Public Radio. "Latino Businesses Not Receiving 'Fair Share' Of Federal Relief, Say Advocates", accessible at https://www.keranews.org/post/latino-businesses-not-receiving-fair-share-federal-relief-say-advocates

6. Rosemary Ugboajah, owner of Neka Creative in Minneapolis, Minnesota applied through her credit union, but was unsuccessful: "They were hard to reach, but eventually I got through to someone and they emailed me back saying they can't process the loan because they don't process SBA loans," she said. "I wasn't aware of that."[60]

7. Dannesia Pullen, owner of PullenBoy Hauling in Rolesville, North Carolina, has experienced a difficult time during the COVID-19 crisis: "We have seen a 15-20 percent decline in cash flow," she says. She has applied for a PPP loan and for an Economic Injury Disaster Loan and has been denied for both. She added, "When I see businesses like the NBA, Ruth Chris, and Potbelly receiving funding, I no longer have faith in the government."[61]

8. Portia Kimble, sole proprietor of a hair salon in Hoover, Alabama, was encouraged to apply for a PPP loan by several peers. "I had a little savings, but didn't know how long that would last," she said. HOPE Federal Credit Union was able to offer her a $5,200 PPP loan, which will allow her to weather the financial storm, and hopefully expand her business in the future. "This business, being an entrepreneur, it is a faith business," Kimble says. "God is my source. You don't know how things are gonna go. I'm glad we're still standing."[62]

9. Brighter Beginnings, is a non-profit with locations in Oakland, Richmond and Antioch, California. Brighter Beginnings has been responding to the needs of families in resource-poor neighborhoods since 1984 by providing tele-medicine services, intensive services to special needs children, and food for families struggling to make ends meet. Unable to obtain a PPP loan from its bank of many years, Brighter Beginnings was forced to furlough its eight-person staff and discontinue its critical community services. After receiving a PPP loan from Self-Help, it was able to bring back all eight staff members and is now supporting over 450 existing and new clients in its communities.[63]

10. ASI Services is a female person-of-color led non-profit organization that has served the Chicago area for 45 years. Through its 300-person staff, ASI provides quality supportive home-care services to post-acute patients, senior citizens and persons with disabilities; its services are available to persons of all backgrounds, but approximately 95% of its clients are people of color. Even though ASI had an existing banking relationship, it was unable to obtain a PPP loan from its bank and turned to Self-Help. ASI noted that the PPP loan has provided it a "runway to last through the summer," allowing ASI to continue providing vital services and continue paying all 300 of its employees.[64]

11. Kiddie World Child Development Center is a child-care provider in rural eastern North Carolina. With an eight-person staff, this female person-of-color led nonprofit serves essential workers by providing child-care for workers of the local chicken factory, hospital and nursing homes. Obtaining a PPP loan from Self Help has allowed Kiddie World to keep its staff employed and continue providing high-quality, safe child-care.[65]

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[60] Kurtzleben, Danielle. National Public Radio. "Minority-Owned Small Businesses Were Supposed to Get Priority. They May Not Have", accessible at https://www.npr.org/2020/05/12/853934104/minority-owned-small-businesses-were-supposed-to-get-priority-they-may-not-have

[61] Allam, Chantal. WRAL Tech Wire. "Black-led businesses getting shut out of PPP loan program, owners and experts say", accessible at https://www.wraltechwire.com/2020/05/22/black-led-businesses-getting-shut-out-of-ppp-loan-program-owners-and-experts-say/

[62] Johnson, Roy S. The Birmingham News. "Amid corona-crash, small businesses found savior in smaller banks, fund", accessible at https://www.al.com/opinion/2020/05/johnson-in-corona-crash-small-businesses-found-savior-in-smaller-banks.html

[63] Story on file with Self Help Federal Credit Union

[64] Story on file with Self Help Federal Credit Union

[65] Story on file with Self Help Federal Credit Union

12. Shaw Legal Services is a female person-of-color owned law firm with a staff of six. After finding that she was unable to obtain a PPP loan from her business and personal lender of over 20 years, this Chicago-area small business owner learned about Self-Help. Her PPP loan has enabled her to keep all six employees on payroll, and to provide low-cost or pro bono legal services to help small business clients that were unable to obtain PPP funding in Round 1 negotiate out of leases and contracts they are no longer able to honor.[66]

[66] Story on file with Self Help Federal Credit Union

Honorable Congresswomen and Congressmen,

I am honored to be here and thank you for allowing me to come before you today as a representative of small businesses across the United States.

I am the owner of a small animal veterinary practice in Lebanon, Ohio. I have been the owner of Four Paws Animal Hospital since January of 2007. My wife, Jen, and I purchased the practice from another veterinarian and quickly made it our own. At the time of purchase, the practice was a single doctor practice with 3 employees and now we have expanded to become a 5 doctor practice with 34 employees. In 2012, we moved from a stripmall store to our own state of the art 5400 sq ft stand-alone building in the heart of the Lebanon business corridor. Over the last few years, we have seen an amazing level of growth from a client standpoint as well as a revenue standpoint. Over the last few years of prosperity, we have been able to give raises, purchase equipment and add additional staff members.

In March, that all changed. COVID-19 hit the United States and people were asked to stay home. Ohio was one of the earliest states to shut down. Fortunately for us, we were deemed "an essential business" and we still were able to operate as a veterinary hospital but with severe restrictions in place. We had to reinvent how to practice veterinary medicine and still keep the staff and clients safe. Because of these restrictions, we went from monthly continuous growth numbers to being down nearly 30%. We were fearful that at any time, we would have to shut down the hospital if any of the staff were to fall ill from the coronavirus.

We first heard about the PPP loans on the national news and I immediately reached out to our local bank to start the wheels in motion. I stayed in contact with them and asked for any information that they were getting as far as what the application would look like. I filled out sample applications, had my numbers confirmed by my accountant, and tried to get any documentation that was needed together for when the loans were approved by Congress, the SBA and the President. Once the bank let me know that the applications were ready, I filled them out and submitted everything the next day. The bank kept me in the loop with where we stood in the approval process and once the approval occurred, we were very quick to get documents signed. Within the week, we had our PPP loan funds.

I can not say enough about the way that Congress and the SBA got such a huge undertaking done so quickly. The funds were exactly what our business needed to make up the shortfall in revenue and allow us to keep all of our employees. We did not lay off any of the staff and everyone was able to keep their hours if they were able to come to work. A few staff members had to stay home for two week quarantines, due to the unknown nature of things in the early stages. We asked anyone with a fever or cough to stay home for those 14 days, but no one in the hospital tested positive for COVID-19 and everyone was able to return to work.

The only concern we had with the loan process was that the loan documents that were signed did not have language in them that discussed the loan forgiveness. We were signing a loan

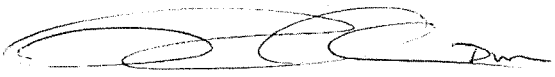
with good faith that the government would honor their word and forgive the PPP loan. I looked at the loan as a lifeboat that my business needed to provide for my staff and my family. If the loan was forgiven, it would be a godsend. If the loan was not, then at least I had a government loan with reasonable terms to get us through this unusual time. Our loan was funded during the first phase and we received $206,000. The interesting part was that I saw a stat that said the average loan amount was $206,000. I joked with my wife that we owned America's most average business.

Our 8 week loan period actually ends today on June 17th. We have elected to extend that to the 24 weeks as allowed by the new provisions passed 2 weeks ago. We opened an account that was only to be used for the PPP loan funds. That way there was complete transparency as far as where every dollar was being used. Our business has rebounded and we are digging out. We still are not practicing veterinary medicine the way that I have for the last 18 years. We are currently doing car calls, with the clients staying out of the hospital, and only the pets coming in. It is a new business model and my staff has been amazing in completely reinventing ourselves. I can not thank them enough for getting OUR veterinary hospital and all of our patients and clients through these tough times.

Again, I cannot thank Congress enough for providing the funds that all of the small businesses in the US need to survive in this time of uncertainty. I feel that the loan process could not have gone any smoother than it did. Congress is known for doing things at glacial speed and I was amazed at how quickly this came together. It is amazing what can be accomplished when we all work together. I would like to thank our local community bank, Lebanon Citizen National Bank, for making the process as easy as possible under the circumstances and my accountant, Pelfrey and Associates, for helping navigate through the application process.

Thank you again for having me today and allowing me to tell my story. Because of the bipartisan efforts of Congress, the 34 staff members at Four Paws Animal Hospital were able to go home every night knowing that they could pay their rent, feed their family, and more importantly feed the massive amount of the pets that they own.

Respectfully,



Rich Coleman, D.V.M.
Four Paws Animal Hospital
Lebanon, Ohio

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June 17, 2020

The Honorable Nydia Velázquez
Chairwoman
House Small Business Committee
2361 Rayburn House Office Building
Washington, DC 20515

The Honorable Steve Chabot
Ranking Member
House Small Business Committee
2069 Rayburn House Office Building
Washington, DC 20515

Dear Chairwoman Velázquez and Ranking Member Chabot:

Today's hearing, titled, "Paycheck Protection Program: Loan Forgiveness and Other Challenges" allows the committee to hear about the issues borrowers encountered while applying for Paycheck Protection Program (PPP) loans. While the Paycheck Protection Program is providing vital assistance to farmers and ranchers who were able to receive loans, the agriculture, forestry, fishing, and hunting sectors combined received a meager 1.49 percent of the total approved funding, according to SBA data. Farm Bureau has identified several challenges that have impacted farmers' and ranchers' ability to access the PPP loans.

- Farm Bureau recommends that the calculation used to determine a sole proprietor's maximum PPP loan amount, when using Schedule F, expand beyond net farm income for determining owner compensation. Farm Bureau supports H.R. 7175, the Paycheck Protection for Producers Act, which addresses this major hurdle for sole proprietors who file a Schedule F. This change is needed because Schedule F alone is not an accurate indicator of farm income and having a "zero or negative" net farm income has made many farmers ineligible for PPP benefits.

- Every H-2A worker residing in the United States for more than six months should qualify as an employee whose "principal place of residence" is the U.S. Additionally, clarification is needed about how seasonal guest workers should be accounted for in determining the employee count for purposes of program eligibility and loan forgiveness. Wages paid to H-2A workers are a considerable expense for non-mechanized commodities, and to exclude them is counter to helping business with high payroll expenses.

- Farm Bureau believes that rental payments for all business-related items should be included in the calculation for determining loan forgiveness. This should include rent on a variety of business-related items including equipment, land, and buildings. In addition, utility cost of guest worker housing should be counted as an eligible utility expense.

- Farm Bureau asks for clarification that expenses incurred while operating a business under a PPP loan are deductible as normal and customary business expenses for income tax purposes. To do otherwise would have the effect of taxing the loan amount and

interest loan assistance as income, the exact opposite of congressional intent.

- Farm Bureau supports the removal of the forgiveness requirement that 60 percent of loan proceeds be used for payroll. Limiting the forgivable portion of non-payroll expenses to 40 percent prevents many farmers and ranchers from participating in this program. In addition, employer compensation and in-kind commodity wages should be included in the amount considered to be wages.

- Farm Bureau recommends that farmers be allowed to file IRS Form 943, which is the form on which agricultural employers report payroll deposits, for loan forgiveness. The current loan forgiveness form requires participants file IRS Form 941, which is a form that farmers do not complete.

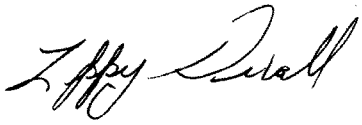
- Farm Bureau asks that accruing interest be based on a simple basis. This will lower the monthly payments and provide an additional cost-savings to farmers and ranchers who participate in the program.

- Farm Bureau requests that Farm Credit institutions be among those allowed to access the set-aside for small financial lenders.

While the CARES act as written makes 501(c)(3) charitable organizations eligible for PPP benefits, it fails to make non-profit 501(c)(5) agricultural organizations like Farm Bureau eligible. We ask that 501(c)(5) agricultural organizations be eligible for the PPP program. Farm Bureau organizations at the national, state and county levels provide valuable services to farm and ranch businesses and disseminate important information needed by them to manage their business, access financial aid and deal with the emotional stress surrounding the current crisis. In addition, county and state Farm Bureaus are themselves small businesses struggling to pay employees and cover expenses.

Thank you for conducting today's hearing and Farm Bureau is ready to work with the committee to ensure farmers and ranchers can fully participate in the Paycheck Protection Program.

Sincerely,



Zippy Duvall
President

CC: House Small Business Committee Members

ICBA
INDEPENDENT COMMUNITY BANKERS of AMERICA

June 17, 2020

Paycheck Protection Program: The Need for Simplified Forgiveness

The Independent Community Bankers of America, representing community banks across the nation with more than 52,000 locations, appreciates the opportunity to provide this statement for the record for today's hearing, "Paycheck Protection Program: Loan Forgiveness and Other Challenges." We are grateful to you for creating the Paycheck Protection Program (PPP) and for your ongoing efforts to ensure its ultimate success, including the Paycheck Protection Program Flexibility Act (H.R. 7010). The Program has rapidly and effectively deployed critical funding to small businesses. At this time, a simplified forgiveness process is urgently needed to ensure the Program does not become a quagmire of red tape for lenders and borrowers, distracting them from the hard work of restoring economic and employment growth.

Community Banks and the PPP

Community bankers nationwide recognized the program as the best hope for preserving the economic life of their communities and processed a flood of applications in a short time for new customers and old. Community banks were uniquely positioned to make the program work, drawing on established relationships and bonds of trust to help borrowers navigate the application process. They were ready and eager to help borrowers who had been turned away from other institutions. To date, community banks have issued 65 percent of PPP loans.

New Flexibility is Welcome, but the Program Remains too Complex

It remains to be seen whether the program will ultimately reach its potential for sustaining communities. H.R.7010 has created welcome program flexibility. The new law replaces the rigid requirement that 75 percent of loan proceeds be spent on payroll as a condition of loan forgiveness with a 60 percent payroll spend requirement. ICBA continues to advocate for a 50/50 split, but 60/40 is a significant improvement. Further, the new law extends the timeframe in which PPP funds must be spent as a condition of forgiveness from 8 weeks to 24 weeks. The 8-week timeframe was simply unrealistic and unworkable. Many non-essential businesses have only recently reopened and have not had the opportunity to spend their PPP funds.

Forgiveness Must Be Simplified

While H.R. 7010 has made the Program more flexible, it does nothing to address the Program's prohibitive complexity when it comes to obtaining loan forgiveness. Until forgiveness is simplified, the Program will not be what Congress intended it to be: essentially a grant program to sustain employment through government-imposed business disruption.

Borrowers should not have to hire accountants at exorbitant fees to assist with loan forgiveness. Borrowers whose first language is not English should not be forced to struggle with complex forms and procedures. We urge your consideration of several recommendations for simplifying PPP loan forgiveness:

- **Ease of Application with EZ-Form.** Treasury and the Small Business Administration (SBA) should promptly provide a straightforward, easy-to-apply approach to loan forgiveness. The 11-page application released by Treasury on May 15 is overly complex and detailed. We urge creation of a much shorter and simpler form akin to the IRS Form 1040EZ.
- **Loan Forgiveness Calculator**. We continue to urge Treasury and SBA to provide an online loan forgiveness calculator that would allow the borrower and lender to easily determine the forgiven amount. The certainty provided by a short form and calculator would allow borrowers to focus on bringing their businesses back to viability and protecting employees and customers. The last thing they need in this challenging environment is the distraction of complex calculations.
- **Presumption of Forgiveness Compliance for Loans of $1 Million or Less.** Congress intended the PPP to be essentially a grant program to help small businesses retain workers. For all loans with an original balance of $1 million or less, ICBA recommends a presumption of compliance based on the borrower's certification that the funds were used in accordance with the terms of the program. A disproportionately high number of applications were submitted to the SBA by community banks. Detailed review of each loan is simply not practical for borrowers or lenders. A presumption of compliance for these borrowers will allow business owners to focus on their businesses and the safety of their employees and customers. A threshold of $1 million for presumed compliance would be consistent with Secretary Mnuchin's intention to focus audit resources of loans in excess of $2 million. A presumption of compliance is consistent with vigorous pursuit of fraud by lenders, Treasury, and SBA.
- **SBA Should Buy Residual PPP Loans at Par.** After the forgiveness amount has been determined, the SBA should purchase remaining PPP loans at par from originating institutions. **This would create greater bank balance sheet capacity to spur additional lending.** The high volume of PPP lending done by community banks to meet the urgent demands of the crisis is absorbing their balance sheets. As we enter the recovery, banks need ample balance sheet capacity to support small businesses in their markets. SBA purchase of PPP loans at par would address this need.
- **Preserve Tax Deduction for Business Expenses**. ICBA believes it was the intention of Congress to allow PPP borrowers who obtain forgiveness to continue to deduct payroll and other ordinary business expenses. Denying this deduction effectively reduces the value of forgiven amounts and undermines the true potential of the Program. We urge your support for the Small Business Expense Protection Act (S. 3612/H.R. 6821), introduced in the Senate by Senator John Cornyn and in the House by Representative George Holding, which would preserve this important deduction.

We urge this committee's support for the provisions outlined above.

Closing

Thank you again for convening today's hearing. We appreciate this committee's commitment to the ultimate success of the PPP. We look forward to continuing to work with you to follow through on the critical choices that must be made to successfully implement a complex and ambitious program.

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National Association of Federally-Insured Credit Unions

June 16, 2020

The Honorable Nydia Velázquez
Chairwoman
Committee on Small Business
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Steve Chabot
Ranking Member
Committee on Small Business
U.S. House of Representatives
Washington, D.C. 20515

Re: Tomorrow's hearing, "Paycheck Protection Program: Loan Forgiveness and Other Challenges"

Dear Chairwoman Velázquez and Ranking Member Chabot:

I write to you today on behalf of the National Association of Federally-Insured Credit Unions (NAFCU) in regard to tomorrow's hearing titled, "Paycheck Protection Program: Loan Forgiveness and Other Challenges." As you are aware, credit unions are working on the front lines with their members during these times of economic uncertainty. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve 120 million consumers with personal and small business financial service products.

The bipartisan efforts in Title I of the CARES Act, including the creation of the Small Business Administration's (SBA) Paycheck Protection Program (PPP), have helped countless small businesses survive the lockdowns required by the current pandemic. The PPP, in particular, has been very successful and an important tool that credit unions have used to help their small business members, and we thank you for including credit unions as lenders in this program. Still, even with the success of the PPP, there remain some issues that we believe need to be addressed such as the simplification of the loan forgiveness process.

NAFCU believes it is important to simplify the loan forgiveness process and application for smaller PPP loans. While credit unions are working with their members to assist them with the current loan form, the complexity of the forgiveness rules and application is posing challenges for many small businesses who may not have the staff or expertise for such a complex application, especially with the current economic challenges. We were pleased to see a majority of the members of the Senate join letters to Treasury Secretary Steven Mnuchin and SBA Administrator Jovita Carranza last week urging simplification and streamlining of the PPP loan forgiveness process for smaller loans.

NAFCU member credit unions report making PPP loans in amounts much lower than the national average of both rounds of funding. As such, NAFCU is supportive of automatic loan forgiveness for PPP loans under a $150,000 threshold. Loans under $150,000 account for 85 percent of PPP recipients but only account for 26 percent of the funds disbursed by the SBA. This level would cover the majority of credit union loans, the vast majority of which have been to smaller businesses

that could most benefit from this automatic forgiveness. A smaller PPP loan is less likely to pose a high risk of fraud so the benefits to all small businesses and lenders of providing this automatic or simplified forgiveness significantly outweigh the potential risks. Moreover, automatic forgiveness frees up human capital at a time when credit unions and small businesses may be short-staffed due to ramifications of COVID-19.

Understandably, the forgiveness application is one mechanism to uncover fraudulent activity; however, there are others and the SBA retains the right to review a borrower's loan documents for six years after the date the loan is forgiven or repaid in full. NAFCU would urge Congress and the SBA to improve the forgiveness process by considering automatic loan forgiveness for loans below a $150,000 threshold.

We thank you for the opportunity to share our thoughts and look forward to continuing to work with you on pandemic relief and economic recovery. Should you have any questions or require any additional information, please contact me or Lewis Plush, NAFCU's Associate Director of Legislative Affairs, at 703-842-2263 or lplush@nafcu.org.

Sincerely,

Brad Thaler

Brad Thaler
Vice President of Legislative Affairs

cc: Members of the House Committee on Small Business

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HEARING BEFORE THE

HOUSE COMMITTEE ON SMALL BUSINESS

ENTITLED

"PAYCHECK PROTECTION PROGRAM:

LOAN FORGIVENESS AND OTHER CHALLENGES"

STATEMENT FOR THE RECORD OF

THE NATIONAL ASSOCIATION OF REALTORS®

JUNE 17, 2020

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EQUAL HOUSING OPPORTUNITY

On behalf of the 1.4 million members of the National Association of REALTORS® (NAR), thank you for holding today's hearing, "Paycheck Protection Program: Loan Forgiveness and Other Challenges." NAR's membership is comprised of many small

business owners and independent contractors, and small businesses make up a large portion of NAR's commercial practitioner clientele. The small business provisions in the CARES Act – specifically, the Paycheck Protection Program and the Economic Injury Disaster Loan Advance Grants – have provided crucial assistance to small businesses and independent contractors to help them through these difficult times. Now, attention must be turned to ensuring that those same small businesses and independent contractors are able to use PPP loans in a way that allows their businesses to eventually reopen, and to have eligible loans forgiven without going through an arduous forgiveness process.

Public safety measures put in place to slow the spread of COVID-19 and stay-home orders around the country have resulted in thousands of small businesses closing or reducing their operations. According to a Small Business Pulse Survey conducted by the U.S. Census Bureau, more than half of respondents reported a large negative impact due to COVID-19, with an average of 31.4% expecting that it will take more than six months before their businesses return to normal.[1] Additionally, the Department of Labor reports that in April 2020 unemployment levels increased by 10.3% to 14.7% nationwide, the highest level and the largest single-month increase since it began collecting such data.[2] NAR's research team reports that between March and April 2020 there was a decrease of 29% in advance estimates for sales for restaurants and drinking establishments, and food service employment numbers were nearly cut in half in the month of April with only 6.3 million people employed in those fields.[3] These figures represent just a snapshot of the damage small businesses are suffering around the country. These businesses and their employees will need continued attention and assistance in the coming months, even after they are allowed to begin reopening.

We appreciate the work that Congress has done to address these issues and provide aid to small businesses and their employees, and for ensuring that independent contractors can access these programs thus far. The creation of the Paycheck Protection Program (PPP) has been especially important, although confusion when the program launched and overly-restrictive requirements for use of the funds kept some businesses from applying. For that reason, Congress should extend the PPP deadline past its current date (June 30), to allow those businesses who were wary of the program's earlier complications an opportunity to access the loans. We are encouraged by the recent passage of the "PPP Flexibility Act," which improves the PPP loans by giving greater flexibility to recipients in how they can use the funds. Those adjustments – especially lowering the required amount that must go toward payroll from 75% to 60% and extending the time borrowers have to use the funds from 8- to 24-weeks - will increase the likelihood that businesses will be able to reopen and re-hire their employees when the crisis is over.

As many PPP borrowers approach the end of their covered period, it is also important that guidelines on forgiveness from the SBA and the Treasury Department are clear and consistent, and do not place undue burdens on borrowers who received loans and followed the program's requirements in good faith. We appreciate the work that these agencies have done already to provide such guidance for loan recipients, and encourage them to continue working to make the loan forgiveness application and process as easy to administer as possible.

In addition to clear forgiveness guidelines, Congress should enact legislation automatically forgiving all PPP loans under $150,000. These borrowers represent independent contractors and the smallest of small businesses – the most vulnerable to the economic damage that COVID-19 is wreaking. For example, an independent contractor can receive a max PPP loan amount of $20,833 – based on having net earnings of $100,000 in 2019, which is much higher than the average. These borrowers would struggle to afford an attorney and/or CPA to assist them with the forgiveness application, undermining the purpose of PPP in the first place. Automatically forgiving those small loans is a common-sense solution to that issue, and an easy step Congress can take to further assist those businesses.

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[1] U.S. Census Bureau, May 14, 2020, "New Small Business Pulse Survey Shows Breadth of COVID-19 Impact on Businesses," https://www.census.gov/library/stories/2020/05/new-small-business-pulse-survey-shows-breadth-of-covid-19-impact-on-businesses.html (June 1, 2020).
[2] Bureau of Labor Statistics, U.S. Department of Labor, May 8, 2020 "The Employment Situation – April 2020," https://www.bls.gov/news.release/pdf/empsit.pdf (June 1, 2020).
[3] "Commercial Market Insights: Deliveries: Ghost Kitchens." June 2020. National Association of REALTORS® Research Group. https://www.nar.realtor/sites/default/files/documents/2020-06-commercial-market-insights-deliveries-ghost-kitchens-06-05-2020.pdf

Finally, as you look into the impact of this pandemic on small businesses around the country, we ask you to also consider 501(c)(6) organizations that have been affected. Currently these organizations are not eligible to apply for PPP loans, and many are struggling. These organizations employ thousands of people, and provide important services and support to their communities. They will play a crucial role in the economic recovery post-COVID-19 in this country, but in order to get there will need assistance as well.

Thank you again for your continued work on behalf of the small businesses and independent contractors who are struggling to survive this crisis, and for the assistance you have already provided to them.



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June 17, 2020

The Honorable Nydia Velazquez
Chairwoman
House Committee on Small Business
Rayburn House Office Building
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The Honorable Steve Chabot
Ranking Member
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Rayburn House Office Building
Washington, DC 20515

Dear Chairwoman Velazquez and Ranking Member Chabot,

On behalf of NFIB, the nation's leading small business advocacy organization, I write to thank you for holding this hearing entitled, "Paycheck Protection Program: Loan Forgiveness and Other Challenges." The vast majority of small businesses are negatively impacted by the economic crisis as most stay-at-home orders remain in place or are beginning to be relaxed slowly. In a recent NFIB Research Center survey, 92% of small business owners reported being negatively impacted by the economic crises caused by COVID-19.[1]

The economic crisis began in earnest Friday, March 13, 2020 for many small business owners when states started imposing business restrictions and stay-at-home orders to slow the COVID-19 pandemic. Congress worked together to respond to the economic crisis. The *Coronavirus Aid, Relief, and Economic Security (CARES) Act* provided vital financial assistance to small business owners to help weather the economic disruptions caused by government shutdown orders. The *CARES Act* helped small business owners through the creation of the Paycheck Protection Program (PPP) and additional funding for the Economic Injury Disaster Loan (EIDL) program. The EIDL program re-opened for applications from non-agricultural businesses on Monday evening. The PPP received two rounds of funding and is still open to new applicants. but the negative effects of the pandemic have lasted longer than anticipated over two months ago and additional flexibility is necessary for small businesses to emerge from the crisis.

Recognizing this need, Congress enacted the *Paycheck Protection Program Flexibility Act of 2020*, which extends the forgiveness covered period from 8 weeks to 24 weeks, increases the percentage of nonpayroll expenses from 25% to 40%, allows PPP recipients to defer payroll

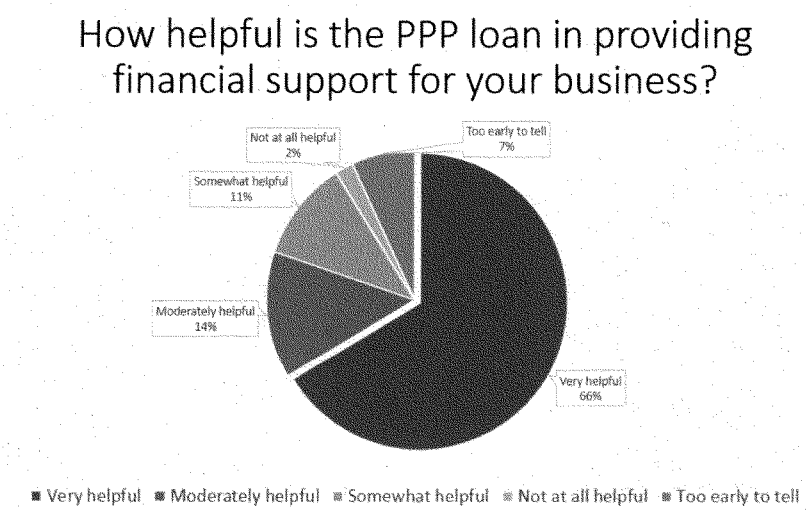
[1] Holly Wade, *COVID-19 Small Business Survey*, NFIB Research Center, May 21, 2020, https://www.nfib.com/assets/Covid-19-6-Write-up-Q.pdf.

taxes, among other flexible enhancements to the PPP. NFIB strongly supported both the *CARES Act* and the *Paycheck Protection Program Flexibility Act of 2020*, and thanks Congress for their enactment.

The NFIB Research Center has conducted a series of surveys measuring the impact of COVID-19 and government responses to the crisis on small businesses. This statement for the record summarizes the most recent survey, which was released on June 2, 2020.[2]

The popularity of the PPP drew strong interest among small business owners from the beginning. The PPP loan provides financial assistance for those owners who can take advantage of the loan's forgiveness provision, essentially turning it into a grant. The loan will be forgiven if the business owner keeps employees on payroll and the money is used for payroll, rent, mortgage interest, or utilities.

Over three-quarters of small business owners (77%) have applied for a PPP loan. Almost all who have applied (93%) have received the loan. The vast majority of small business owners (67%) who have a PPP loan have found the loan very helpful in financially supporting their business. Another 14% report that the PPP loan is moderately helpful and 11%, somewhat helpful. Only 2% said that the PPP loan is not at all helpful and 7% said that it is too early to tell.



[2] Holly Wade, *COVID-19 Small Business Survey (7)*, NFIB Research Center, June 2, 2020, https://strgnfibcom.blob.core.windows.net/nfibcom/FINAL-Covid-19-7-Write-up-and-Questionniare.pdf.

The SBA released updated PPP loan forgiveness applications today, Wednesday, June 17. Small businesses are required to complete the application and submit it for approval with the financial institution from which they received their loan. About 60% of small business borrowers had reviewed the previous application, which was released on May 15, and 40% had not.

The terms and conditions of forgiveness can be complicated for certain types of businesses, especially those that are labor intensive and had to reduce staff due to the economic crisis. About half of small business borrowers are using a CPA or similar professional to help fill out the PPP loan forgiveness application. Just over half are filling out the application themselves or having someone on staff fill it out. The terms and conditions of loan forgiveness require reporting and documentation of qualifying expenses, and when those expenses are incurred and paid. Over half (54%) of small business borrowers are using an Excel workbook to keep track of those expenses, 47% are not. Those who are not using an Excel workbook to track expenses might be relying on their CPA or similar professional to track or collect required documentation.

NFIB thanks Chairman Velazquez and Ranking Member Chabot for working together to help create these vital small business financial assistance programs and increase flexibility of the programs. Additional adjustments, such as restoring the deductibility of forgiven expenses and increasing the list of qualified nonpayroll expenses, would further improve the program.

Thank you again for holding this hearing. NFIB welcomes the opportunity to continue working together to improve these programs and help small businesses survive this economic crisis.

Sincerely,

Kevin Kuhlman

Kevin Kuhlman
Vice President, Federal Government Relations
NFIB



Opening Statement of Ranking Member Chabot
House Committee on Small Business
Month Day, Year
Hearing: "Paycheck Protection Program: Loan Forgiveness and Other Challenges"
Remarks as Prepared for Delivery

Thank you, Madam Chairwoman, for holding this hearing today.

Before we begin, I must note my concern about continuing to conduct Committee business in a "virtual" format. The House has important work that needs to be completed, yet we are forced to have these hearings virtually. With states and localities opening up, it is a concern that the House of Representatives remains a "virtual" entity.

Turning my attention to today's hearing, the Small Business Administration's (SBA's) Paycheck Protection Program (PPP) application portal opened on April 3, 2020. In just two months, the SBA has approved and disbursed more than four and a half million loans totaling over $510 billion. It has been a truly herculean effort by the SBA.

According to the May employment report released by the Bureau of Labor Statistics, or BLS, nonfarm payroll employment rose by 2.5 million and the unemployment rate declined to 13.3 percent. There is clearly a long way to go in this recovery, but it appears the PPP is having an impact and saving American jobs.

I have seen the enormous impact of these loans in my district's communities. I have visited more than 20 businesses in my district that have utilized PPP loans including restaurants, learning centers, manufacturers, and medical practices.

On May 8th, I visited Four Paws Animal Hospital in Lebanon, Ohio. The owner and head veterinarian, Rich Coleman, had such a positive experience with the PPP loan program that I invited him to tell his story today.

We know the program has had hiccups. In Congress, we have worked diligently to pass legislative adjustments including the Paycheck Protection Program and Health Care Enhancement Act, which was signed into law on April 24th.

Most recently, the House came together to overwhelmingly pass the Paycheck Protection Program Flexibility Act, which was signed into law on June 5th. This law makes some additional adjustments to PPP, including expanding the loan forgiveness period and modifying the loan amount that can be spent on nonpayroll costs.

The PPP program is a result of tireless work between Congress and the Administration. We hope to achieve a delicate balance between flexibility for lenders and loan recipients, protecting the integrity of the program's mission, and conducting needed oversight. Transparency continues to be a hallmark of all government programs. We must ensure transparency without compromising confidential and personal information.

Additionally, as small businesses move closer to the end of their forgiveness covered period, it will be instrumental for Members of Congress to examine how forgiveness is treated. Just this morning, the SBA and the Department of the Treasury published two new loan forgiveness application forms. The revised form and the new EZ form incorporate the changes from the PPP Flexibility Act and aim to streamline the process and reduce complexity. These forms are a move in the right direction, and we look forward to examining how these forms assist small businesses working through forgiveness.

We are all committed to making sure this program has a maximum impact for our small businesses.

Thank you to our witnesses today, and the countless businesses that have provided feedback on the PPP program. Your input has an immediate impact on this program and the nation's economic recovery. Thank you, Madam Chairwoman, and I yield back.

Team85
FITNESS & WELLNESS

May 12, 2020

RE: IMPACT OF COVID-19

Dear IHRSA Community:

My name is Kevin Johnson and I am the CEO and Owner of Team85 Fitness & Wellness, LLC, I wanted to take the time to express the impact the Covid-19 pandemic has had on my employees, community, and various businesses. To give you a brief history of myself, I grew up in Hamilton, New Jersey in a community of limited means. I was fortunate that I had the athletic ability that allowed me to gain a scholarship to Syracuse University and eventually play in the NFL. When my NFL career ended suddenly due to injury, I had to figure out what I wanted to do with my future as continuing to play football professionally was no longer an option.

I was always told to do what you love, so I elected to move forward with my love of fitness and after significant research I decided that I would enter into the Health and Wellness industry. Originally, I was only going to focus on a small health club, but ultimately it evolved into the building of a 120,000 sq. ft. facility, multiple medical office buildings and retail buildings. I look back on my life and I feel blessed, I can not believe where my foray in this industry has led me. However, today I look at the industry and this pandemic and the uncertainty has me and my other peers in the industry concerned. I write this letter to discuss those concerns and I use my name in order to attempt to put a face to those concerns.

We are not just corporations, we are small proprietors, community staples and a place of safety for our members and employees. From every level of my community I have seen the terrible consequences that this virus and the shut-down has had on the mental, physical, and financial state of my members, employees, community, and business. Life has come to a stand-still.

My members are both excited to comeback and anxious as to what coming back means. They want to know if it is safe to return, will they be able to use the club the way it was before, will they be able to financially afford to continue their membership if they do not have a job. I have stayed in touch with my members through webinars and have diverted the canceling of memberships by not charging them for the months that we are closed. However, once we open and begin charging the members, I do not know how many will remain or will be able to afford to remain. The result of my actions is that the Health Club is not receiving any income during this time period and the operations will be extremely impacted once we reopen if Members are either not confident they can return or cannot afford to return. We need to find a way to ensure our members can come back and we need the government to help restore the confidence in our industry.

My employees are frightened, I have taken on the responsibility to continue to pay my employees for the time being, but those funds without complementary income from the business are finite. We need to support our workers, but for our workers to have jobs in the future we need to make sure that the economy of the Health and Wellness industry can rebound. We need the support of our government to protect our employees and the actions put in place thus far are not enough to continue this assistance. Without a concerted effort, we will see this industry begin to crumble. Even if the larger facilities can remain open, the small business will not be able to sustain paying the employees without this support from state and federal legislators.

The community in Bordentown New Jersey has been overwhelmed by this virus, this community is the true American community, it is a combination of blue collar and white-collar workers of all races, creeds, and colors. It is known as the Cross-Roads of New Jersey and it lives up to the name with the diversity of the community. The businesses in my community are generally small, sole proprietors, there are no big box store, everyone knows everyone, and the soul of that community happens to be Team85. Without our health club operating there is a noticeable hole in the heart of the community. This sentiment has been repeatedly expressed by my members, through e-mails, text messages, webinars and other social media posts. I feel that I have a duty to provide that sense of community and strength, but without the support of the government that will not be able to take place. We need our elected officials to help if we are to reopen and succeed.

I am fortunate that I have multiple business ventures, which include property management, construction and health and wellness. However, because of the heavy restrictions and limitations all my business ventures are at a standstill. My primary goal in each of my projects is to give back to the community. I come from small beginnings, and in constructing my business I was determined to provide opportunities to the less fortunate so they could build something solid for themselves. I want my businesses to continue to be a beacon of hope and continue to show that it does not matter where you come from you can achieve anything in this great country, we call America. However, to continue to provide that message we need help, we need the government to give us guidance to help us reopen, we are the health leaders of the community and our health is our greatest wealth. It should be evident from what is happening in the world today that we must reinforce how important it is to stay healthy to keep our bodies in the best shape possible and we need our government to stand behind us as we work to reopen our business both economically and politically.

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Team85
FITNESS & WELLNESS

In closing, I want to reassert the purposes of this letter. I want the Government to give us clear guidance on how we are supposed to move forward, create legislation that protect our business from liability in the event of an infection in our club, fight the insurance companies excuses to not provide business interruption insurance, help our members through legislation that will allow them to use their medical insurance to pay for their club membership and help give security to our families, members, employees, communities and businesses as we take the next steps in this process of reopening our facilities. Without your support one of the most important industries in this world will be withered away to nothing, which is the exact opposite of what should take place in the future. If we have learned anything from this experience it is that those who are healthy have a better chance of being able to survive this type of virus and it is imperative that the fitness industry be at the forefront of all government entities to improve the health and wellbeing of all their constituents now and in the future. Thank you for your time and consideration of this correspondance.

Sincerely yours,

Kevin L. Johnson, CEO and Owner
Team85 Fitness & Wellness, LLC

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June 24, 2020

Attn: Members of the House Committee on Small Business

Engine is a non-profit technology policy, research, and advocacy organization that bridges the gap between policymakers and startups. Engine works with government and a community of thousands of high-technology, growth-oriented startups across the nation to support the development of technology entrepreneurship. Engine welcomes the opportunity to provide comments for the record regarding the Paycheck Protection Program ("PPP") and CARES Act for startups.

Startups are major drivers of U.S. economic growth, innovation, and job creation; it is integral that we support startups now, so they are well positioned to both survive the economic downturn caused by the COVID-19 pandemic, and so that they are able to quickly expand and hire after the pandemic. While startups across the country have been an important part of the national response to the COVID-19 pandemic, they are also in desperate need of federal support. Startups of all sizes have faced major layoffs in the wake of the pandemic, including tens of thousands of workers from just thirty of the nation's most prominent startups.[1] These expansive layoffs are compounded by the Small Business Administration's often confusing guidance regarding the Paycheck Protection Program (PPP) and loan forgiveness. Startups are also facing significant challenges in obtaining funding, a difficult endeavor even absent a pandemic. Seed funding has significantly declined this year,[2] and for those companies lacking extensive venture capital (VC) relationships, deals will likely continue to slow.[3] Startups with women or minority founders will likely face even greater challenges.[4] And startups are not just facing the evaporation of typical forms of financing. Many may be shut out of current federal relief programs due to ineligibility, a lack of programs that meet their needs, and confusion associated with the requirements of the programs themselves, including how to secure loan forgiveness.

Engine recognizes that the PPP needed to be implemented quickly to protect the American economy, and we applaud the efforts to make the program helpful to startups and smaller businesses across the country. However, hurried implementation led to barriers for many of the companies the program was intended to help. The fee structure for lenders and the

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[1] Visualizing Layoffs at Prominent Startups Triggered by COVID-19 (June 2, 2020) available at https://www.visualcapitalist.com/layoffs-prominent-startups-covid-19/.

[2] Angus Loten, *Startup Funding Dwindles Due to Coronavirus Slowdown*, Wall Street J. (Mar. 25, 2020), https://www.wsj.com/articles/startup-funding-dwindles-due-to-coronavirus-slowdown-11585175702.

[3] Sophia Kunthara, *VCs Share Thoughts, Advice on State of the Market During COVID Restrictions*, Crunchbase News (Apr. 13, 2020), https://news.crunchbase.com/news/vcs-share-thoughts-advice-on-state-of-the-market-during-covid-restrictions/.

[4] *See, e.g.*, Eliza Haverstock, *Female Founders Face Funding Hurdles Amid the Pandemic*, PitchBook (May 8, 2020), https://pitchbook.com/news/articles/female-founders-face-funding-hurdles-amid-the-pandemic.

exclusionary rules promulgated by the SBA limited many startups' access to the first round of PPP funding.[5]

The average startup launches with less than $80,000, often with a founder who is not yet taking a salary and a small or nonexistent staff—instead hiring teams through independent contractor mechanisms until each startup is able to bring teams on as employees.[6] As such, many entrepreneurs and their startups would have been excluded from vital funding simply because of their size and structure of their business. For many early-stage companies, payroll costs are only a small fraction of total expenses. Some startup founders even choose to forgo a salary, instead investing capital back into their businesses. While Congress reduced the SBA's initial requirement that 75 percent of funds be directed to payroll to 60 percent for a loan to be forgivable, the presence of a threshold on the whole does not take into account needs or operational structure of many startups. As we stated in earlier comments to the SBA, this means many startups are unable to apply for or obtain relief from a PPP loan because they simply cannot meet the requirements for forgiveness, despite their need for funding.[7]

Furthermore, lenders servicing PPP loans were incentivized to service larger loans for larger organizations rather than for smaller startups.[8] The PPP fee structure heavily favored those loans that could deliver higher fees.[9] Moreover, many banks required companies to have preexisting relationships to obtain a loan, further incentivizing lenders to service their largest clients that already have large loans with a bank.[10]

The difficulty in accessing capital is not the only issue that startups faced when trying to access government assistance in response to the pandemic. Many startups are also concerned about the ability to complete the loan forgiveness process. As noted by Sen. Joni Ernst (R-Iowa) in a Senate Small Business Committee hearing on the CARES Act,[11] navigating the loan forgiveness process has been associated with high legal and accounting costs—resources many startups simply do not have. While some believe the forgiveness process to be straightforward, the lengthy and complex application will likely prove challenging for a great deal of startups, many of which are operating with bootstrap budgets and minimal staff, and lack the ability to hire an accountant or lawyer to assist them in navigating the process.[12] In the hearing, borrowers testified that they signed their loans in good faith that the federal government would honor its commitment to loan forgiveness, even though the documents they signed were not explicit as to

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[5] See testimony by Ms. Ashley Harrington, available at https://smallbusiness.house.gov/uploadedfiles/06-17_ms._harrington_testimony.pdf.

[6] Engine, Primer: Access to Capital (Jan. 31, 2019), available at: https://www.engine.is/news/primer/accesstocapital.

[7] Comments of Engine Advocacy to the Small Business Administration regarding the Business Loan Program Temporary Changes; Paycheck Protection Program Final Rule (May 15, 2020), available at https://static1.squarespace.com/static/571681753c44d835a440c8b5/t/5ebef7f85034b57a3c4fa9e2/1589573625368/Comments+of+Engine+Advocacy+Docket+no.+SBA-2020-0015.pdf.

[8] See testimony by Ms. Ashley Harrington, available at https://smallbusiness.house.gov/uploadedfiles/06-17_ms._harrington_testimony.pdf.

[9] Id.

[10] Prachi Bhardwaj, Small Business Loans and the Coronavirus Stimulus: Here's How the Major Banks Are Handling PPP Applications (April 10, 2020), available at: https://money.com/sba-loans-stimulus-ppp-application-requirements/.

[11] See Oral Testimony of Senator Joni Ernst, available at https://www.sbc.senate.gov/public/index.cfm/2020/6/implementation-of-title-i-of-the-cares-act

[12] See Testimony of Ms. Ashley Harrington, available at https://smallbusiness.house.gov/uploadedfiles/06-17_ms._harrington_testimony.pdf.

the terms of forgiveness.[13] Confusion was further augmented as the PPP was implemented through 17 Interim Final Rules (IFRs) and 48 individual Frequently Asked Questions (FAQs).[14] Moreover, testimony from the Secretary of the Treasury in a Senate Small Business Committee hearing suggested the requirements that have been issued may still be subject to change.[15] The fluidity and uncertainty regarding implementation and forgiveness has contributed to lender's reluctance to participate and startup fear of participation, ultimately limiting the capital access streams that startups need to keep their doors open during the pandemic.

Engine is also concerned about the confusion surrounding the applicability of the affiliation rule and its potential outsized harm for startups. To qualify for a PPP loan, eligible companies must have fewer than 500 employees. The affiliation rule conditions that VC-backed startups may have to count the employees of all the companies in that VC firm's portfolio.[16] This rule is highly fact- and context-specific, for example, forcing companies to determine if any companies exert control over one another and are therefore affiliated,[17] making it very difficult to apply. The result, in the context of applying for the PPP, was that many VC-backed startups were excluded from PPP funding or too uncertain about eligibility to apply—because even though the company had far fewer than 500 employees, they may have had to count other companies' employees as their own.[18] While the Treasury Department did issue an FAQ with a limited waiver of the affiliation rule for PPP,[19] the FAQ failed to adequately resolve the confusion over the rule's application and, at best, left startups scrambling to renegotiate agreements with their investors and boards of directors.[20]

Despite the challenges startups have had in accessing funding and in obtaining relief through federal programs amidst the COVID-19 pandemic thus far, there are multiple opportunities to both ease startup difficulties with the PPP and to provide alternative resources for startups in future relief packages. Engine has developed a series of policy recommendations that, if enacted, could help startups secure the capital and resources they need to weather the economic downturn. These policy recommendations are attached, and include suggestions pertaining to the PPP, and the prioritization of equity investment, tax credits and grants.

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[13] See Testimony Dr. Richard Coleman, available at https://smallbusiness.house.gov/uploadedfiles/6-17-20_dr._coleman_testimony.pdf.

[14] See Testimony of Mr. Ed Sosa, available at https://smallbusiness.house.gov/uploadedfiles/06-17-20_mr._sosa_testimony.pdf.

[15] See Testimony of Secretary Steven Mnuchin, available at https://www.sbc.senate.gov/public/_cache/files/c/5/c57c52a9-e164-4597-9025-62b4a899493a/1829083271D640E7930A9AF5869FAFCB.mnuchin-testimony.pdf.

[16] *VC-Backed Startups Fight for Share of $349 Billion Stimulus*, (April 2. 2020), available at https://www.inc.com/kimberly-weisul/losing-out-billion-stimulus-paycheck-protection-loans-startups-fight-hands.html.

[17] Id.

[18] Id.

[19] Paycheck Protection Program Loans Frequently Asked Questions 6 (May 27, 2020), https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf.

[20] Jason B. Freeman, *PPP Loans: Do Private Equity And Venture Capital Backed Companies Qualify?* (April 10, 2020), available at: https://www.forbes.com/sites/jasonbfreeman/2020/04/10/ppp-loans-the-fate-of-private-equityand-venture-capital-backed-companies/#564024b156a8.

Engine appreciates the opportunity to provide comments for the record on the Paycheck Protection Program and is happy to be a resource for the Committee on economic recovery and capital access for startups. We look forward to further engaging with the Committee on issues affecting startups in the future.

Respectfully Submitted,

Engine Advocacy
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Engine Proposals for Future COVID-Relief Packages

Equity Investment

Government equity investment is one option for providing working capital to startups. There are at least three models for such an equity investment program: (1) a joint federal-state-private program, such as the New Business Preservation Act, led by Representative Phillips (H.R. 6403) and Senator Klobuchar (S. 3515); (2) a federal-private, convertible-debt model, or (3) direct federal investment.

1. Federal-State-Private Partnership - The New Business Preservation Act

   The New Business Preservation Act creates a joint public-private program to invest in new startups. It is designed to incentivize private investment, to promote diversity, and to be self-sustaining because the government's returns will be reinvested in future startups. As currently drafted, the bill would establish the Innovation and Startups Equity Investment Program in the Department of the Treasury and allocate an initial $2 billion for the program. The federal funds are allocated to state programs which partner with private investors to make equity investments in startups in the state. The government can provide up to 50% of the total invested through the program. As introduced, the bill focuses on funding female- and minority-founded companies and companies located outside of major VC sectors in California, New York, and the greater Boston, MA area. Any money returned to states following successful exits is to be used for further reinvestment in other startups.

2. Federal-Private, Convertible Debt Matching Program - The U.K.'s Future Fund

   Alternatively, government funded equity investment could be modeled after a recent U.K. approach. This program provides assistance via loans that convert to equity if not repaid, rather than direct equity investment. And, in contrast to the New Business Preservation Act that involves a state-level partner, the U.K. program is administered at the national government level.

   The U.K. Government's 'Future Fund' program, which is slated to launch later this month, is a convertible loan program designed to ensure startups receive enough working capital during the COVID-19 crisis to stay afloat.[21] The program provides government loans in the amount of £125,000 to £5,000,000 (about $156,000 - $ 6.25 million), which must be matched by private investors. Additionally, the startup must have raised at least £250,000 (about $312,500) in equity investment within the past five years. The loans mature after three years, at which time they may either be repaid with an interest rate of 8% per year or automatically converted into equity. Initially, £250,000,000

[21] *Apply for the coronavirus Future Fund,* Her Majesty's Treasury (April 20, 2020), https://www.gov.uk/guidance/future-fund

(about $312.5 million) has been committed to the Future Fund, with the possibility of additional funding in the future.

3. Direct Federal Equity Investment

Similar to assistance provided to private companies in previous recessions where the federal government purchased direct stake in struggling companies,[22] the government could make an equity investment in startups struggling to meet operating demands during the COVID-19 crisis. Following the crisis, companies can buy out the government's stake. Structuring federal support as an equity investment limits the downside of the program, as the government will make a profit from successful companies that will offset losses from companies that failed in spite of the assistance.

Forgivable Loans

Earlier COVID-19 relief packages include forgivable loan programs designed to help small businesses, like the Paycheck Protection Program (PPP). However, due to the program's requirements, many startups were not able to take full advantage of the PPP. Modifying the PPP and/or creating a designated "startup fund" could help to maximize the effectiveness of such a program.

- Fix affiliation rule. Many VC-backed startups would be excluded from the PPP program due to the SBA's affiliation rule. This rule, which is highly fact- and context-specific and can be difficult to apply, requires VC-backed startups to count the employees of every other company in the VC's portfolio as their own employees—putting them over the 500 employee threshold. Congress could amend and simplify the rule to waive it for (many) VC-backed startups, for example by narrowing the definition of affiliates to those that own more than 50% of a company at present.

- Expand scope of forgivable purposes.
  - Allow companies to use funds to pay independent contractors and other employees not formally on their payrolls. Many early stage companies are not yet able to hire employees, and instead pay their teams through the 1099 independent contractor mechanism.
  - Expand the scope of costs and payments that are eligible for forgiveness. Additional forgivable purposes could include all (or at least more) of a company's basic operating costs, such as cloud-computing contracts, accounting and bookkeeping services, marketing expenses, or attorneys fees.
  - Do not impose a strict requirement that a specified percentage of loan funds be spent on payroll. While the Paycheck Protection Program Flexibility Act reduced the initial 75% threshold, any percentage requirement may not suit the realities facing startups. For early-stage companies with few employees, payroll makes up only a small portion of total operating expenses.

[22] *See, e.g.*, *TARP Programs*, U.S. Treasury (November 15, 2016), https://www.treasury.gov/initiatives/financial-stability/TARP-Programs/Pages/default.aspx

- Create a startup fund. Early stage startups have had to compete with more established businesses for PPP funds. Congress could allocate a portion of future loan funding for high-growth startups (e.g., founded in the last ten years, fewer than 100 employees, technology-enabled companies).

Tax Credits

Extending tax credits is a third option for providing financial relief to startups.

- Investor tax credits. These credits are designed to spur private investors to continue funding startups. Congress could build on existing models to create new or expand current programs. For example, a number of states have enacted angel investor tax credits, through which the state government subsidizes and encourages individual investors by offering tax breaks for qualifying investments.[23] Congress could enact a federal counterpart, allowing individual investors a credit of 20-50% of the amount invested in startups (e.g., new investments in recently established businesses with a smaller number of employees). Opportunity Zones provide another model. Congress created this program to provide tax benefits to individuals or corporations that invest in financially distressed regions.[24] Congress could expand this program to either cover more areas or create a similar program to provide tax benefits to investors who invest in qualified startup incubators or accelerators.

- R&D tax credits. These credits are designed to encourage companies to invest in research and development,[25] and can be suited to support innovative startups.[26] Congress could expand existing tax credits to offset income and payroll tax liability for small businesses who spend on R&D. And Congress could also expand the definition of what counts as R&D to include common software development activities like user experience (UX) research and design.

Grants

Finally, grants are an attractive, certain, and lower-risk option for providing financial relief to startups. Congress could allocate additional funding to existing programs like SBIR/STTR or the NSF's I-CORPS. The existing SBIR/STTR programs were created to fund R&D at innovative small businesses.[27] SBA coordinates the programs, but individual research funding agencies (e.g., NSF, NIH, DOD) implement them. The NSF's I-CORPS program is designed to support the commercialization of new technologies, reducing the risk and time required to translate new ideas to the market.[28]

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[23] *Everything You Need to Know About Angel Investor Tax Credits*, Startups.com (July 3, 2019), https://www.startups.com/library/expert-advice/angel-investor-tax-credits.
[24] *Opportunity Zones Frequently Asked Questions*, IRS, https://www.irs.gov/newsroom/opportunity-zones-frequently-asked-questions.
[25] Yair Holtzman, *U.S. Research and Development Tax Credit*, CPA J. (Oct. 2017), https://www.cpajournal.com/2017/10/30/u-s-research-development-tax-credit/.
[26] Jeff Haskett, *8 Reasons Startups Miss Out on the R&D Tax Credit*, Gust (Jun 19, 2018), https://gust.com/launch/blog/reasons-startups-miss-out-rd-tax-credit.
[27] *SBIR-STTR, America's Seed Fund*, https://www.sbir.gov/about.
[28] *National Science Foundation Innovation Corps*, https://www.nsf.gov/news/special_reports/i-corps/about.jsp.

In addition, Congress could instruct the agencies to speed or streamline the review and approval process. Applying for grants is usually a lengthy and time consuming process, in which applicants are often competing for set amounts of money. This may not be suited to the startup lifecycle, where companies often need more flexibility and (a potentially smaller amount of) capital quickly. In addition to traditional SBIR/STTR funding, the government could also provide funding to incubators, accelerators, and innovation intermediaries who have more familiarity with the startup ecosystem in their communities and the individual needs of the companies they serve. Those entities could in turn award funding directly to startups in their networks.[29] Congress could also instruct agencies which issue SBIR/STTR grants to modify the review process, review criteria, and composition of review panels to focus on commercialization and entrepreneurship.[30]

[29] *See, e.g.*, Engine Letter to Members of the Subcommittee on Innovation and Workforce Development of the House Committee on Small Business (Feb. 27, 2020), https://static1.squarespace.com/static/571681753c44d835a440c8b5/t/5e582a468fa56521103d6600/1582836294242/House+Small+Business+Committee+Feb+27.pdf.

[30] *See, e.g.*, Scientific Management Review Board, *Report on Optimizing the NIH Small Business Innovation Research and Small Business Technology Transfer Programs* (Aug. 2013), https://smrb.od.nih.gov/documents/reports/SBIR_STTR.pdf.