

Congress of the United States
U.S. House of Representatives
Committee on Small Business
2501 Rayburn House Office Building
Washington, DC 20515-6515

MEMORANDUM

To: Members, Committee on Small Business
From: Nydia M. Velázquez, Chairwoman
Date: June 17, 2020
Re: Full Committee Remote Hearing: “Paycheck Protection Program: Loan Forgiveness and Other Challenges”

The Committee on Small Business will meet for a hearing titled, “Paycheck Protection Program: Loan Forgiveness and Other Challenges.” The hearing is scheduled to begin at 1:00 P.M. on Wednesday, June 17, 2020, via webcast and dial-in (information to be provided). The hearing will allow Members to learn about the Small Business Administration’s (SBA) Paycheck Protection Program (PPP) and the issues borrowers and lenders have faced in applying for and using the loans, especially regarding use of proceeds that will qualify borrowers for full loan forgiveness. Members will also have the opportunity to hear about what has generally worked with the program, what has not, the changes Congress has recently made to the program, and suggestions to continue optimizing the program.

Panel

- Ms. Melissa Kelly, Executive Chef and Proprietor, Primo, Rockland, ME
- Mr. Eduardo Sosa, Senior Vice President, SBA Lending, Commerce National Bank, West Lake Hills, TX
- Ms. Ashley Harrington, Director of Federal Advocacy and Senior Counsel, Center for Responsible Lending, Washington, DC
- Dr. Rich Coleman, DVM, Owner, Four Paws Animal Hospital, Lebanon, OH

Background

The Paycheck Protection Program (PPP) was established in the CARES Act¹ as a subprogram of the 7(a) loan guarantee program. It delegates authority to banks and other lenders to make up to \$350 billion in fully guaranteed loans to small businesses negatively impacted by the COVID-19 outbreak and subsequent economic collapse. The program was tailored to assist small businesses with meeting payroll costs and other expenses, and it offers full forgiveness on loan proceeds spent for such purposes. However, the Small Business Administration (SBA) and Department of Treasury’s implementation of the PPP has been problematic, and the initial round of funding expired after 14 days, requiring Congress to act again.

¹ P.L. 116-136.

On April 24, the Paycheck Protection Program and Health Care Enhancement Act² (Enhancement Act) became law. The Enhancement Act appropriated an additional \$310 billion for the PPP, and included a series of set-asides of those funds so that community lending institutions, including Community Development Financial Institutions (CDFIs), Certified Development Companies (CDCs) and SBA Microloan Intermediaries, could participate in the program on equal footing with large banks. These set-asides are intended to maximize PPP lending in traditionally underserved business communities.

On June 5, 2020, the Paycheck Protection Program Flexibility Act (Flexibility Act) became law.³ The Flexibility Act establishes a minimum maturity of five years on PPP loans, and extends the covered period during which a borrower may use such funds for certain expenses while remaining eligible for forgiveness from eight to 24 weeks. The new law also raises the non-payroll portion of a forgivable covered loan amount from the current 25 percent up to 40 percent.

As of June 11, the second tranche of PPP funding has supported over 4.5 million loans for a total net PPP dollars lent at over \$511.7 billion, with the average loan size of about \$112,388.⁴ As of that date, about \$130 billion in PPP funding remains available.⁵

Current Issues

Need for Simplified Forgiveness Application

One of the greatest challenges reported by PPP borrowers to Congress was the lack of timely guidance regarding loan forgiveness. On May 22, about seven weeks after the program was enacted and only one week before some borrowers became eligible to begin applying for forgiveness, SBA issued more detailed instructions and published a loan forgiveness application. Lenders and borrowers have raised concerns that the 11-page application is too long and complex for most small businesses, especially microbusinesses. Congress intended these loans to ultimately be fully forgiven, and an overly burdensome application creates a barrier to that forgiveness. The hearing will discuss options for a streamlined forgiveness application for small-dollar PPP loans.

"Safe Harbor" from the Loan Forgiveness Rehiring Requirement.

The Flexibility Act provides borrowers with a "safe harbor" from the loan forgiveness rehiring requirement if the borrower is unable to rehire an individual who was an employee of the recipient on or before February 15, 2020, or if the borrower can demonstrate an inability to hire similarly qualified employees on or before December 31, 2020. This provision was intended to provide flexibility for PPP borrowers who tried in good faith to restore their pre-COVID-19 headcounts but were legitimately unable to through no fault of their own. The Committee plans to monitor SBA's implementation of the safe harbor provision, and the hearing will offer Members the opportunity to hear both the borrower's and lender's perspectives on this particular concern.

² P.L. 116-139.

³ P.L. 116-142.

⁴ Email from U.S. Small Bus. Admin. Office of Cong. & Legislative Affairs, to U.S. House Comm. On Small Bus. (Jun. 11, 2020, 06:29 PM EDT) (on file with recipient).

⁵ U.S. Small Bus. Admin., *Paycheck Protection Program (PPP) Report: Approvals through 06/06/2020*, (Jun. 6, 2020), https://www.sba.gov/sites/default/files/2020-06/PPP_Report_Public_200606%20FINAL_-508.pdf.

Lack of Sufficient, Clear Guidance for Lenders

While recognizing the implementation of these large lending programs is a steep challenge for a small, independent agency like the SBA, the rollout of more general, non-forgiveness related guidance was also fragmented and confusing for lenders and borrowers from the start, and per stakeholder reports, has remained as such through the present.⁶ This was an immediate issue, as the very first interim final rule was released on the eve of the date the PPP was launched, leaving lenders with little time to become familiar with the new regulations and implement them. In the ensuing weeks, guidance was released in a piecemeal manner, forcing lenders to rely on incomplete and ever-changing information. As of June 11, the rollout of guidance remains piecemeal, and has not been centralized into a single volume or document for borrowers and lenders. Treasury/SBA have published 17 interim final rules (IFRs) and 48 answers to Frequently Asked Questions since the start of the program, which has forced borrowers and lenders to rely on disjointed and incomplete guidance that is subject to change. Lenders have reported this is an unfortunate departure from traditional SBA practice, which is to publish a comprehensive set of Standard Operating Procedures (SOPs) governing each program. Though lenders greatly anticipated the quick release of SOPs or some other comprehensive program guide for PPP, they were and remain disappointed and frustrated with the rolling nature of program guidance.

Full-Time Employee Count

One of the most confusing aspects of the program, as reported by many borrowers *and* lenders, is the calculation of full-time employees, especially “full-time equivalent” (FTE) employees. PPP borrowers must restore pre-COVID-19 employment levels in order to qualify for full loan forgiveness, and the FTE calculation is a central part of the process. Initially, this was so confusing SBA had to offer an alternative method for FTE calculation “for administrative convenience.”⁷ Given that loan forgiveness was one of the main appeals of the program, many borrowers have reported greater clarity regarding FTE counts and other issues at the outset could have prevented some of the issues that borrowers encountered.

Minority-Owned Small Businesses Shut Out of Program

When the initial tranche of PPP funding was revealed to be favoring larger, better capitalized businesses, Congress realized more needed to be done to ensure traditionally underserved small businesses, especially those owned by minority entrepreneurs, had equitable access to the program, as well. That is partly why the Enhancement Act included a set-aside of \$30 billion for community financial institutions, such as CDFIs, CDCs, and SBA Microloan Intermediaries. However, minority entrepreneurs, especially sole proprietors, have reported that more needs to be done to ensure minority-owned businesses are able to fully access the program. This hearing will allow Members to assess the impact the PPP has had on traditionally underserved business communities.

Need for More Data

On Wednesday, June 10, Secretary Mnuchin testified before the Senate Committee on Small Business and Entrepreneurship and stated that the names, amounts, and other key data points for the PPP will not be published because it is “confidential information.” This was a stunning reversal, as SBA initially intended to publish this data in accordance with the information presently

⁶ Notably, this guidance was prepared and released by Treasury in conjunction with SBA, as opposed to independently by SBA.

⁷ 85 FR 33008.

on the SBA.gov website.⁸ It is also a departure from typical 7(a) program procedures, which are required to also govern PPP, since PPP is a 7(a) sub-program. Typically, SBA publishes detailed loan information for each 7(a) loan made, enabling SBA and policymakers to fully assess the impact of the program, especially in terms of geography and demographics. News organizations have already filed lawsuits under the Freedom of Information Act to obtain this typically accessible data.⁹

Program Ends on June 30

Under the CARES Act, the final date a PPP loan application may be made is June 30. However, small businesses in certain industries and parts of the country still under forced closures and stay-at-home orders report needing more time to assess the viability of their business before committing to taking on more debt, and have argued that extending the end date of the program will give them more certainty as to the debt product they need to maximize their business' chance of survival. However, Members of Congress and Senators have called for additional improvements to the PPP program before extending it.

Need for More PPP in States Hardest Hit and Areas with Recent Spikes In COVID-19 Cases

After the first tranche of PPP funding, concerns were raised about the geographic distribution of PPP loans. For example, the Economic Innovation Group (EIG) found that on a per capita basis, populous states received relatively little funding in the first tranche.¹⁰ According to EIG, that changed in the second round of funding, as the share of PPP dollars approved nearly doubled in California and New York.¹¹ Other states that saw proportionately little funding in the first tranche, such as Florida and New Jersey, experienced a significant rebound in the second round, as well.¹² Based on this, it appears the set-asides Congress included for community lenders in the Enhancement Act was at least partially successful at making the geographic distribution of PPP loans more equitable. With that said, some states that were not particularly hard hit by the pandemic earlier are now beginning to see an increase in the number of cases,¹³ raising concerns and calls for further assistance.

Proposals

Some small business advocates have called for more changes to the program. Some have called on Congress to allow existing PPP borrowers who've exhausted their initial funds to apply for a second loan, particularly if they are in the hardest hit areas. The Committee wants to make sure that all small businesses, particularly microbusinesses and minority- and women-owned small businesses, that need funding are able to apply for funds, before allowing borrowers a second round of funding. To that end, the Committee plans to analyze why demand for PPP appears to

⁸ The Washington Post, *Trump Administration Won't Say Who Got \$511 Billion in Taxpayer-backed Coronavirus Loans*, (Jun. 11, 2020) <https://www.washingtonpost.com/business/2020/06/11/trump-administration-wont-say-who-got-511-billion-taxpayer-backed-coronavirus-loans/>.

⁹ The Washington Post, *The Post Among Five News Organizations Suing Small Business Administration for Access to Loan Data*, (May 12, 2020) <https://www.washingtonpost.com/business/2020/05/12/sba-foia-lawsuit/>.

¹⁰ Economic Innovation Group, *Comparing Tranches 1 and 2 of the Paycheck Protection Program*, (May 14, 2020) <https://eig.org/news/comparing-tranches-1-and-2-of-the-ppp>.

¹¹ *Id.*

¹² *Id.*

¹³ The Wall Street Journal, *Covid-19 Hospitalizations Surge in Some States*, (Jun. 11, 2020)

https://www.wsj.com/articles/covid-19-hospitalizations-surge-in-some-states-11591912459?mod=hp_lead_pos3.

has stalled – the initial \$349 billion was spent in only 14 days, forcing Congress to add an additional \$310 billion in late April. As of mid-June, approximately \$130 billion of that \$310 billion remains unspent. The Committee also plans to discuss potential solutions to streamline the forgiveness process.

Conclusion

A recent jobs report¹⁴ showed a slight uptick in the creation/restoration of jobs – a sign that the PPP, despite the initial stumbles, is working. Though encouraged by the effectiveness of the program, we must acknowledge that the COVID-19 pandemic is not over, there is still not a vaccine available, nor is testing widely and affordably available for all. Local economies must still operate under stay-at-home orders, which will continue to limit the ability of small businesses to generate the revenue they could have otherwise expected. Scientists and experts still warn us of the possibility of a second wave of COVID-19 happening this autumn, which means this Committee must continue its focus on providing relief to small businesses that still need it. Accordingly, this hearing will provide Members with a timely opportunity to comprehensively assess the PPP and hear from a borrower's, lender's, and research perspective on the program and how it can be modified so that it can most effectively respond to the needs of small businesses impacted by COVID-19.

¹⁴ News Release, U.S. Dep't of Labor Bureau of Labor Statistics, *The Employment Situation – May 2020*, (Jun. 5, 2020), <https://www.bls.gov/news.release/pdf/empisit.pdf>.