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Committee on Armed Services

Committee on Small Business

Chairman, Subcommittee on Contracting and Infrastructure

Jared Golden
Congress of the United States
2nd District of Maine

April 16, 2020

The Honorable Nancy Pelosi
House of Representatives
H-232, U.S. Capitol Building
Washington, DC 20515

The Honorable Steny Hoyer
House of Representatives
H-107, U.S. Capitol Building
Washington, DC 20515

The Honorable James Clyburn
House of Representatives
H-329, U.S. Capitol Building
Washington, DC 20515

The Honorable Nita Lowey
Committee on Appropriations
House of Representatives
H-307, U.S. Capitol Building
Washington, DC 20515

Dear Speaker Pelosi, Leader Hoyer, Whip Clyburn, and Chairwoman Lowey:

While Congress and the Small Business Administration (SBA) have taken swift action to respond to the economic disaster facing small businesses due to COVID-19, the programs that the federal government has deployed are encountering challenges, and—in their current form—may fail to save some small businesses from going under due to government restrictions that have curtailed or shut down their ability to operate. As we have learned today, both the Paycheck Protection Program (PPP) and Economic Injury Disaster Loan (EIDL) program are facing funding shortfalls that have required SBA to cease accepting new applications, so I reiterate my earlier request for $349 billion in additional funding for the PPP. But funding alone will be insufficient to put the program on the right track.

That is why I am writing to share my priorities for reforms to the PPP to prevent foreseeable problems moving forward.

The implementation of the PPP requires not only oversight, but also a re-examination of several conflicting program rules that threaten the viability of many PPP applicants if left unaddressed. While the PPP is structured as a modified 7(a) loan, employers have applied for these obligations with the understanding that Congress intended for most of these loans to be forgiven as long as employers used the funds to prevent or undo layoffs. The CARES Act accordingly set a June 30th deadline for borrowers to restore their FTE and salary levels to offset any reductions between February 15th and April 26th. Unfortunately, two regulatory decisions by SBA, as well as interactions with unemployment compensation, will make it difficult for many employers to meet this requirement.

First, SBA's Interim Final Rule established a 75 percent minimum for the portion of PPP proceeds that a borrower must use for payroll costs during the eight-week period following disbursement of the loan. Second, SBA's guidance to lenders established a ten-day deadline for loans to be disbursed following SBA's approval of an application. When applied in combination, this means that an employer whose application is approved prior to April 25th is going to be required to hire back their employees early enough that there is going to be an unfunded gap between the end of the PPP-supported eight-week period and the June 30th deadline to have FTEs restored. For employers that remain under government-ordered closures or that otherwise have limited revenue in June, this unfunded gap could force them to lay off employees, miss the PPP forgiveness criteria, and ultimately be forced out of business once large payments—amortized over only an 18 month period—come due six months from the loan disbursement date.

The combination of the June 30th deadline for the forgiveness layoff safe harbor and these SBA rules will also be problematic for some employers who may have difficulty returning all workers to payroll either due to ongoing concerns about personnel safety, individual quarantine requirements, extended government restrictions on business operations, or their inability to match pay levels from unemployment benefits enhanced by Pandemic Unemployment Compensation. Employers in this situation will face difficulty hitting FTE restoration targets, placing them at risk of having their PPP loan go unforgiven, which would saddle their weakened business with large payments that may ultimately overwhelm them in the challenging months ahead.

Given these likely threats to the viability of many PPP borrowers, Congress should address them in any forthcoming legislation to increase funding for this program by taking the following actions:

- Require SBA to allow PPP borrowers to defer their loan's disbursement so that they are not left with a gap between their eight weeks of funded payroll and the June 30th FTE restoration safe harbor date or move the June 30th date forward accordingly for impacted borrowers;

- Direct SBA to relax the requirement it created to spend a minimum of 75 percent of the loan on payroll or eliminate it in favor of a different approach for determining that the program's intent has been met;

- Because the program's goal should be to maintain payroll for those that have been able to avoid furloughs or layoffs, or increase employment where they have already occurred, we should amend the program's forgiveness standard for employers who successfully return employees to payroll but are unable to fully restore their FTE count, despite well-documented efforts to invite all of their employees back from furlough or layoff at full pay; and,

- Instruct SBA to explicitly include compensation paid to employees who are unable to perform routine workplace tasks due to an employer's full or partial closure within the definition of eligible payroll costs.

In addition to the need for reforms to the PPP, the implementation of the complementary COVID-19 EIDL program requires robust congressional oversight and further demonstrates why it is unacceptable that Congress has recessed at a moment of national crisis. Given that the demand for EIDLs far outpaces the funding authorized by Congress, it is understandable that SBA would face challenges in ramping up this program for a nationwide disaster declaration. The agency's response to these challenges, however, has been opaque and the result has been confusion and frustration for business-owners.

Weeks-long delays in the processing of EIDL applications are currently the norm, a blow that could be softened if applicants could obtain an estimate for when to expect an application decision. Unfortunately, SBA's updated EIDL application portal eliminated the online status check tool available to applicants, now requiring them to join a caller queue of up to 2,000 people. Further, SBA's recent restrictions on the size of EIDLs and EIDL advance grants might have been avoided with better communication between the agency and members of Congress about application trends. These are all avoidable errors that have exacerbated the program's growing pains, and effective congressional oversight is needed to prevent them from compounding.

Thank you for considering these suggestions to improve these important programs for our nation's small businesses. I believe congressional oversight, targeted changes to EIDL and PPP, and increased funding for administration and financing for these programs will ensure they meet the worthy goal of keeping businesses open and workers employed. We must do everything we can to make sure that small businesses can survive—and eventually recover from—the continuing economic disruption that COVID-19 is creating across our nation.

Sincerely,

Jared F. Golden
Member of Congress