

Congress of the United States
Washington, DC 20515

December 3, 2020

Ms. Jovita Carranza
Administrator
Small Business Administration
403 3rd Street SW
Washington, DC 20416

Dear Ms. Carranza:

We write concerning the administration of Paycheck Protection Program (PPP) loan forgiveness under Section 1106 of the CARES Act. Reports indicate that current Small Business Administration (SBA) guidance for loan forgiveness is highly confusing for both loan recipients and loan providers. Further, we understand that there are many gaps in the guidance, leaving questions unanswered and lenders unable to process loan forgiveness applications, which is of particular concern as we near the years-end and business owners struggle to clarify their 2020 taxable income. Therefore, we request that you consolidate your existing guidance and issue further clarifying guidance on the PPP loan forgiveness program.

On October 8th, SBA released new loan forgiveness forms and rules for PPP loans under \$50,000, along with a set of Frequently Asked Questions on October 13th.^[1] The *New York Times* reports that, even with this new threshold and guidance, loan recipients and lenders continue to find the forgiveness process overly complicated, quoting one lender who complained, “It’s almost a nightmare to go through the forgiveness process as it is now written.”^[2] As noted below, there are forty seven different pieces of guidance that the SBA has issued since PPP was launched.

While testifying before the House Committee on Small Business Subcommittee on Economic Growth, Tax, and Capital Access on September 25th, Lynn G. Ozer, President of SBA Lending at Fulton Bank in Pottstown, Pennsylvania stated, “Piecemeal guidance continues to create confusion. The lack of guidance from the SBA is something I have never seen before in all my years dealing with the SBA. Guidance from the SBA is usually very prescriptive and clear. This is not the case with the PPP program. It’s come piecemeal and it’s confusing. If it’s confusing for the lenders, it’s going to be confusing with the borrowers.”^[3]

^[1] <https://www.sba.gov/article/2020/oct/08/sba-treasury-announce-simpler-ppp-forgiveness-loans-50000-or-less>

^[2] Stacy Cowly, October 9, 2020, <https://www.nytimes.com/2020/10/09/business/small-business-ppp-loans-forgiveness.html>

^[3]^[3] https://smallbusiness.house.gov/uploadedfiles/09-25-20_ms_ozertestimony.pdf

Pete Patel, CEO and President of Promise Hotels, testified at the same hearing and explained that, although PPP loans provided much needed support to more than 5 million American businesses, the forgiveness process has been, “Anything but easy. The stress on struggling businesses is intense: complicated rules, multiple forms (there are now three different forms: 3508, 3508EZ, 3508S), potential for second loans, and the SBA is still slow to approve forgiveness. Some of these businesses have the resources and sophistication to stay on top of the rules and processes for loan forgiveness. But, the vast majority of small businesses with PPP loans have limited access to the support they need to obtain full forgiveness.”^[4]

These witnesses’ testimony, coupled with the aforementioned reporting, indicates that existing guidance from the SBA has not been sufficiently clear or comprehensive. This is further evidenced by the dozens of separate pieces of guidance the SBA has issued regarding PPP, on top of loan forgiveness applications and instructions.^[5] A list of these pieces of guidance is provided below:

1. [Notice: Paycheck Protection Program closed August 8, 2020](#)
2. [Paycheck Protection Program Loan Information](#)
3. [Loan Details and Forgiveness](#)
4. [Who Can Apply](#)
5. [Lender Forms and Guidance](#)
6. [Additional Program Information](#)
7. [Other Assistance](#)
8. [Frequently Asked Questions for Lenders and Borrowers \(10-7-2020\)](#)
9. [How to Calculate Loan Amounts \(06-26-20\)](#)
10. [Frequently Asked Questions for Faith-Based Organizations Participating in the Paycheck Protection Program and Economic Injury Disaster Loan Program](#)
11. [Paycheck Protection Program Affiliation Rules](#)
12. [Interim Final Rule for Applicable Affiliation Rules](#)
13. [Frequently Asked Questions about PPP Loan Forgiveness \(10-13-2020\)](#)
14. [SBA Procedural Notice on Extension of Authority](#)
15. [SBA Procedural Notice on Participation Sales](#)
16. [SBA Procedural Notice on Whole Loan Sales](#)
17. [SBA Procedural Notice on Lender Processing Fee Payment and 1502 Reporting Process \(updated 07-13-2020\)](#)
18. [SBA Procedural Notice on Refinance of EIDL Loans with PPP Loan Proceeds and Lender Remittance of EIDL Refinance Proceeds to SBA](#)
19. [SBA Information Notice on Guidance Regarding Identification and Reporting of Suspicious Activity in the COVID-19 EIDL Loan Program](#)
20. [SBA Procedural Notice on Procedures for Lender Submission of Paycheck Protection Program Loan Forgiveness Decisions to SBA and SBA Forgiveness Loan Reviews](#)
21. [SBA Procedural Notice on PPP Loans & Changes of Ownership](#)
22. [Letter from the Administrator](#)
23. [Paycheck Protection Program](#)

^[4] <https://www.youtube.com/watch?v=KyjO0WnTl-M&feature=youtu.be>

^[5] <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program#section-header-5>

24. [Affiliation Rules](#)
25. [Additional Eligibility Criteria and Requirements for Certain Pledges of Loans for the Paycheck Protection Program](#)
26. [Promissory Notes, Authorizations, Affiliation, and Eligibility](#)
27. [Seasonal Employers](#)
28. [Disbursements](#)
29. [Requirements – Corporate Groups and Non-Bank and Non-Insured Depository Institution Lenders](#)
30. [Nondiscrimination and Additional Eligibility Criteria](#)
31. [Extension of Limited Safe Harbor with Respect to Certification Concerning Need for PPP Loan Request](#)
32. [Requirements for Loan Increases for Partnerships or Seasonal Employers](#)
33. [Eligibility of Certain Electric Cooperatives](#)
34. [Treatment of Entities with Foreign Affiliates](#)
35. [Second Extension of Limited Safe Harbor with Respect to Certification Concerning Need for PPP Loan and Lender Reporting](#)
36. [Requirements – Loan Forgiveness](#)
37. [SBA Loan Review Procedures and Related Borrower and Lender Responsibilities](#)
38. [Eligibility of Certain Telephone Cooperatives](#)
39. [Interim Final Rule on Revisions to the First PPP Interim Final Rule](#)
40. [Additional Revisions to First PPP Interim Final Rule](#)
41. [Interim Final Rule on Revisions to the Third and Sixth Interim Final Rules](#)
42. [Revisions to Loan Forgiveness Interim Final Rule and SBA Loan Review Procedures Interim Final Rule](#)
43. [Additional Eligibility Revisions to First PPP Interim Final Rule](#)
44. [Certain Eligible Payroll Costs \(Fishing Boat Owners\)](#)
45. [Appeals of SBA Loan Review Decisions Under the PPP](#)
46. [Treatment of Owners and Forgiveness of Certain Nonpayroll Costs](#)
47. [Additional Revisions to Loan Forgiveness and Loan Review Procedures](#)

In addition to the confusion that this volume of piecemeal guidance has caused, there are unanswered questions impeding lenders from doing their jobs and borrowers from completing the requisite loan applications. Ms. Ozer provided numerous examples to the House Small Business Committee, including how to handle cases wherein a business has filed for bankruptcy or closed permanently, borrowers seeking to sell loans to new owners, and more.

Ms. Ozer additionally noted the confusing nature of the existing forgiveness process, stating, “borrowers are confused by the burdensome forgiveness process and panicked that the loans they believed would be grants if they followed the rules may become debts because they can’t muddle through the paperwork.”^[6] Private companies are taking advantage of the confusion and lack of specific guidance to charge up to \$499^[7] to walk businesses through the forgiveness process.^[8] These companies are taking advantage of already suffering small businesses to do the job the

^[6] ID.

^[7] <https://upsidefinancial.com/pricing#pricingplan>

^[8] <https://www.prnewswire.com/news-releases/ppp-borrowers-finally-get-forgiveness-relief-from-confusion-301161223.html>

SBA should be doing. This suggests that, without greater assistance from the SBA, the benefits of PPP might accrue disproportionately to the businesses with resources to pay for private guidance, thereby undermining the intent of the program.

These challenges are exacerbated by the impending 2020 tax filing season. With uncertainty around timing and eligibility for PPP loan forgiveness, business owners are faced with the challenge of discerning their tax liability, which is directly impacted by their loan forgiveness. According to the IRS Notice 2020-32, no deduction is allowed for expenses covered by PPP loans, therefore clear guidance on the timeline and extent of PPP loan forgiveness is critical to helping business owners assess their 2020 versus 2021 taxable income.

As you know, small businesses have faced enormous hardships during the COVID-19 pandemic. According to the *Wall Street Journal*, 20 percent of businesses that were open in January have stopped doing business entirely.^[9] We are gravely concerned that, without streamlined guidance and a simplified process under which to apply for loan forgiveness, businesses might be forced to expend even more resources to meet SBA's current requirements, or fail to meet them altogether. As such, we respectfully request that SBA take the following actions:

1. Provide detailed, clear and comprehensive guidance on the PPP loan forgiveness process within a single document that includes all of the forgiveness requirements and corrects any contradictions included in previous guidance document. This should be made available to all PPP borrowers and lenders by January 1, 2021; and
2. Provide borrowers and lenders with clear points of contact they can use to seek answers to their questions from SBA directly, free of charge. SBA should additionally consider releasing and periodically updating a set of Frequently Asked Questions on its website.

Please provide responses to these requests no later than **December 18, 2020**. Thank you for your attention to this matter.

Sincerely,

ANDY LEVIN



Member of Congress

JOE MORELLE



Member of Congress

^[9] Justin Lahart, October 9, 2020, <https://www.wsj.com/articles/covid-is-crushing-small-businesses-thats-bad-news-for-american-innovation-11602235804>

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