

**Congress of the United States**  
**U.S. House of Representatives**  
**Committee on Small Business**  
2361 Rayburn House Office Building  
Washington, DC 20515-6315

**MEMORANDUM**

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**To:** Members, Committee on Small Business  
**From:** Nydia M. Velázquez, Chairwoman  
**Date:** March 10, 2021  
**Re:** Full Committee Hybrid Hearing: “The Next Steps for the Paycheck Protection Program”

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The Committee on Small Business will meet for a hybrid hearing titled “The Next Steps for the Paycheck Protection Program.” The hearing is scheduled to begin at **10:00 A.M. on Wednesday, March 10, 2021, in person in 2360 Rayburn House Office Building, and virtually via the WebEx platform (information to be provided)**. The hearing will provide an overview of the Paycheck Protection Program (PPP) and an update for Members on the current state of the First and Second Draw loans, as well as loan forgiveness. The Committee will also hear feedback on the impact of the five programmatic changes recently announced and suggestions from stakeholders regarding the future of the program.

**Panel:**

- Ms. Hilda Kennedy, President & Founder, AmPac Tri State CDC, Ontario, CA;
- Ms. Lisa Bombín, President & CEO, Unico Communications, Inc., San Antonio, TX;
- Ms. Lisa Simpson, Vice President – Firm Services, American Institute of Certified Public Accountants, Durham, NC;
- Ms. Alice Frazier, President & CEO, Bank of Charles Town, Charles Town, WV

**Background**

*Paycheck Protection Program*

The PPP was established in the CARES Act<sup>1</sup> as a subprogram of SBA’s 7(a) loan guarantee program. Under PPP, banks and other private lenders make fully guaranteed SBA loans to small businesses negatively impacted by the COVID-19 pandemic. The loans are intended to assist small businesses with meeting payroll costs and other expenses and offers full loan forgiveness if loan proceeds are spent on such purposes. In total, over \$800 billion has been appropriated for PPP in several pieces of legislation.

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<sup>1</sup> P.L. 116-136.

The PPP and Health Care Enhancement Act<sup>2</sup> (Enhancement Act) included set-asides of newly-appropriated PPP 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 were intended to maximize PPP lending in traditionally underserved business communities. The PPP Flexibility Act<sup>3</sup> (Flexibility Act) established a minimum maturity of five years on PPP loans and extended the covered period during which borrowers may use such funds for certain expenses while remaining eligible for forgiveness from eight to 24 weeks. The Flexibility Act also raised the non-payroll portion of a forgivable covered loan amount from the current 25 percent up to 40 percent. S. 4116<sup>4</sup> extended the PPP application deadline to August 8, 2020, allowing more time for small businesses considering applying for a PPP to weigh their options. The Economic Aid Act<sup>5</sup> made numerous improvements to PPP, including allowing borrowers who've spent all of their PPP loan to apply for a "Second Draw" PPP loan, and expanded the use of loan proceeds eligible for forgiveness. Finally, the House and Senate versions of the American Rescue Plan<sup>6</sup> adds \$7.25 billion for expanded eligibility of small nonprofits and internet publishing organizations for PPP.

As of March 4, 2021, PPP is open and currently accepting applications for First and Second Draw loans. According to SBA's public data, as of February 28, 2021 (the most current available on SBA.gov), the PPP has guaranteed over 7.3 million loans for a total net PPP dollars lent at over \$678.7 billion, with an average loan size of approximately \$92,448.<sup>7</sup> In 2021, over 2.1 million PPP loans have been approved totaling over \$156.2 billion total net PPP dollars lent, with an average loan size of approximately \$71,205.<sup>8</sup>

## **Current Issues**

### *Extending PPP Application Deadline*

Under current law, PPP is set to close on March 31, 2021, and some lenders have reported they may slow down PPP operations in advance of that date in order to dedicate the final weeks of the program to serving pending PPP applications. There is concern that allowing the program to close on March 31 would still leave many small businesses in need without relief, especially if there are funds remaining to be lent. There is also a concern that an extension of the program would require an additional appropriation from Congress.

### *Interplay with Shuttered Venue Operators Grant Program*

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<sup>2</sup> P.L. 116-139.

<sup>3</sup> P.L. 116-142.

<sup>4</sup> P.L. 116-147.

<sup>5</sup> P.L. 116-260.

<sup>6</sup> American Rescue Plan Act of 2021, H.R. 1319, 117th Cong. § 6001 (2021).

<sup>7</sup> U.S. Small Bus. Admin., *Paycheck Protection Program (PPP) Report: Approvals through 02/28/2021*, (Feb. 28, 2021), [https://www.sba.gov/sites/default/files/2021-03/PPP\\_Report\\_Public\\_210228-508.pdf](https://www.sba.gov/sites/default/files/2021-03/PPP_Report_Public_210228-508.pdf).

<sup>8</sup> *Id.*

Small businesses in the live events industry, especially venue operators, have expressed serious concerns with SBA's delays in opening the Shuttered Venue Operators Grant (SVOG) program, especially given the rapidly approaching PPP deadline of March 31. Entities that receive a PPP loan in 2021 are ineligible for SVOG,<sup>9</sup> which given the delay in opening SVOG, effectively forces venue operators and other SVOG-eligible firms into the choice between seeking either a PPP loan in 2021, or waiting until SVOG is open. This is a suboptimal dilemma for these firms, who desperately need relief. On one hand, by seeking a PPP loan in 2021, an applicant would forego eligibility for a grant program with more flexible use of proceeds permitted and designed for the specific needs of the industry, and assume the risk of partial loan non-forgiveness, which equals more debt for the business at a time when they least need it. On the other hand, by continuing to wait for SVOG to open, an applicant would continue to delay their access to relief, which increases the likelihood of job losses and of eventual business closure.

As of March 4, 2021, the Senate version of the American Rescue Plan would allow SVOG applicants to receive a PPP loan in 2021, but would reduce the amount of the overall grant by the amount of the new loan to prevent double dipping.

#### Replenishing PPP Funds

Furthermore, since PPP re-opened in January, lenders have approved 2,092,884 PPP loans for a total of \$151.7 billion in net dollars lent.<sup>10</sup> Using data as of February 25, this means lenders have approved approximately \$4 billion in PPP loans per day.<sup>11</sup> Congress will continue to monitor the rate at which the current PPP appropriation is being used to determine whether additional funds are needed.

#### Biden Administration Amendments to PPP to Reach Minority-owned and Underserved businesses

Research has shown disparities in PPP access based on the borrower's race, particularly hurting Black borrowers.<sup>12</sup> On February 22, 2021, President Biden announced five changes to PPP that build off the successful bipartisan initiatives intended to increase lending to minority-owned small businesses. These include:

1. Instituting a 14-day PPP exclusivity period for businesses with fewer than 20 employees;
2. Revising the PPP loan calculation formula for sole proprietors, independent contractors, and self-employed individuals and establishing a \$1 billion set aside for these businesses located in low- and moderate-income (LMI) areas;

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<sup>9</sup> U.S. Small Bus. Admin., *Cross Program Eligibility on SBA Coronavirus Relief Options*, <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/cross-program-eligibility-sba-coronavirus-relief-options>.

<sup>10</sup> U.S. Small Bus. Admin., *Paycheck Protection Program – Data as of 02/25/21*, (Feb. 25, 2021), [https://www.sba.gov/sites/default/files/2021-03/2021.02.26%20-%20SBA%20COVID%20Relief%20Program%20Report%20-%20vFINALSHARE-508\\_0.pdf](https://www.sba.gov/sites/default/files/2021-03/2021.02.26%20-%20SBA%20COVID%20Relief%20Program%20Report%20-%20vFINALSHARE-508_0.pdf).

<sup>11</sup> *Id.*

<sup>12</sup> Rachel Atkins, et al., *Discrimination in Lending? Evidence from the Paycheck Protection Program*, (Jan. 15, 2021), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3774992](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3774992).

3. Supporting formerly incarcerated entrepreneurs by making most individuals with felony convictions eligible for PPP;
4. Making individuals with federal student loan delinquencies or defaults within the last seven years eligible for PPP; and,
5. Directing SBA to issue clear guidance that otherwise eligible PPP applicants cannot be denied access because they use Individual Taxpayer Identification Numbers (ITINs) to pay their taxes.

In response to the 14-day exclusivity period, many PPP lenders conducted extensive outreach to community-based organizations to raise awareness and encourage more PPP applications during the exclusivity period. During the 14-day exclusivity period, on March 3, SBA published a new PPP loan application form for Schedule C filers. However, some lenders have expressed concern that the timing of the release of the new application form for Schedule C filers will not allow these borrowers to take full advantage of the 14-day exclusivity period, and have argued for an extension of the 14-day exclusivity period.

On March 3, 2021, SBA issued an Interim Final Rule (the “March 3rd IFR”)<sup>13</sup> implementing a revised PPP loan calculation formula for sole proprietors, independent contractors, and self-employed individuals. Specifically, the new formula allows these applicants to calculate their loan amount based on gross income, which makes it easier for these borrowers to qualify for loans at higher amounts, as opposed to net profit, which deducts items like rent, utilities, and other business expenses. However, the March 3rd IFR also limits the application of the new formula to new PPP loan applicants, denying PPP borrowers already approved the ability to seek an increase based on the new formula. Advocates for self-employed individuals have argued this will severely limit the benefit of this policy change.

#### *PPP First Draw Increases and Interplay with PPP Second Draws*

Furthermore, the Committee has also received feedback, particularly from seasonal employers, regarding potentially problematic sequencing issues with PPP First Draw Increases and PPP Second Draw applications. Though a limited number of borrowers are impacted by this issue, some have reported that PPP lenders have not established a system for processing PPP First Draw Increases. Consequently, impacted borrowers are effectively forced to decide whether they will seek a PPP First Draw Increase, or a PPP Second Draw. This is especially problematic for borrowers who opt for a PPP First Draw Increase because they will risk missing out on a PPP Second Draw if funds are exhausted. In particular, some seasonal employers have requested SBA permit them to seek a PPP First Draw Increase *after* being approved for a PPP Second Draw.

#### *PPP Coverage of Hardest-Hit Industries*

In addition to PPP, Congress enacted programs, such as SVOG, that are designed for the unique needs of hardest-hit industries. Congress continued this approach as part of President Biden’s

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<sup>13</sup> U.S. Small Bus. Admin., *Interim Final Rule on Loan Amount Calculation and Eligibility* (originally posted 3/3/2021), (Mar. 3, 2021), <https://www.sba.gov/sites/default/files/2021-03/SBA%20PPP%20IFR%20Loan%20Amount%20Calculation%20and%20Eligibility%20283-3-21%29.pdf>.

American Rescue Plan, which includes a similar \$25 billion program for restaurants, but remains mindful there are many other small businesses and sectors that were not given any extra help and are still in desperate need of more assistance. This hearing will therefore provide Members an opportunity to assess PPP's coverage of these sectors still in need of relief and whether PPP's coverage is adequate for reaching these sectors.

#### Forgiveness Update

Early during the PPP loan forgiveness process, many borrowers expressed concerns with the loan forgiveness process. SBA was slow to publish loan forgiveness applications, and when borrowers and lenders expressed concerns about the needless complexity of these forms, SBA was slow to streamline them. This led to concerns from PPP stakeholders that SBA would be slow to process loan forgiveness, and that many borrowers would struggle with only partial loan forgiveness, saddling them with more unanticipated debt. Now it appears these concerns have eased somewhat and that SBA is processing forgiveness in a timely manner. As of March 4, approximately 36 percent of PPP loans have completed the forgiveness process, representing about 32 percent of total 2020 PPP loan volume.<sup>14</sup> Across all loan sizes, over 99 percent of loan value has been forgiven on loans that have completed the forgiveness process.<sup>15</sup>

#### PPP Fraud Update

While Congress and SBA have worked on continued PPP upgrades, federal and local law enforcement agencies have continued aggressively prosecuting PPP loan fraud. As of February 26, 2021, DOJ has filed criminal charges against 149 defendants in connection with PPP loan fraud.<sup>16</sup>

#### Hold Codes for "Unresolved Borrowers"

Some lenders are concerned about the Table 1 codes and the lender certification procedure provided in Procedural Notice 5000-20092.<sup>17</sup> Primary concerns center on the effect this method may have on lender hold harmless provisions and guarantees. The Procedural Notice shifts the responsibility to the lender to collect, certify and maintain information submitted by borrowers to resolve hold codes. Subject to SBA review, lenders will need to show they made the correct decision based on borrower-submitted documents. Though not all lenders have expressed concerns with the current state of the codes in Table 1, some have suggested further amendment to the Table 1 issues based on the risk to the lender associated with each code. Under this suggestion, codes easily cleared would be left to lender certification, and those not easily cleared and presenting a serious risk concern to the lender would go through the Table 2 SBA review process.

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<sup>14</sup> U.S. Small Bus. Admin., *Paycheck Protection Program: Data as of 03/04/21*, (Mar. 4, 2021), <https://www.sba.gov/sites/default/files/2021-03/2021.03.05%20-%20SBA%20COVID%20Relief%20Program%20Report%20-%20REVISED.pdf>.

<sup>15</sup> *Id.*

<sup>16</sup> Arnold & Porter, *CARES Act Fraud Tracker*, (Feb. 26, 2021), <https://www.arnoldporter.com/en/general/cares-act-fraud-tracker>.

<sup>17</sup> U.S. Small Bus. Admin., *SBA Procedural Notice No. 5000-20092*, (Feb. 10, 2021), <https://www.sba.gov/sites/default/files/2021-02/Procedural%20Notice%205000-20092%20-%20Revised%20PPP%20Procedures%20to%20Address%20Hold%20Codes-508.pdf>

### *Borrowers May Not Be Funded*

Some lenders have also raised concerns about a lack of process at SBA for quickly releasing applications for borrowers with hold codes. Reportedly, there are potentially thousands of loans with holds that remain in a holding pattern within SBA's systems, and lenders fear these loans may not be funded as the program deadline approaches. These lenders have advocated for a mechanism by which SBA can get these resolved borrowers out of the system quickly so their loans can be funded.

### *Disseminating Resources*

From the start, PPP was designed as a public-private partnership, requiring active engagement by all participants. It was therefore crucial that when the Biden administration announced the 14-day exclusivity period for businesses with fewer than 20 employees, that all participants do all they could to raise awareness and distribute loan applications, especially to underserved business owners. The Committee looks forward to reviewing updated PPP loan data to assess the impact of the 14-day exclusivity period.

### **Conclusion**

A year into the COVID-19 pandemic, the small business economy remains in a fragile state, with many sectors still in need of additional assistance. Though PPP has been effective at preserving millions of jobs and thousands of businesses, there were gaps it could not fill, and to that end, Congress will continue to evaluate the coverage of PPP and consider changes to it, and possibly other SBA programs, intended to maximize its reach and impact.