United States Senate

April 28, 2020

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

The Honorable Jovita Carranza
Administrator
Small Business Administration
409 Third Street, SW, Suite 7900
Washington, DC 20416-2230

Dear Secretary Mnuchin and SBA Administrator Carranza:

We write to urge you to issue guidance to ensure that the processing and disbursement of Paycheck Protection Program (PPP) loans prioritize Main Street small businesses and nonprofits—not large, well-funded companies. For small businesses and nonprofits, access to a PPP loan is a matter of survival, but many of them will be left with nothing because the SBA's current process is not working. Thus, we urge the SBA and Department of Treasury to immediately issue guidance that, for the remainder of the PPP funds and for any future PPP funding, the SBA will process loan applications for less than $1 million first, and then process applications for loans for more than $1 million.

Giving priority to smaller loans will ensure that small businesses in our states have a fair shot at receiving PPP funds. During the first round of funding, small businesses waited in vain for a PPP loan, while much larger businesses—some with as many as 1,500 employees—received the maximum loan of $10 million or more.[1] According to the SBA's data from the first round of PPP funding, 45 percent of PPP loans by dollar value went to just 4 percent of borrowers.[2]

In light of public backlash over news reports that large, well-funded companies secured millions in PPP loans, the SBA and Department of Treasury issued new guidance to try to fulfill Congress's intention that PPP loans serve as a lifeline to small businesses and nonprofits.[3] However, this guidance is not enough. The problem is rooted in the SBA and Treasury's approach to processing loan applications. This approach, which purports to be "first-come, first-served," is not at all transparent and does a poor job of effectuating Congress's intentions. As we saw with the first round of funding, a smaller number of applications from larger businesses depleted the funds in a matter of days while mom-and-pop small businesses waited for funds that will never come.

Without warning to Congress, the SBA issued guidance to lenders late on Sunday, April 26, 2020—on the eve of reopening the PPP loan portal—that exacerbated the problem. This

---

[1] Jason Grotto, Mark Niquette, and David Kocieniewksi, "Why Not-So-Small Businesses Benefited Form Small-Business Rescue," Bloomberg, April 27, 2020.
[2] Aaron Klein, "The Small Business Relief Program is Still Broken," Opinion, Politico, April 27, 2020, available at: https://www.politico.com/news/agenda/2020/04/27/small-business-relief-206960 (citing the Small Business Administration, "Paycheck Protection Program (PPP) Report: Approvals through 12 PM EST, 4/16/2020," available at: https://home.treasury.gov/system/files/136/SBA%20PPP%20Loan%20Report%20Deck.pdf)
[3] "Paycheck Protection Program Loans: Frequently Asked Questions (FAQs), As of April 26, 2020," available at: https://www.sba.gov/sites/default/files/2020-04/Paycheck-Protection-Program-Frequently-Asked-Questions_04%2026%2020.pdf (*see, e.g.*, Question #31, which clarifies that businesses owned by large companies with adequate sources of liquidity to support the business's ongoing operations do not qualify for a PPP loan)

guidance, revised hours after the program reopened, originally allowed for bulk submissions of 15,000 or more applications (then revised down to 5,000) and set a "cap" at $60 billion per lender. This cap is so high that it will guarantee that the largest banks consume much of the $250 billion. While Congress set aside funds for smaller financial institutions, we are concerned that these funds will quickly be exhausted, if they have not already run out. It is increasingly clear that the set-aside funds are insufficient to meet the demand from small businesses that bank with community-based and smaller financial institutions.

As a result, smaller lenders will end up competing with larger lenders for the main pool of $250 billion in funding. But it will not be a fair competition: large lenders were allowed to submit thousands of applications the moment the SBA reopened its loan system, while small lenders are stuck trying to manually enter applications one-by-one. The SBA claims that its last-minute guidance was meant to help smaller lenders, but it appears to do the opposite.

Congress's intentions for PPP are clear: Section 1102(P)(iv) directs the SBA to "issue guidance to lenders and agents to ensure that the processing and disbursement of covered loans prioritizes small business concerns and entities in underserved and rural markets, including veterans and members of the military community, small business concerns owned and control by socially and economically disadvantaged individuals… women, and businesses in operation for less than 2 years." Prioritizing smaller loans would be the most effective way to ensure that PPP's finite funds are used to provide relief to as many small businesses as possible.

We also request more information about how the April 26, 2020 guidance was developed. Please answer the following questions by May 5, 2020:

1. How did the SBA and Treasury determine the $60 billion cap per lender?
    a. Did the SBA or the Treasury discuss the lender cap with any financial institutions before making the decision to set the cap? If so, which financial institutions were consulted?
    b. Did the SBA or the Treasury consult with Congress about the lender cap? If so, which offices or committees were consulted?
2. How did the SBA and Treasury determine that lenders could upload applications in bulk? How did the SBA and Treasury decided to initially set the minimum number of applications at 15,000? What was the impetus to lower the minimum number to 5,000?
    a. Did the SBA or the Treasury discuss the bulk application uploads any financial institutions before making the decision to issue this guidance? If so, which financial institutions were consulted?
    b. Did the SBA or the Treasury consult with Congress about bulk application uploads? If so, which offices or committees were consulted?
3. According to the SBA, applications filed in bulk are being considered one at a time. However, it matters how exactly the SBA will process the bulk-uploaded applications. Are all applications in a bulk upload being treated as if they were submitted at the same time, and therefore stand in front of any applications uploaded one-by-one by another lender?
4. How will the SBA and Treasury monitor how many PPP loans go to larger companies with adequate sources of liquidity to support the business's ongoing operations?
5. How will the SBA and Treasury monitor how many loans go to small businesses, as described in Section 1102(P)(iv) of the CARES Act?

6. How will the SBA and Treasury monitor how many loan applications were submitted to lenders but will not be funded by the time the PPP funds run out?

In our states, hundreds of thousands of small businesses are desperate for financial relief. The PPP was meant to be a lifeline for them and their employees. But as we saw with the first round of PPP funding, the SBA's approach to processing loans gave larger, more sophisticated businesses a significant advantage. We urge you to take immediate steps to ensure that PPP funds go to actual small businesses and nonprofits by prioritizing loan applications for less than $1 million.

Sincerely,

Brian Schatz
U.S. Senator

Sherrod Brown
U.S. Senator