

Congress of the United States
U.S. House of Representatives
Committee on Small Business
2361 Rayburn House Office Building
Washington, DC 20515-6515

MEMORANDUM

To: Members, Subcommittee on Economic Growth, Tax, & Capital Access
From: Andy Kim, Subcommittee Chairman
Date: September 25, 2020
Re: Hybrid Hearing: “A Review of PPP Forgiveness”

The Committee on Small Business Subcommittee on Economic Growth, Tax, & Capital Access will meet for a hybrid hearing titled “A Review of PPP Forgiveness.” The hearing is scheduled to being at **9:30 A.M. on Friday, September 25, 2020 in person in Rayburn room 2360 and virtually via the WebEx platform (information to be provided).**

The hearing will provide an overview of the Paycheck Protection Program (PPP) loan forgiveness process and allow Members an opportunity to hear from lenders and borrowers about their experiences with the forgiveness process. The Committee will examine loan forgiveness guidance and proposals for simplifying the loan forgiveness process for certain borrowers.

Panel:

- Lynn Ozer, President-SBA Lending, Fulton Bank, Pottstown, PA
- Amy Bonfig, Owner, Little Saints Academy, St. Joseph, MN
- Jim Parker, CEO/Director, Riverview Studios, Bordentown, NJ
- Pete Patel, President and CEO, Promise Hotels, Tulsa, OK

Background

In response to the COVID-19 pandemic, Congress created the Paycheck Protection Program (PPP) at SBA, which has been implemented with the assistance of the Department of Treasury. The program is designed to help small employers access critical financial assistance quickly.

Paycheck Protection Program – CARES Act

The PPP was established in the CARES Act¹ as a subprogram of SBA’s 7(a) loan guarantee program. It delegated authority to banks and other lenders to make up to \$349 billion in fully guaranteed loans to small businesses negatively impacted by the COVID-19 outbreak and subsequent economic collapse. The program is tailored to assist small businesses with meeting

¹ P.L. 116-136.

payroll costs and other expenses, and it offers full or partial forgiveness on loan proceeds spent for such purposes. Due to high demand, the initial round of funding was exhausted in 14 days, requiring Congress to act again.

Paycheck Protection Program and EIDL – The Enhancement Act

On April 24, the Paycheck Protection Program and Health Care Enhancement Act² (Enhancement Act) became law. The Enhancement Act appropriates an additional \$310 billion for the PPP and includes 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.

Paycheck Protection Program – Flexibility Act

On June 5, 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 borrowers 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. The new law also provides borrowers with a safe harbor from the loan forgiveness rehiring requirement if borrowers are unable to rehire an individual who was an employee of the recipient on or before February 15, 2020, or if borrowers can demonstrate an inability to hire similarly qualified employees on or before December 31, 2020.

S. 4116, Extension of Paycheck Protection Program

On July 8, S. 4116 became law.⁴ S. 4116 extends the PPP application deadline to August 8, allowing more time for small businesses considering applying for a PPP to weigh their options.

According to SBA's public data, as of July 17 (the most current available on SBA.gov), the PPP has guaranteed over 4.95 million loans for a total net PPP dollars lent at over \$518.3 billion, with the average loan size of approximately \$104,699.⁵ As of that date, over \$131 billion in PPP funding remains available.⁶

Overview of PPP Forgiveness Process

Borrowers are required to complete either the SBA loan forgiveness application (either Form 3508 or 3508EZ) or lender equivalent for PPP loan forgiveness and submit to their lender. Lenders are

² P.L. 116-139.

³ P.L. 116-142.

⁴ P.L. 116-147.

⁵ U.S. Small Bus. Admin., *Paycheck Protection Program (PPP) Report: Approvals through 07/17/2020*, (Jul. 17, 2020), https://content.sba.gov/sites/default/files/2020-07/PPP_Report%20-%202020-07-19.pdf.

⁶ U.S. Small Bus. Admin., *Paycheck Protection Program (PPP) Report: Approvals through 07/17/2020*, (Jul. 17, 2020), https://content.sba.gov/sites/default/files/2020-07/PPP_Report%20-%202020-07-19.pdf.

then required to make a decision on the forgiveness application within 60 days of submission. If lenders determine borrowers are entitled to some or all of the amount of forgiveness sought, they must request payment from SBA. SBA must then send the appropriate forgiveness amount to lenders (plus any interest accrued through the payment date) no later than 90 days after lenders issue decisions to SBA. Borrowers must repay any amounts not forgiven within the PPP loan's two-year maturity period, or if the application received an SBA loan number on or after June 5, 2020, the five-year maturity period.⁷

SBA reviews all loans in excess of \$2 million, and others as appropriate, following lenders' submission of borrowers' loan forgiveness application.⁸

SBA released the first version of the borrower's application for PPP loan forgiveness on May 18, 2020, and subsequently released a revised version on June 16, 2020. On June 16, SBA also released an "EZ" loan forgiveness application requiring fewer calculations documentation than the standard loan forgiveness application form for borrowers that meet specified criteria.⁹

Generally, only payroll costs paid or incurred during the 8-week or 24-week covered period are eligible for forgiveness. Borrowers may consistently apply one of two start dates: 1) the date their lenders disbursed their PPP loan, or 2) the first day of their first payroll cycle in the covered period. There is also an exception for payroll costs incurred during the borrowers' last pay period of the covered period, which are eligible for forgiveness only if paid on or before the next regular payroll date. Any payroll costs incurred before the covered period but paid during the covered period are also eligible for forgiveness. Nonpayroll costs eligible for forgiveness include payments for: 1) interest on any business mortgage obligation on real or personal property; 2) business rent obligations on real or personal property under a lease agreement; and 3) business utility payments for the distribution of electricity, gas, water, transportation, telephone, or internet access.¹⁰

Current Issues

Long and confusing forgiveness process for borrowers and lenders

On June 17, 2020, the Committee held a hearing regarding lender and stakeholder experiences with the PPP, and concerns were raised about the unclear and cumbersome loan forgiveness application process. During the hearing, a PPP lender testified that the guidance provided by SBA

⁷ See generally, Cong. Res. Serv., R46397, "SBA Paycheck Protection Program (PPP) Loan Forgiveness: In Brief," (Sep. 3, 2020).

⁸ FAQ 39, <https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf>.

⁹ U.S. Small Bus. Admin., "Paycheck Protection Program Loan Forgiveness Application Form 3508EZ," SBA Form 3508EZ, <https://home.treasury.gov/system/files/136/PPP-Forgiveness-Application-3508EZ.pdf>.

¹⁰ See generally, U.S. Small Bus. Admin., "Paycheck Protection Program Frequently Asked Questions (FAQs) on PPP Loan Forgiveness," (Aug. 11, 2020) <https://home.treasury.gov/system/files/136/PPP--Loan-Forgiveness-FAQs.pdf>

to lenders remained incomplete.¹¹ Witnesses went on to testify that given the significant liability concerns lenders face, the lack of clarity creates unnecessary challenges for lenders in providing assistance to borrowers in completing forms.¹² Furthermore, borrowers have expressed a great deal of anxiety with the overly burdensome loan forgiveness application, given the expectation among many was that loan forgiveness would be readily accessible. This has led to an increased focus among PPP stakeholders on streamlining the forgiveness process for small-dollar borrowers. Furthermore, lenders have consistently reported needing to unexpectedly partner with third parties to help either simplify applications for borrowers or reduce lenders' backlog of applications. For example, one lender reported partnering with a Fintech company to develop a more user-friendly loan forgiveness application that auto-populated numerous data fields, helping save borrowers time, but unexpectedly adding to lenders' costs in participating in the program. The fact that smaller lending institutions, such as CDFIs, may not have the cost structure to establish such a partnership puts them and their borrowers at a disadvantage, blunting the community-driven impact of many of those lenders. Additionally, many smaller lenders have reported either partnering with accounting professionals to assist with filling out loan forgiveness applications correctly or relying on guidance from professional accounting associations to assist borrowers when lenders could not answer borrower questions confidently. Lastly, some smaller institutions have reported a concern that less-than-full forgiveness on most PPP loans would lead to many PPP loans remaining on lenders' balance sheet for longer than expected, which could increase the likelihood of a PPP borrower's default (if borrowers were expecting full forgiveness).

From borrowers' perspective, very few have reportedly completed a loan forgiveness application (either the Form 3508 or Form 3508EZ). This is due to a number of factors, including the length and complexity of the various forms, lack of guidance from SBA to lenders and borrowers about how to correctly fill out a loan forgiveness application to secure full loan forgiveness, and a hope in the marketplace that either Congress or SBA will provide a streamlined forgiveness process for small-dollar PPP loans, which account for the vast majority of PPP loans. According to SBA, over 86% of PPP loans were \$150,000 or less.¹³ Those borrowers who have completed a loan forgiveness application described the process as a "full-time job." Moreover, those program participants who have carefully analyzed and worked with both the Form 3508 and Form 3508EZ have reported no material difference between the forms.

DOJ PPP Fraud prosecutions

At a press conference on September 10, 2020, the U.S. Department of Justice (DOJ) Acting Assistant Attorney General Brian Rabbitt announced that DOJ's Criminal Division Fraud Section and other law enforcement partners have criminally charged more than 50 individuals who have

¹¹ *Paycheck Protection Program: Loan Forgiveness and Other Challenges Before the H. Comm. on Small Bus.*, 116th Cong. (2020) (statement of Eduardo Sosa, Senior Vice President, SBA Lending, Commerce National Bank), https://smallbusiness.house.gov/uploadedfiles/06-17-20_mr._sosa_testimony.pdf.

¹² *Paycheck Protection Program: Loan Forgiveness and Other Challenges Before the H. Comm. on Small Bus.*, 116th Cong. (2020) (statement of Eduardo Sosa, Senior Vice President, SBA Lending, Commerce National Bank), https://smallbusiness.house.gov/uploadedfiles/06-17-20_mr._sosa_testimony.pdf.

¹³ U.S. Small Bus. Admin., *Paycheck Protection Program (PPP) Report: Approvals through 07/17/2020*, (Jul. 17, 2020), https://content.sba.gov/sites/default/files/2020-07/PPP_Report%20-%202020-07-19.pdf.

allegedly committed fraud to obtain PPP funds.¹⁴ The cases charged involved attempts to steal over \$175 million from the PPP, and actual losses to the federal government are over \$70 million.¹⁵ The cases involve fraud ranging from loan requests for as low as \$30,000 to criminal enterprises requesting up to an approximately \$24 million.¹⁶ This reveals that PPP fraud is unfortunately not limited to high-dollar loans, which are generally subject to a lengthier review by SBA. Therefore, to best safeguard taxpayer dollars, any future legislation on streamlining PPP forgiveness must be mindful of the extent to which criminals have sought to defraud taxpayers at a time when small businesses needed capital relief more than ever.

GAO findings regarding forgiveness applications

On September 21, 2020, the Government Accountability Office (GAO) published a report showing that as of September 8, 2020, SBA had received about 56,000 loan forgiveness decisions from lenders.¹⁷ This represents just over 1% of the 5.2 million PPP loans made. This new information corroborates what lenders and borrowers have been reporting publicly – that the forgiveness application process remains overly burdensome for borrowers, and the forgiveness guidance remains too confusing for lenders to confidently submit forgiveness decisions to SBA.

Legislative Proposals

To maximize relief for PPP borrowers, while safeguarding taxpayer dollars in a program that is unfortunately experiencing fraud, some advocates have called for streamlining the loan forgiveness applications for PPP borrowers on a tiered structure based on loan size. Under such a proposal, small-dollar PPP borrowers would be required to certify loan proceeds were used for permissible uses and maintain relevant documentation in the event of a subsequent audit. Mid-dollar borrowers would have a simplified application process from SBA Forms 3508 and 3508EZ, and would also be required to maintain relevant documentation in the event of a subsequent audit. All other borrowers would be required to use existing forms. By allowing borrower certification for the smallest borrowers and requiring documentation maintenance for all, Congress and SBA will be able to deliver maximum relief to PPP borrowers who need it most, while maintaining to government's ability to prosecute fraud and other white-collar crimes associated with PPP.

¹⁴ U.S. Dep't of Justice Office of Public Affairs, "Acting Assistant Attorney General Brian Rabbitt Delivers Remarks at the PPP Criminal Fraud Enforcement Action Press Conference," (Sep. 10, 2020) <https://www.justice.gov/opa/speech/acting-assistant-attorney-general-brian-rabbitt-delivers-remarks-ppp-criminal-fraud>.

¹⁵ U.S. Dep't of Justice Office of Public Affairs, "Acting Assistant Attorney General Brian Rabbitt Delivers Remarks at the PPP Criminal Fraud Enforcement Action Press Conference," (Sep. 10, 2020) <https://www.justice.gov/opa/speech/acting-assistant-attorney-general-brian-rabbitt-delivers-remarks-ppp-criminal-fraud>.

¹⁶ U.S. Dep't of Justice Office of Public Affairs, "Acting Assistant Attorney General Brian Rabbitt Delivers Remarks at the PPP Criminal Fraud Enforcement Action Press Conference," (Sep. 10, 2020) <https://www.justice.gov/opa/speech/acting-assistant-attorney-general-brian-rabbitt-delivers-remarks-ppp-criminal-fraud>; *see also* U.S. Dep't of Justice Office of Public Affairs, "NFL Player Charged for Role in \$24 Million COVID-Relief Fraud Scheme," (Sep. 10, 2020) <https://www.justice.gov/opa/pr/nfl-player-charged-role-24-million-covid-relief-fraud-scheme>.

¹⁷ U.S. Gov't Accountability Office, "COVID-19: Federal Efforts Could Be Strengthened by Timely and Concerted Actions," GAO-20-701, (Sep. 2020) <https://www.gao.gov/products/GAO-20-701>.

Conclusion

Though PPP has been credited with saving thousands of small businesses and many more jobs, PPP borrowers continue to report concerns with the loan forgiveness process. The applications remain lengthy, confusing, and user-unfriendly for both borrowers and lenders, leading to greater expenses, anxiety, and uncertainty for all. Meanwhile, Congress continues to monitor potentially waste, fraud, and abuse of the program, requiring a balanced approach with respect to streamlining the loan forgiveness process that will focus on maximizing relief for impacted borrowers, while safeguarding taxpayer dollars to the fullest extent practicable.