

April 3, 2020

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

The Honorable Jovita Carranza
Administrator
U.S. Small Business Administration
409 3rd St, SW
Washington DC 20416

(Docket Number: SBA-2020-0015, Comments Submitted Transmitted Electronically Through Regulations.gov)

Secretary Mnuchin and Administrator Carranza:

On behalf of the nearly \$1 trillion equipment leasing and finance industry, I am writing to submit comments regarding the recently issued interim final rule regarding the Paycheck Protection Program (Docket Number: SBA-2020-0015). The first is to ask you to reconsider your decision to exclude small financial services businesses from the Paycheck Protection Program. The second is to confirm that, under the PPP, “rent,” and “lease payments,” include rent payments under both personal property and real property leases.

In light of the fact that the program is only anticipated to run for 60 days, and the comment period runs for 30 days, we are requesting that you issue additional clarifying guidance during the comment period addressing both of these issues. As you know, there is a significant chance that the program will be fully subscribed before the end of the comment period. The extraordinary circumstances of a program this large, running over such a relatively short period of time, warrant extraordinary administrative action to ensure accurate guidance and economic relief is provided to America’s small businesses.

A short background about the Equipment Leasing and Finance Association (ELFA) follows the signature block.

Small Financial Services Firms

In the interim final guidance issued by the Small Business Administration implementing the PPP, almost all the exclusions of the traditional SBA 7(a) program are maintained. This means that small finance companies are not eligible to receive funds under the PPP. As highlighted in the ELFA’s letter of March 28, 2020, to Administrator Carranza, today, small equipment finance companies are processing hundreds, if not thousands, of deferrals for their customers. (A copy of the March 28th letter is attached to this submission.) Now, as a result of that reduced revenue, they may need to reduce their workforce, because they are likely ineligible for the PPP.

These small equipment finance companies are exactly the types of businesses that we need running at full speed when the health crisis recedes, and we want to get the economy back to full speed. Congress clearly indicated that they wanted this program to apply to, “all businesses,” when they specifically included this language in the statute and we would strongly encourage you to reconsider the exclusion of small finance companies from the PPP.

Additionally, we do not believe the Economic Injury Disaster Loans (EIDL) are an acceptable substitute for the PPP. If, due to the coronavirus, a cash-strapped business with a \$1 million annual payroll were to receive funds from the PPP, that would be approximately a \$208,000 loan, which if used appropriately would convert to a grant (presuming the business maintained its payroll). If the same business took out a \$208,000 EIDL loan, it would have to pay back the loan in its entirety, with interest. This loan amount represents 20 percent of payroll, in this example - a significant difference. We believe that even businesses with the best of intentions are going to debate whether it is more prudent to reduce payrolls rather than take on significant additional debt in times of economic uncertainty.

The Use of PPP Funds for Personal Property Leases

As you both know, American small businesses require many things to operate. A grocery store can't operate without its employees, but it also can't operate without its freezers. A delivery service can't operate without its drivers, but it also can't operate without its trucks. In today's economy, half of all equipment placed into service in any given year is either leased or financed.

As noted above, ELFA member companies are today processing hundreds, if not thousands, of loan and lease modifications to allow their small business customers to defer payments until the economy can get back on its feet. However, those same equipment finance companies have obligations to creditors of their own. Additionally, often equipment leases and loans are securitized adding another level of economic impact.

We believe that the Paycheck Protection Program will enable small businesses to continue to keep employees on the payrolls, which is critical to ensuring that the economy can restart efficiently once the health crisis recedes. We believe just as strongly though that it is also critical for the overall economy that small businesses be allowed to utilize this program to make lease payments on their freezers, trucks, ovens, and other equipment critical to their day to day operations. We believe this because we are concerned about the effect of missed payments on the overall economy. Missed lease payments will translate into missed payments to creditors and significantly lower yields on asset-backed securities, leading to serious market-wide credit consequences. When considering \$900B of equipment is leased or financed in any given year, this could have a significant effect across the economy.

Accordingly, we would request that you clearly indicate that PPP loans can be utilized by small businesses for lease payments for personal property, or more specifically equipment. A legal rationale for you providing this clarity follows.

Section 1102 of the Act provides for Paycheck Protection Program Loans and the SBA guaranty of principal and interest thereon. Section 1102(a)(2)(F) specifies the allowable uses of

covered loan proceeds during the covered period for such loan. In addition to payroll costs, employee salaries, and group health care benefits, subsection (F)(i)(V) includes “rent (including rent under a lease agreement).” Along with clause (VI) “utilities,” this recognizes that covered loans are needed not only for human capital, but also for use of equipment, premises, and energy needed to sustain continuance of the small business.

The Act distinguishes between such current expenses, and capital expenditures to acquire ownership of property: clause (IV) expressly excludes “prepayment of or payment of principal on a mortgage obligation,” both of which would be capital expenditures with respect to acquiring unfettered ownership of the realty. In contrast, that clause does allow for “payments of interest on any mortgage obligation,” which—like rents and utilities—represent payments for the current use of the mortgage loan.

Similarly, the borrower certification requirements under subsection (G)(i)(II) mandate a good faith certification “that funds will be used to...maintain payroll or make mortgage payments, lease payments, and utility payments.” There is no restriction on lease or utility payments, whereas subsection (F)(i)(IV) and (VII) both specify that only interest on mortgage obligations and “other debt obligations...incurred before the covered period,” is a permitted use of covered loans.

Finally, the forgiveness provisions of section 1106 also are broadly written so that a “covered rent obligation” is simply “rent obligated under a leasing agreement in force before February 15, 2020” and the “expected forgiveness amount” is limited to “interest on any covered mortgage obligation” but is merely the “payments on any covered rent obligation.” Section 1106(b) confirms this conclusion by stipulating that the amount eligible for forgiveness includes “any payment on any covered rent obligation,” but only the “interest on any covered mortgage obligation”—and expressly excludes “any prepayment of or payment of principal.” Current expenses (payroll, rent, interest, and utilities) are eligible for forgiveness; expenses which discharge all or a portion of prior indebtedness are not.

Conclusion

For the reasons articulated in the first section above, ELFA strongly encourages you to amend your initial final rule with regards to the exclusions under the PPP. It is critical that small financial firms suffering from revenue shortfalls due to the health crisis be eligible for the PPP so they can maintain the workforce that will be necessary to restart the economy once the health crisis recedes. Additionally, we would ask that you issue immediate guidance while the comment period is running that indicates that rent in the form of lease payments on personal property is explicitly an allowable expense under the PPP.

Respectfully submitted,



Ralph Petta
President and CEO

BACKGROUND ON ELFA

ELFA is the trade association representing financial services companies and manufacturers in the nearly \$1 trillion U.S. equipment finance sector. Equipment finance not only contributes to businesses' success, but to U.S. economic growth, manufacturing and jobs. Seventy-nine percent of U.S. companies use some form of financing when acquiring equipment, including loans, leases, and lines of credit (excluding credit cards). In 2019, a projected \$1.8 trillion will be invested by U.S. businesses, nonprofits, and government agencies in plant, equipment, and software. Approximately 50%, or \$900 billion of that investment, will be financed through loans, leases and lines of credit. America's equipment finance companies are the source of such financing, providing access to capital.

ELFA represents more than 575 member companies, including many of the nation's largest financial services companies and manufacturers and their associated service providers, as well as regional and community banks and independent, medium, and small finance companies throughout the country. ELFA member companies finance the acquisition of all types of capital equipment and software, including agricultural equipment; IT equipment and software; aircraft; manufacturing and mining machinery; rail cars and rolling stock; vessels and containers; trucks and transportation equipment; construction and off-road equipment; business, retail, and office equipment; and medical technology and equipment. The customers of ELFA members range from Fortune 100 companies to small and medium sized enterprises to governments and nonprofits.

ELFA represents virtually all sectors of the equipment finance market and its members see virtually every type of equipment financing transaction conducted in the United States and every type of funding available to providers of equipment finance. ELFA members who are service providers to the equipment finance industry (such as lawyers, accountants, trustees and vendors) have a unique vantage point of seeing scores of financial transactions from initial concept to final payout and from the perspective of both the borrower/issuer and lender/investor/funding source. ELFA truly is at the heart of equipment finance in the United States and our member companies provide lease, debt, and equity funding to companies of all sizes.