

Congress of the United States
Washington, DC 20515

May 13, 2020

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

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

Dear Secretary Mnuchin and Administrator Carranza:

Thank you for your tireless efforts in developing and implementing the Coronavirus Aid, Relief and Economic Security, or CARES, Act. Included in this package was the critical Paycheck Protection Program, which has provided a critical lifeline to businesses struggling to keep their doors open and stay afloat.

As you know, the Paycheck Protection Program (PPP) was set up to provide small businesses access to emergency capital in the form of low-interest private loans guaranteed by the U.S. Small Business Administration (SBA). These loans were to be used for payroll and other statutorily defined business expenses, conditioned upon business retaining or rehiring employees. These provisions were intended to incentivize business owners to keep their employees, provide a steady source of income for millions of Americans and limit start-up costs after the pandemic.

As part of the PPP loan application, there is a certification required that the "[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant." While the PPP interim rule did not define necessity, it is clear that Congress envisioned supporting companies that may not survive given their limited access to capital. This does not mean that the business had to demonstrate likely foreclosure to qualify. Nor does the business need to demonstrate that it had no other means of obtaining credit.

Although applicants were not required to seek credit elsewhere or otherwise show likely closure before applying, it appears that enforcement agencies will be scrutinizing the perceived need for the funding. Post-issuance reviews seem likely to focus on whether the applicant had sufficient cash reserves, had access to capital from related sources, issued projections showing limited impact during the COVID-19 crisis, or was otherwise in a strong financial position prior to applying for the loan or loan forgiveness.

In its supplemental FAQs issued on April 23, SBA urged borrowers to "review carefully the required certification" regarding necessity of the loan. SBA's interim final rule gave borrowers a "limited safe harbor" window of opportunity, until May 7, 2020, to return funds that in retrospect they should not have received. However, that window has since been extended until May 14, 2020. The SBA has indicated it would deem the original certification as made in good faith – in other words, ignore the mistaken certification and forego civil, or even criminal, enforcement down the road – if the funds are returned within that time frame.

However, as currently drafted, the interim final rule issued by the SBA has created some very vague guidance regarding the safe harbor provision. We ask that you exercise the power of your respective offices to extend the safe harbor window of opportunity for business certification until one week after the issuance of a final rule. This will give businesses the opportunity to fully review the final guidance in order to determine whether or not to return the funds.

Thank you for your immediate attention to this issue and again, we ask that you extend the safe harbor provision until one week after final guidance is issued. We look forward to continuing to work with you on this and other important issues to ensure the full recovery of the U.S. economy.

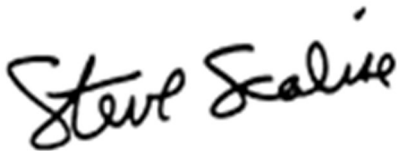
Sincerely,



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Member of Congress



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Member of Congress



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Rick Allen
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Scott Tipton
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Steve Stivers
Member of Congress



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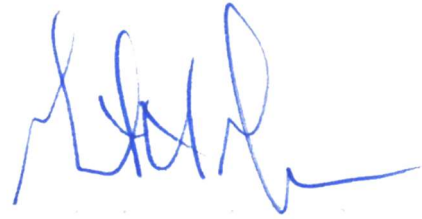
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