

Testimony of Tracy C. Ward
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Before the House Committee on Small Business

“What Comes Next? PPP Forgiveness”

September 1, 2021

I. Introduction

Good morning, Chairwoman Velázquez, Ranking Member Leutkemeyer, and members of the United States House Committee on Small Business. Thank you for the opportunity to provide testimony today. My name is Tracy Ward, and I am Director of the SBA 504 Loan Program at Self-Help Ventures Fund, part of the Self-Help family of nonprofits. Self-Help is a leading national Community Development Financial Institution (CDFI) with a mission of creating and protecting economic opportunity for all. We help drive economic development and strengthen communities by providing responsible financial services; lending to individuals, small businesses and nonprofits; developing real estate; and promoting fair financial practices. Since 1980, Self-Help has provided over \$9 billion in financing, and while our work benefits communities of all kinds, our focus is on those who may be underserved by conventional lenders, including people of color, women, rural residents and low-wealth families and communities. Through our affiliate, the Center for Responsible Lending, we engage in research and policy to protect homeownership and family wealth by working to eliminate abusive practices in financial markets.

Self-Help has offered small business loans to underserved and economically disadvantaged borrowers since the early 1980's, and we have partnered with the U.S. Small Business Administration (SBA) to offer SBA loans for over 30 years. As a community lender, Self-Help works closely with our borrowers, originating around 150 small business loans a year. In 2020 and 2021, Self-Help made almost 2,800 Payroll Protection Program (PPP) loans – about 1,750 during the 4½ months the program was available in 2020, and just over 1,000 more during the 4½ months it was available in 2021. Our median PPP loan size was \$20,800; over 70% of our PPP loans were under \$50,000.

On behalf of our borrowers, we are grateful that Congress came together to create PPP and that we and so many other lenders – especially CDFIs and community lenders focused on underserved businesses – were able to marshal resources and staff to meet the unprecedented volume of pandemic-related need in the communities we serve.

Congress came together on a bipartisan basis to create PPP to deliver urgently needed funds to small businesses, nonprofits, Veterans' organizations, and Tribal businesses, as well as self-employed individuals and independent contractors – collectively the backbone of the U.S. economy. The program was designed to deliver rapid relief for small businesses that had seen their revenues disappear literally overnight as COVID-19 forced an unprecedented economic shutdown across the country. Suddenly faced with the economic uncertainty of a pandemic, businesses were forced to make tough decisions as to how long they could continue paying their employees; nonprofits likewise faced tough decisions as to whether they could continue offering critically needed services in their communities.

Congress acted quickly to prevent mass layoffs and business closures by creating PPP, a grant program structured as forgivable loans to small businesses and nonprofits. Implemented by SBA and distributed through SBA's network of financial institutions, PPP was designed to provide an

immediate cash infusion to allow businesses to continue paying their workers and certain fixed operating costs, with the promise that funds spent properly would not have to be repaid. PPP was a lifeline to the struggling small businesses and nonprofits who were able to access this critical funding.

While PPP was a much-needed and unprecedented program, the challenges of accessing PPP funding – especially for microbusinesses, rural businesses and businesses owned by people of color – were numerous and well-documented.¹ SBA did outstanding work to get an entirely new loan program of this scope up and running within approximately two weeks of Congress creating it; nevertheless, the initial rules for the program were incomplete and confusing. Rules for microbusinesses were especially unclear and changed regularly throughout the time PPP loans were available. To date, SBA has issued over 30 Interim Final Rules (“IFRs”) for PPP, more than 90 Frequently Asked Questions (FAQs) across two separate documents, and several Notices, many of which clarified or changed earlier rules – and some of which continue to note that they do not yet incorporate all changes.²

Many of these changes were issued by SBA late at night, and in almost every case, were effective immediately upon issuance, rather than following the standard 30-day delayed effective date under the Administrative Procedure Act, and in the case of significant changes, the 60-day delayed effective date for major rules under the Congressional Review Act.³ Given the short duration and limited funding of the program, the intent of Congress under the CARES Act to issue relief expeditiously, and the urgent need for small businesses to obtain loans quickly, dispensing with the standard 30-day (and in cases of major rules, 60-day) delayed effective dates was necessary and appropriate for rules implementing explicit CARES Act language or expanding earlier SBA interpretations. In these cases, immediate effective dates benefited small businesses by allowing lenders to develop internal systems, policies, and procedures and begin offering PPP loans as quickly as possible. For changes that limited the broad language of the CARES Act, or clarifications that restricted SBA’s initial program rules, however, immediate effective dates caused significant harm to PPP borrowers by denying them a reasonable period to review and understand the changes.

Immediate effective dates for rules that restricted program parameters are especially troubling given that PPP was designed by Congress and SBA to put the burden of certifying eligibility and loan amount calculations on the small business borrower. Implementing restrictive changes

¹ For further discussion of the structural inequities in the PPP program, see Testimony of Ashley Harrington, Center for Responsible Lending, Before the U.S. House Committee on Small Business Regarding “Paycheck Protection Program: Loan Forgiveness and Other Challenges,” (June 17, 2020), <https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-testimony-harrington-house-smallbusiness-17jun2020.pdf>.

² See, e.g., Small Business Administration, Paycheck Protection Program: Frequently Asked Questions. Available at <https://www.sba.gov/sites/default/files/2021-07/FINAL%20FAQ%20Update%207.29.21-508.pdf>.

³ See, e.g., the Comments and Immediate Effective Date provisions of each PPP Interim Final Rule; the Administrative Procedure Act at 5 U.S.C. 553(d)(3); and the Congressional Review Act at 5 U.S.C. 808(2).

with an immediate effective date directly prevented small businesses from understanding the terms and conditions of their PPP loans, and as a result, is now preventing many PPP borrowers from receiving the full forgiveness Congress intended. If small businesses lacked capacity and expertise to review, analyze and understand changes to the rules that resulted in their ineligibility or in a miscalculation of their PPP loan amount, they now are required to repay all or a portion of their PPP loan. Even in cases where the small business borrower used PPP funds entirely for eligible purposes, they will not be fully forgiven. While immediate effectiveness was necessary and laudable in the case of beneficial changes, in the case of restrictive changes, immediate effectiveness was deeply unfair and harmful to borrowers. This is especially true for microbusinesses, which did not have the resources to access the accountants, lawyers or third-party payroll processing service providers larger businesses relied on for interpretations of PPP rules.

As the PPP program progressed, Congress, the Treasury Department and SBA recognized the inequities that proliferated in the early roll-out of the program, preventing many microbusinesses and economically disadvantaged applicants from accessing this critical relief, and made beneficial changes to help improve the final stages of PPP. It is now vitally important to ensure that the loan forgiveness stage of the program does not unintentionally harm these same underserved and economically disadvantaged businesses.

This is my over-riding message to you today: Several clear fixes to the forgiveness rules are necessary to ensure fairness, to provide the critical support to America's small businesses that Congress intended and upon which businesses and their employees relied, and to avoid inadvertently hurting the smallest businesses that are least able to sustain further harm.

My testimony will explain the following recommendations, which we believe are necessary to correct inequities in the PPP forgiveness process:

- **Avoid “gotcha” denials of loan forgiveness due to sudden changes in SBA rules imposed without advance notice** by requiring SBA to retroactively apply a standard 30-day grace period for effectiveness of PPP rules changes that made eligibility or loan amount calculation more restrictive. Implementing this change to rules that imposed limitations on broad CARES Act provisions or added clarifying restrictions to previously issued rules would significantly reduce forgiveness denials for microbusinesses that applied in good faith under PPP rules in place within a reasonable time of their application, fully expecting the loans would be forgiven. This is an issue of fundamental fairness that should apply to all borrowers impacted by these sudden changes, whether or not they have already submitted their forgiveness application to SBA.
- **Rescind SBA Procedural Notice 5000-20078 (issued on January 15, 2021), which requires borrowers to return PPP loan amounts received due to “borrower or lender error made in good faith”** even where the borrower spent the funds for eligible purposes in good faith reliance on promised forgiveness. Given that ambiguities in the initial rules and the chaotic program roll-out made good-faith errors inevitable, SBA

should forgive all borrowers who acted in good faith but were confused into unintended errors, provided they spent their funds properly. It is especially crucial that this grace be extended to microbusinesses – those with loans of \$150,000 or less – that lacked access to the assistance of legal and accounting professionals to help them avoid mistakes, that are least able to repay moneys already spent to survive the pandemic, and that are most likely to be forced to shut down if they are burdened with unexpected debt.

- **Improve borrower access to the SBA’s Direct Forgiveness Portal** by requiring opt-in to the SBA portal by lenders that (a) do not have their own online forgiveness portal; (b) have not submitted applications for forgiveness for at least 75% of their PPP loans within twelve months of the loan disbursement date; or (c) have been found by the SBA to have regularly failed to be responsive to borrower requests for submission of their loan forgiveness application.⁴
- **Alleviate unnecessary paperwork burdens for the smallest businesses** by expanding the use of simplified forgiveness application Form 3508S to loans of up to \$350,000 and by implementing automatic forgiveness for loans of \$25,000 or less.
- **Improve SBA’s loan review process to ensure fraudulent activity is prosecuted and borrowers who applied in good faith are not unfairly penalized** by focusing SBA’s manual review efforts on larger loans. SBA should balance the incidence and severity of likely fraud against the harmful impact of extensive delay and uncertainty on small businesses and nonprofits that acted in good faith.

II. Ensuring Equity in Small Business Lending

A. Small Businesses of Color Entered the Pandemic Credit Starved.

Business ownership is a proven mechanism for wealth-building, with economic benefits that extend beyond the individual business to the entire community. Unfortunately, there are profound disparities in how business owners fund their enterprises, with businesses of color having less access to loans from financial institutions. Research from the Federal Reserve found that in the previous five years, 46% of white-owned businesses with employees accessed credit from a bank, and 6% accessed credit from a credit union. During that same time, just 23% of Black-owned employer firms accessed credit from a bank, and 8% from a credit union; 32% of Latino-owned employer firms accessed credit from a bank, and 4% from a credit union.⁵ A recent study by the National Community Reinvestment Coalition found

⁴ It is worth noting that requiring unresponsive lenders to opt in to SBA’s Direct Forgiveness Portal would not let unresponsive lenders off the hook – lenders remain responsible for reviewing the borrower’s forgiveness application and supporting documentation and submitting a forgiveness decision to SBA, even when the borrower applies for forgiveness through the SBA’s Direct Forgiveness Portal. SBA must continue to monitor PPP lenders and hold them accountable to ensure they are complying with PPP requirements.

⁵ Small Business Credit Survey: Report on Employer Firms (2020).

steep reductions in SBA 7(A) lending to Black businesses between 2008 and 2016.⁶ That same study also found that Black and Latino testers applying for loans were required to produce more documentation to support their loan application than white testers, and received less information about fees and less friendly service when visiting a small business lender.⁷ Additional research found that business owners of color are more likely than white business owners to feel discouraged from seeking loans.⁸

Research from the Federal Reserve also found that business owners of color were more likely to rely on personal funds and personal credit scores to finance their business. Twenty-eight percent of Black and Asian owners and 29% of Latino owners relied on personal funds as the primary funding source for their business, compared to 16% of white business owners. Black and Latino business owners were also more likely to use their personal credit scores when obtaining financing with 52% and 51% doing so, respectively, compared to 45% of white and 43% of Asian business owners.⁹ In addition, in SBA's fiscal years ending September 30, 2019 and 2018, for all SBA 7(A) loans made, only 5% were made to Black-owned businesses, and only 9% were made to Latino-owned businesses.¹⁰

B. The Paycheck Protection Program was not implemented equitably.

Lack of access to credit can be harmful in the normal course of business, but in the midst of a pandemic, lack of access can have disastrous consequences for microbusinesses, the owners, and employees who depend on them for their livelihoods. Notably, as recently reported by the Federal Reserve, “the smallest firms ... also tend to be the most vulnerable to economic downturns such as the one sparked by the COVID-19 pandemic.”¹¹ Yet as set forth below,

⁶ National Community Reinvestment Coalition. (2019). “Disinvestment, Discouragement and Inequity in Small Business Lending.” Available at <https://ncrc.org/wp-content/uploads/2019/09/NCRC-Small-Business-Research-FINAL.pdf>.

⁷ *Ibid.*

⁸ See McManus, 2016. (“Research also finds that minority business owners are more likely to feel discouraged from seeking private loans. In a Census survey, only 16% of nonminorities felt discouraged from seeking a loan, while almost 30% of minorities felt the same way. These, in combination with other reasons, may be why minority business owners have a heavier reliance on personal finances.”) (citing Christine Kymn, U.S. Small Business Administration, Office of Advocacy, Access to Capital for Women- and Minority-owned Businesses: Revisiting Key Variables, January 2014, <https://www.sba.gov/sites/default/files/Issue%20Brief%203%20Access%20to%20Capital.pdf>).

⁹ Federal Reserve (2019) “Small Business Credit Survey: Report on Minority-Owned Firms.” Available at <https://www.fedsmallbusiness.org/medialibrary/fedsmallbusiness/files/2019/20191211-ced-minority-owned-firms-report.pdf>.

¹⁰ Small Business Administration, SBA Business Loan Approval Activity Comparisons for Fiscal Years 2012 to 2019, for the Period Ending 08-30-2019. Available at https://www.sba.gov/sites/default/files/aboutsbaarticle/WebsiteReport_asof_20190830.pdf.

¹¹ Federal Reserve (2021) “Small Business Credit Survey, 2021 Report on Firms Owned by People of Color.” Available at <https://www.fedsmallbusiness.org/medialibrary/FedSmallBusiness/files/2021/sbcs-report-on-firms-owned-by-people-of-color>.

microbusinesses faced hurdle after hurdle in accessing PPP funds, and under current rules, continue to face obstacles accessing promised forgiveness. “[T]he majority of small employer firms across each racial and ethnic group employed fewer than five workers. Seventy-six percent of Black-owned firms employed fewer than five employees, the largest share of any group, followed by Hispanic-, Asian-, and white-owned firms (69%, 60%, and 52%, respectively).”¹² Indeed, firms of 19 employees or less constitute 94% of all Black-owned firms and 93% of all Latino-owned employer firms.¹³ Because the majority of businesses of color are microbusinesses, every hurdle faced by microbusinesses in the PPP process disproportionately harms businesses of color.

Small businesses of color were mostly locked out of the initial funding of \$350 billion. The design of the program, which relied on banks to originate the loans, unfairly put microbusinesses and businesses of color at a distinct disadvantage in attempting to access PPP funds when so many already lacked access to capital. Banks prioritized customers with whom they had an existing banking relationship; as noted previously, Black businesses are less likely to access credit through a bank. Many banks also appeared to prioritize larger PPP loans to maximize fees, leaving the smallest businesses without access to relief.¹⁴

The effect of the crisis on small businesses has been profound. As of mid-August 2021, over 68% of businesses reported moderate or large negative effects from the pandemic.¹⁵ The pandemic and economic downturn have had a particularly large impact on the smallest businesses and self-employed individuals. These businesses struggled to access PPP funds, especially during the critical first rounds in 2020. The majority of loans under \$150,000 occurred in 2021, after Congress and SBA implemented changes to help address program inequities. Self-employed business owners, sole proprietors and independent contractors could not even apply during the first week of the first round of the program. Researchers also estimate that (i) half of the jobs lost as a result of the delay in receiving PPP funding and the flawed PPP implementation were in firms with fewer than 10 employees, and (ii) if the program had been designed and implemented more effectively to reach the smallest firms,

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ For further discussion of the structural inequities in the PPP program, see Testimony of Ashley Harrington, Center for Responsible Lending, Before the U.S. House Committee on Small Business Regarding “Paycheck Protection Program: Loan Forgiveness and Other Challenges,” (June 17, 2020), <https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-testimony-harringtonhouse-smallbusiness-17jun2020.pdf>.

¹⁵ “Small Business Pulse Survey – Survey Response Detail” (Updated August 26, 2021, reflecting data gathered from August 16-22, 2021), <https://portal.census.gov/pulse/data/#data>. The survey target population was all nonfarm, single nonfarm, single-location employer businesses with between 1-499 employees and receipts of \$1,000 or more in the 50 states, District of Columbia, and Puerto Rico. Some industries were excluded, a complete list is provided in the survey methodology available at <https://portal.census.gov/pulse/data/#methodology>. The Small Business Pulse Survey may be subject to non-response bias, as businesses that have closed due to COVID-19 may not be receiving the invitation to participate and unable to respond.

more jobs would have been saved more cost effectively.¹⁶ Further, at the onset of COVID-19, job loss was greater for the self-employed than for small business employees. SBA's Office of Advocacy issued a report noting that:

The total number of people who were self-employed and working declined by 20.2 percent between April 2019 and April 2020. The Hispanic group experienced a higher decline, at 26.0 percent. The highest declines were experienced by the Asian and Black groups, with a decline of 37.1 percent for the Asian group and 37.6 percent for the Black group.¹⁷

While PPP was extended by Congress for the hardest-hit small businesses, the program expired on May 31, 2021, leaving hundreds of thousands of small businesses without access to full relief.

1. Ongoing failures to equitably serve the smallest businesses.

In addition to other documented flaws in the PPP, microbusinesses – the vast majority of whom file their business income taxes on IRS Form 1040, Schedule C or Schedule F – largely received little or no PPP relief in the first rounds of the program, because SBA initially calculated PPP loan amounts as a percentage of Schedule C or Schedule F taxable “net profit.” For many microbusinesses, this resulted in PPP loans of minimal amounts or no PPP loan at all. In December 2020, Congress addressed this issue for Schedule F microbusinesses engaged in farming or ranching by requiring loan amounts to be calculated as a percentage of “gross income” instead of taxable “net profit.” This simple change provided a much more realistic measurement of the relief promised under the CARES Act.

Recognizing the inequity of making this change so late in the program, Congress appropriately applied it retroactively for Schedule F filers, allowing farming and ranching microbusinesses that had earlier received inadequate PPP funding to receive the amount they deserved. However, no similar provisions were enacted for Schedule C filers. Following calls from over 100 organizations seeking equitable treatment for all microbusinesses,¹⁸ SBA implemented this same simple change for Schedule C microbusinesses in March of 2021.¹⁹ As a result, Schedule C microbusinesses, sole proprietors, independent contractors, and self-employed

¹⁶ Doniger, Cynthia L., and Benjamin Kay (2021). “Ten Days Late and Billions of Dollars Short: The Employment Effects of Delays in Paycheck Protection Program Financing,” Finance and Economics Discussion Series 2021-003. Board of Governors of the Federal Reserve System, available at <https://doi.org/10.17016/FEDS.2021.003>.

¹⁷ Wilmoth, Daniel. March 2021. “The Effects of the COVID-19 Pandemic on Small Businesses.” US Small Business Administration, March 2021. Available at <https://cdn.advocacy.sba.gov/wp-content/uploads/2021/03/02112318/COVID-19-Impact-On-Small-Business.pdf>.

¹⁸ See: https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/coalition-letter-to-sba-treasuryreqs-for-sched-cfilers-feb2021_0.pdf

¹⁹ See: <https://www.sba.gov/sites/default/files/2021-03/SBA%20PPP%20IFR%20Loan%20Amount%20Calculation%20and%20Eligibility%20%283-3-21%29-508.pdf>

individuals who applied for PPP relief after mid-March 2021 had the opportunity to receive meaningful PPP relief. Neither SBA nor Congress provided a retroactive remedy for Schedule C filers, however, and tens of thousands of microbusinesses were never able to access the full relief they deserved. This will result in an even greater decline in microbusinesses and the employment they provide.

Consider these specific examples of how microbusinesses were affected by the failure to provide this change retroactively:

- A Black woman-owned childcare microbusiness in North Carolina received only \$2,750 in PPP funding for a first PPP loan under the old formula; if the formula had been applied retroactively, she would have been eligible for an additional \$14,456 to support her business.
- A teacher in Chicago who supplemented her income by working as an independent contractor for Lyft received a PPP loan of only \$1,085 under the old formula; if this change had applied retroactively, she instead would have been eligible for \$6,336 in needed PPP support.
- A Latino-owned auto repair microbusiness in California with one employee (in addition to the owner) received only \$4,680; under the new formula he would have been eligible to receive \$23,216 to support his business.

Perhaps most frustrating were the thousands of microbusinesses that received a PPP loan under the old formula when the program reopened in January 2021. Microbusinesses that received their PPP loan in January or February did not receive the critical increase and were left significantly vulnerable to permanent closure. For example, an Asian-American woman-owned childcare microbusiness in California received a PPP loan on February 1 for only \$2,302; under the new formula, she would have received \$14,659. Denying her – and all other microbusinesses in this same situation – the critical relief they needed to survive was unacceptable.

In the CARES Act, Congress allocated funds to all small businesses, including sole proprietors, independent contractors, and self-employed individuals, and explicitly directed SBA to prioritize businesses owned by socially and economically disadvantaged individuals. The majority of small businesses in America are non-employer businesses (80.5%) and 17.4% have 20 or fewer employees.²⁰ Further, 95% of all Black-owned businesses and 91% of all Latino-owned businesses are non-employer firms.²¹ It is critical

²⁰ “2018 Small Business Profile.” Small Business Administration Office of Advocacy, 2018. Available at <https://www.sba.gov/sites/default/files/advocacy/2018-Small-Business-ProfilesUS.pdf?fbclid=IwAR2mIIFlyWGXORwJtDR6CDT21cpreCyXtS15N2XJgHNIJ7n8SVYKBcxf7U>.

²¹ “Small Business Credit Survey: Report on Nonemployer Firms.” Washington, DC: Board of Governors of the Federal Reserve System, 2019. <https://www.fedsmallbusiness.org/medialibrary/fedsmallbusiness/files/2019/sbcsnonemployer-firms-report->

that Congress keep the promise it made in the CARES Act to provide meaningful support to microbusinesses – especially those owned by socially and economically disadvantaged individuals. Schedule C microbusinesses were not given the same treatment as Schedule F farming and ranching microbusinesses. The program has closed, and PPP funds are no longer available to right this wrong.

At a minimum, SBA and Congress should not exacerbate this wrong by denying forgiveness to these same borrowers. Making the changes to forgiveness that we are requesting today (including retroactively applying a 30-day grace period for restrictive PPP changes, reversing SBA’s denial of forgiveness to businesses who made good faith errors on their applications, and automatic forgiveness of loans of \$25,000 or less) would help prevent additional harm.

2. Lack of data and transparency in small business lending.

The PPP also highlighted the dearth of data on small business lending that has been a major obstacle for ensuring equity for decades. An analysis of SBA’s PPP data shows that over three-fourths of the 5.2M loans made in 2020 contained *no demographic information*. Just 9.5% reported proprietor race or ethnicity information, 16.2% reported proprietor gender, and 14.5% reported whether the proprietors were veterans.²² SBA has made improvements in its requirements for PPP data collection since its implementation of the program, but by collecting so little information initially, SBA made it nearly impossible to fully evaluate their own success in extending relief to vulnerable communities. Thus, utilization of other data and surveys, such as those discussed previously, was required to demonstrate that the delivery was clearly inequitable.

The limited data masks the lack of equitable investment of taxpayer-supported funds and access to business capital for communities of color and those in rural markets. In fact, in addition to data collection being one of the much-needed improvements to the PPP program, robust data collection is also needed for existing laws enacted to incentivize community investment and job creation through access to business capital. Without publicly available data, it is difficult to prove or disprove, or adequately address, discrimination and inequities in small business lending.

Ten years ago, Congress took steps to address this issue through Section 1071 of the Wall Street Reform and Consumer Protection Act, requiring the collection of key data elements, including demographic data, with respect to applications for small business loans. We are pleased that the CFPB is now moving forward implementing section 1071 and preparing to issue Notice of Public Rulemaking today or on the next few days. It is essential that the CFPB press forward and complete this rulemaking by the middle of next year.

[19.pdf](#).

²² CRL analysis of SBA PPP data.

Beyond data collection and transparency, it is imperative that SBA, Treasury, CFPB and the prudential regulators (i) establish, monitor, and enforce an affirmative duty to fairly serve all small business borrowers, and (ii) establish affordable small business lending goals for all credit providers. The prudential regulators should require financial institutions covered by CRA incorporate a robust small business community reinvestment requirement that includes loans approved for small businesses and for business owners where the business credit runs through their personal credit profile. It is critical for equitable small business lending to be considered in CRA evaluations.

III. Recommendations

Current implementation of the loan forgiveness rules threatens to exacerbate inequities, especially for microbusinesses. To minimize further inequities, we offer the following recommendations.

A. Avoid “gotcha” denials of loan forgiveness due to sudden changes in SBA rules imposed without advance notice.

Frequent rule-changes without advance notice have tripped up some businesses, particularly microbusinesses, and now threatens to require them to return funds already spent in good faith, for proper purposes.

To be fair, it is understandable that SBA had to build the PPP plane after it was already in the air. Time was of the essence – small businesses needed the promised relief of PPP quickly and waiting for a fully developed set of program rules would have doomed many small businesses. Getting the rules out fast – even incomplete rules – was the right call. In addition, the work Congress and SBA did to continue to clarify PPP rules and to make the program more flexible throughout the period PPP funds were available is greatly appreciated and has resulted in significantly more businesses obtaining the forgivable funds they were promised by Congress.

Unfortunately, new IFRs and FAQs were frequently issued by SBA late at night, and in almost every case, were effective immediately upon issuance, rather than following SBA’s standard 30-day grace period. While immediate effectiveness was necessary and laudable in the case of beneficial changes, it was unfair and harmful in the case of changes that made PPP relief more restrictive. As a seasoned SBA lender, Self-Help watched for each new rule change from SBA, and implemented changes as quickly as possible so we could provide guidance to our borrowers and give them the best chance of getting a PPP loan that would ultimately be forgiven. But it is not realistically possible for a lender to implement a more restrictive change the minute it is issued. Following each rule change, lenders had to review the new rules, understand how they restricted the existing rules, update internal processes, and train staff – all while moving quickly

to get an unprecedented volume of desperate applicants approved for funds that were literally running out.

Further, it is critically important to remember that Congress and SBA designed PPP to place the burden on the small business borrower to understand eligibility and loan calculation rules.²³ Imagine you are not an SBA lender with experience reviewing and implementing SBA rules, but a microbusiness trying to apply for the funds to support your staff and keep your business going through the pandemic. You are responsible for reviewing, understanding and keeping up with changes to PPP rules. For these smallest businesses, without the luxury of accountants or attorneys on their payroll and without the resources to hire these professionals, the expectation that they would be able to understand and follow repeated changes to PPP rules, immediately upon issuance, is especially unrealistic and has resulted in denial of promised relief.

It is in this context that we ask Congress and SBA to make an important change: require SBA to apply its standard 30-day grace period for effectiveness of all PPP rule changes that made eligibility or loan amount calculation more restrictive and apply this grace period retroactively to allow businesses that have already applied for PPP forgiveness to be made whole. Implementing this change would have a significant impact on forgiveness denials for microbusinesses who applied in good faith and were eligible under PPP rules in place within a reasonable time of their application.

For example, a Black independent contractor in Illinois submitted his PPP application to a lender on April 22, 2020 and received SBA approval on April 28, 2020 for a PPP loan in the amount of \$19,469. These funds helped replace desperately needed lost income for his product design microbusiness. He completed and documented his SBA application based on SBA rules that specifically stated sole proprietors, independent contractors and self-employed individuals were eligible and could document their payroll amount by submitting “payroll processor records, payroll tax filings, or Form 1099-MISC, or income and expenses from a sole proprietorship. *For borrowers that do not have any such documentation, the borrower must provide other supporting documentation, such as bank records, sufficient to demonstrate the qualifying payroll amount.*”²⁴ On April 20, 2020, however, SBA issued an updated rule, which stated that this type of microbusiness must calculate its payroll amount based on line 31 (net

²³ See SBA’s PPP FAQ #1: “Providing an accurate calculation of payroll costs is the **responsibility of the borrower**, and the borrower attests to the accuracy of those calculations on the Borrower Application Form (SBA Form 2483 or SBA Form 2483-C for First Draw PPP Loans and SBA Form 2483-SD or SBA Form 2483-SD-C for Second Draw PPP Loans). **Lenders are expected to perform a good faith review, in a reasonable time, of the borrower’s calculations** and supporting documents concerning average monthly payroll cost. For example, minimal review of calculations based on a payroll report by a recognized third-party payroll processor would be reasonable. In addition, as the PPP Interim Final Rules indicate, **lenders may rely on borrower representations, including with respect to amounts required to be excluded from payroll costs.**” (emphasis added)

²⁴ IFR #1, RIN 3245-AH34, April 15, 2020 (emphasis added).

profit) of its Schedule C, noting “[i]f this amount is zero or less, you are not eligible for a PPP loan.”²⁵

Under the new rules, which became effective immediately upon issuance by SBA, this microbusiness was not eligible for any PPP relief; as a result, he will be required to repay his \$19,469 loan if full. Had he submitted his application only a few days earlier, his documentation would have supported the full forgiveness promised by Congress. This microbusiness – instead of being able to start the process of getting back on its feet – is being held back by almost \$20,000 of unexpected debt.

B. Rescind SBA Procedural Notice 5000-20078 (issued on January 15, 2021), which requires borrowers to return PPP loan amounts received due to “borrower or lender error made in good faith.”

To add insult to injury, complex and ever-changing PPP rules resulted in many good faith errors by small businesses as well as lenders. Instead of acknowledging what was, even if understandably, the bumpy roll-out of a complex program, SBA issued Procedural Notice 5000-20078 on January 15, 2021, stating that any borrower who received a larger loan amount than they were eligible to receive due to a “borrower or lender error made in good faith” must repay the excess amount. SBA determined that the “borrower may not receive loan forgiveness for any amount that exceeds the correct maximum loan amount,” regardless of “whether the excess loan amount was caused by borrower error or lender error.”

As noted in recent media reports, multiple microbusinesses received PPP loans in amounts that were approved by SBA and their lender, and used those loans for eligible purposes, yet are now being required to repay all or a portion of their loans.²⁶ We believe many of these issues would likely be resolved by allowing SBA to apply the standard 30-day grace period for implementation of restrictive changes, as noted above. It is important to note, however, that a grace period alone would still leave many microbusinesses out in the cold. As has been extensively documented, PPP rules were complex and were constantly changing. News articles and pundits frequently misinterpreted and misstated the rules.

Businesses, especially microbusinesses, were doing all they could to keep operating through a pandemic, while frantically searching for lenders who would accept their applications before time ran out. In the midst of this crisis, to expect these smallest businesses to fully understand over 30 Interim Final Rules, more than 90 FAQs across two separate documents, and several Notices issued by SBA and get their loan request exactly right is unreasonable and deeply unfair. Even larger small businesses that could afford to engage accountants and lawyers found

²⁵ IFR #2, RIN 3245-AH36, April 20, 2020 (emphasis added).

²⁶ See The Intercept, *Banks are Reversing Course on PPP Loans to Small Business Owners*. Available at <https://theintercept.com/2021/07/12/covid-banks-sba-ppp-loans/>.

PPP rules challenging. Microbusinesses that did not have these resources were, by and large, on their own. While many lenders and small business technical assistance providers jumped into the fray to try to understand and explain the ever-changing rules, the program was operating at warp speed with funds running out and scared businesses doing all they could to apply for relief.

Now many of these microbusinesses that made an honest error in trying to follow the encyclopedic set of PPP eligibility and loan calculation rules are being required to repay the loans that they were promised would be forgiven – even if they used the funds exactly as intended by the program. This places a crushing burden on the backs of microbusinesses who now have the heavy burden of unexpected debt payments as they try to get their business back on its feet.

In the context of the bumpy roll-out of the program, a good faith error should not penalize the borrower. If a small business made a good-faith error calculating their loan amount, but used the funds as required by program rules, SBA should be required to forgive the entire PPP loan. To be clear, a good faith error does not include a knowing misstatement. Borrowers or lenders who knowingly lied on the PPP application or submitted false supporting documentation to get or increase a PPP loan are, and should be, subject to prosecution for fraud. Businesses and nonprofits should not be penalized, however, for good faith errors implementing an extremely confusing program during a frantic rush to get promised relief before funding ran out. **To address this harsh unfairness, we ask Congress and SBA to reverse SBA Procedural Notice 5000-20078.**

C. Improve borrower access to the SBA’s Direct Forgiveness Portal.

Self-Help applauds SBA’s decision to implement a Direct Forgiveness Portal. For borrowers whose PPP lender has not been able to offer an online option, SBA’s Direct Forgiveness Portal should be a major improvement over manually completing and processing the application. For borrowers whose PPP lenders had already provided an online option, however, in most cases it would be confusing and counterproductive to change the process and require use of SBA’s portal for everyone at this late date. It is important to note that SBA’s Direct Forgiveness Portal only allows borrowers to start the forgiveness process – it does not change the requirement that the lender must review the information and supporting documentation submitted by the borrower. This means that use of SBA’s Direct Forgiveness Portal, under current rules, would not change the outcome on any PPP loan. If a borrower is not eligible for forgiveness under SBA rules for the program, the lender must recommend denial of forgiveness to SBA.

It is also important to note that many microbusinesses need support to enter their information correctly. For instance, nowhere in SBA’s Direct Forgiveness Portal does it explain to self-employed borrowers that they must choose an 11-week Covered Period if their PPP loan was used – as is permitted – for their own lost income. Likewise, it does not appear to provide detailed guidance explaining employee maintenance rules and exceptions – and potential

reductions to the requested forgiveness amount – applicable to borrowers with loans over \$50,000. It actually would be counterproductive for small businesses to enter their information incorrectly – they either would not be granted full forgiveness or would have to endure additional back-and-forth with their lender and SBA to change their incorrect submission. By working directly with PPP borrowers through our own online portals, PPP lenders have the opportunity to provide much-needed guidance to ensure small businesses are not making mistakes that prevent them from getting the maximum amount of forgiveness they are eligible to receive.

Finally, requiring all PPP borrowers to apply for forgiveness through SBA’s Direct Forgiveness Portal would significantly increase the volume of applicants in SBA’s portal – straining SBA’s capacity and delaying access for the small businesses whose lenders do not have an online option. Lenders who are diligently working with their borrowers to get PPP forgiveness processed are the best resource for those small businesses.

We do have concerns, however, in cases where small businesses are facing unnecessary delays in applying for forgiveness due to unresponsive PPP lenders, or where PPP lenders do not have the capacity to process forgiveness applications in a timely fashion. To address these issues equitably, without causing unintended harm to small businesses, SBA could implement the following requirements:

- Require lenders to opt-in to SBA’s Direct Forgiveness Portal if the lender does not have an online forgiveness portal. This would allow all PPP borrowers to choose to apply using an online system versus completing the application manually.
- Require lenders to opt-in to SBA’s Direct Forgiveness Portal if the lender has not submitted at least 75% of their PPP loans within 12 months of the loan disbursement date. This would encourage lenders with online portals to continue to devote reasonable resources to process borrower forgiveness applications. Since borrowers do not incur interest charges as long as they submit their forgiveness application within 10 months of the end of the maximum 24-week Covered Period (approximately 15½ months from each borrower’s loan disbursement date), implementation of this rule would provide small businesses with a 3-month period to apply for forgiveness to meet this timeline. Note, borrowers can apply at any time before their PPP loan matures, but no small business or nonprofit should be forced to pay PPP interest if they have not been given the opportunity to apply within this 15½ month timeline.
- Require lenders to opt-in to SBA’s Direct Forgiveness Portal if SBA determines that the lender has regularly failed to be responsive to borrower requests to apply for forgiveness.

D. Reduce the paperwork burden on small businesses.

Form 3508S: SBA’s creation of the simplified Form 3508S forgiveness application, which allows borrowers with PPP loans up to \$150,000 to apply for forgiveness without submitting

supporting documentation, has proven to be a real improvement in the process for these small businesses, saving a significant amount of time for the business, the lender, and SBA. Program integrity remains protected against cases of fraud due to SBA's right to require supporting documentation as part of its review of any loan, either as part of a random review or due to flags noted in the application.

SBA could increase the impact of Form 3508S by increasing the threshold for using this form up to \$350,000. SBA could further improve Form 3508S by including clear instructions, for eligible borrowers with loans over \$50,000, concerning calculation of any required reductions to their forgiveness amount. Currently small businesses and nonprofits with loans larger than \$50,000 that are eligible to use Form 3508S must nonetheless refer to the longer, more complicated Form 3508 to make these complex calculations.

Automatic forgiveness for the smallest PPP borrowers: In October of 2020, SBA provided a much-needed exemption for PPP borrowers with loans of \$50,000 or less, relieving these borrowers from the burdensome requirement to document maintenance of employee numbers and wages.²⁷ SBA rightly determined this exemption to be *de minimis*, since the majority of loans of \$50,000 or less were to microbusinesses with no employees other than the owner, making employee maintenance requirements inapplicable.

Similarly, SBA should provide a *de minimis* exemption for the smallest borrowers – those with loans of \$25,000 or less – relieving these microbusinesses from the burden of applying for forgiveness of their PPP loans. The vast majority of borrowers with loans of \$25,000 or less are one-person businesses (self-employed, independent contractors, and sole proprietors) that have already faced excessive obstacles to obtain their PPP loans, including delayed and limited access to program funds, confusing and changing program rules, and, for Schedule C microbusinesses that applied prior to mid-March 2021, loan amounts that SBA later agreed were an inadequate measure of their lost payroll. After facing a time-consuming uphill battle to obtain a PPP loan, they should not now be further burdened by the requirement to complete a forgiveness application.

For one-person businesses, loan amounts were based on owner “payroll” (the business income) and as such are fully forgivable (one-person microbusinesses may use their entire PPP loan to replace their lost income). Requiring these microbusinesses to yet again navigate a confusing process in order to obtain the full forgiveness they are entitled to receive is unnecessary and serves no legitimate purpose. Indeed, it may unfairly cause some of these smallest businesses to be forced to repay their PPP loan, despite their eligibility for full forgiveness.

For example, while only a small fraction of Self-Help PPP borrowers have failed to respond to our repeated outreach to apply for forgiveness, of those, 75% are loans of \$25,000 or less.

²⁷ IFR RIN 1505-AC71. Available at <https://home.treasury.gov/system/files/136/PPP--IFR--Additional-Revisions-Loan-Forgiveness-Loan-Review-Procedures-Interim-Final-Rules.pdf>.

These microbusinesses are focused on the survival of their business and are overwhelmed, and further administrative burdens pose an unnecessary hardship. In many cases, due to the impact of the pandemic and their limited resources, they no longer have the same contact information provided to their lender when they applied for a PPP loan. Yet if they do not complete the forgiveness process, their PPP loan will become an unexpected debt. In our experience, and based on PPP rules, the vast majority of these microbusinesses are eligible for full forgiveness.

The SBA should provide a *de minimis* exemption to PPP borrowers with loans of \$25,000 or less exempting them from the requirement to submit a forgiveness application to obtain forgiveness of their loan.

E. Improve SBA's loan review process to ensure fraudulent activity is prosecuted and borrowers who applied in good faith are not unfairly penalized.

SBA should balance the incidence and severity of likely fraud with the impact of extensive delay and uncertainty on small businesses and nonprofits that acted in good faith by focusing its manual review efforts on larger loans. Based on our informal survey of community lenders and media reports, of the PPP loans SBA has chosen to manually review, over half appear to be small loans under \$50,000. In addition, many PPP borrowers with larger loans have been under an SBA manual review for weeks or months past SBA's promised 90-day process, with no clarity on whether their loan will be forgiven. This level of uncertainty is harmful to small businesses and nonprofits in the best of times, but combined with the continuing economic uncertainty caused by the on-going pandemic, it is especially damaging, as it prevents small businesses and nonprofits from making investments in their operations, their workers, and the communities they serve.

While evidence of knowing misstatements and false documentation should be prosecuted regardless of loan size, SBA's focus should be rooting out fraud on larger loans where significantly more taxpayer dollars are at risk. Refocusing its efforts to larger loans would allow SBA to process these reviews more expeditiously. As SBA has rightly noted, the vast majority of PPP funds supported American small businesses and their hardworking employees in dire need of economic relief. While SBA should continue to protect taxpayer dollars by holding bad actors accountable, its efforts must be balanced with decreasing the level of uncertainty for the vast majority of small businesses and nonprofits who acted in good faith and took Congress at its word.

IV. Conclusion

A bipartisan Congress came together to create the Paycheck Protection Program to deliver urgently needed relief to American small businesses. As a grant program structured as a forgivable loan, the fair execution of the forgiveness phase of the program is as important as was fair access. Several fixes to the forgiveness portion of the program are needed so that the

businesses that were denied fair access at the program's outset are not disproportionately saddled with unanticipated debt on the back end. By eliminating "gotcha" rules and undue bureaucratic burdens, Congress and SBA can deliver on the program's promise, ensuring that all small businesses and nonprofits - and especially microbusinesses and other underserved and economically disadvantaged business owners - emerge from the pandemic on a solid foundation with an opportunity to rebuild.