

United States Senate

WASHINGTON, DC 20510

April 8, 2020

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

The Honorable Jovita Carranza
Administrator
U.S. Small Business Administration
40 3rd Street, S.W.
Washington, DC 20416

Dear Secretary Mnuchin and Administrator Carranza:

I write to you today regarding the implementation of the Paycheck Protection Program (PPP). During this unprecedented period, Congress has tasked the Treasury Department and Small Business Administration (SBA) with the monumental challenge of implementing a significant loan program in a remarkably short amount of time. I first want to thank you both and your staff for your tireless effort under difficult circumstances. Over the past several days, I have been in constant communication with banks, credit unions, and potential borrowers from Pennsylvania to receive direct feedback about the program's performance. As can be expected with the launch of a massive new program, Pennsylvania lenders have raised critical issues about the PPP.

I write to relay these concerns and ask how the Treasury Department and SBA will resolve them, and if statutory changes would better address these problems.

1. *Technological issues.*

Pennsylvania lenders have experienced repeated difficulties with SBA technology platforms. E-Tran has often gone offline or slowed to a crawl. Existing SBA lenders have struggled to reactivate their SBA lender accounts and add new users (waiting up to 48 hours for user names). New lenders report that registering under PPP seems to be unworkable. Lenders have also not been able to access the Amazon Web Services (AWS) platform for processing non-SBA lender PPP loans. Finally, lenders lack clarity about how long the SBA PPP funding will last, which is creating unnecessary uncertainty for borrowers and lenders. Here are two ways to help mitigate these concerns: expedite new user additions for FDIC-insured institutions and provide an accessible running total of remaining PPP funding.

2. *Difficulties serving every eligible customer.*

Many lenders in Pennsylvania are reluctant to originate PPP loans for small businesses who are not currently their customers, in large part due to Anti-Money Laundering (AML) and Bank Secrecy Act (BSA) compliance. This harms Pennsylvania's small businesses because Wells Fargo cannot originate PPP loans for many customers because of a cap on asset size imposed by the Federal Reserve. Where will Wells Fargo's customers turn if they lack a relationship with other lenders? Your agencies could ease this pressure by helping lenders overcome regulatory restrictions on serving new customers, and pursuing other sensible ways to overcome restrictions on the ability of lenders to use the PPP program.

3. *Confusion about required documentation, certification, note, eligibility, and disbursement.*

Lenders still need more clarity on what documentation, certifications, and eligibility will satisfy loan program requirements. Lenders that have wanted to finalize loans as soon as yesterday have struggled with this opaqueness. Clarity is urgently needed on how lenders should document a loan. Lenders want to provide only a manageable number of documents and inputs—that are as uniform and simplified as possible—before closing on a loan. Rather than having lenders use their own loan documents, SBA ought to produce a standardized set of forms for all lenders to use. This form should clarify that PPP loans do not have to be collateralized or personally guaranteed (suretyships). Consistent documentation would also facilitate a secondary market for PPP loans. Finally, lenders need clarity about disbursement requirements for PPP loans, given SBA's indication that PPP loans “should be funded within 5 days of receiving an approval number on E-Tran.” Lenders should know that they may disburse loans within five days, or as soon as is practicable (but not later than a reasonable period, such as 30 days) from the SBA approval date. SBA also should answer whether the standard SBA guarantee for payment defaults will apply to those loans that do not qualify for forgiveness under the payroll calculation.

4. *PPP eligibility and “any business concern.”*

Small financial businesses are concerned about the PPP guidelines' reference to ineligible businesses under 13 C.F.R. § 120.110. Many of these restrictions are sensible, but businesses are particularly concerned about a potentially harmful restriction in 13 C.F.R. § 120.110(b) on lending to “financial businesses primarily engaged in the business of lending.” They believe that this is inconsistent with the statutory text of the CARES Act, which states that “in addition to small business concerns, *any business concern*” shall be eligible to receive a PPP loan if it meets the CARES Act's employee-size criteria. 15 U.S.C. § 636(a)(36)(D)(i) (emphasis added). In their view, the CARES Act's language providing eligibility for PPP loans to “any business concern” overrides the pre-existing SBA regulations in 13 C.F.R. § 120.110. Please address why Treasury and SBA reached its decision to interpret “any business concern” narrowly.

5. *Economic Injury Disaster Loans.*

Borrowers have significant questions about the SBA's Economic Injury Disaster Loans (EIDLs). Before PPP's enactment, some businesses applied for EIDLs because they could allegedly receive EIDL advances of up to \$10,000 within three days of applying for a loan. These advances appear to have been delayed for weeks. This has confused borrowers and lenders, in part because of the interplay between EIDLs and PPP loans. Additional guidance on how to utilize EIDLs and PPPs would be helpful. In addition, small businesses are eager to know how the SBA plans to speed up the delivery of EIDL advances.

6. *Affiliates.*

Many borrowers have asked for more certainty about rules identifying affiliates for the purposes of the 500-employee cap. Some argue that the PPP should use an objective brightline test to identify affiliates, such as an equity owner's percentage control of a company. They argue that the uncertainty springing from a test that requires a borrower to evaluate facts and circumstances, subjectively, could unnecessarily hinder a startup's access to capital.

I thank you in advance for your responses and am happy to discuss these matters with you whenever convenient.

Sincerely,



Pat Toomey
U.S. Senator

Chairman, Subcommittee on Securities, Insurance, and Investment
U.S. Senate Committee on Banking, Housing, and Urban Affairs