

United States Senate

WASHINGTON, DC 20510

May 8, 2020

The Honorable Steven T. Mnuchin
Secretary
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

The Honorable Jovita Carranza
Administrator
U.S. Small Business Administration
409 3rd Street, SW
Washington, DC 20416

Dear Secretary Mnuchin and Administrator Carranza:

I write to you regarding the need for the Small Business Administration (SBA) to issue guidance and regulations regarding implementation and interpretation of Section 1106 of the *Coronavirus Aid, Relief, and Economic Security Act (CARES Act)*, which established the parameters for forgiveness of loans under the Paycheck Protection Program (PPP). Pursuant to Section 1106(k) of the *CARES Act*, such guidance and regulations shall be issued “[n]ot later than 30 days after the enactment of the Act...” However, it has now been more than 40 days since the enactment of the *CARES Act*, and guidance regarding eligibility for forgiveness of PPP loan funds is virtually non-existent. This lack of guidance has left small businesses uncertain about their ability to use these funds.

As you are aware, Congress allocated \$349 billion through the *CARES Act* to provide forgivable loans to assist small businesses in recovering from the economic downturn caused by the novel coronavirus or “COVID-19”. Given the extraordinary demand on this program at the outset, Congress also passed the PPP and Health Care Enhancement Act to provide an additional \$310 billion for the PPP. The overwhelming speed with which these funds have been expended speaks to the enormous need for small businesses assistance.

Implementation of the PPP overall has certainly not been without issue, but as of yesterday, the SBA has approved 4,039,424 forgivable loans through PPP totaling \$523 billion nationally. This is hardly an insignificant achievement. However, given that the application period for the first round of PPP loans opened on April 3, and current SBA guidance is very strict in its interpretation of the 8-week period of payroll expenses that are eligible for forgiveness, small businesses are becoming understandably concerned about the lack of clarity surrounding the circumstances under and extent to which PPP principal balances will be forgiven.

To date, the extent of formal guidance promulgated by the SBA that concerns the eligibility of PPP loan forgiveness consists of one section in the Interim Final Rule, which restates the relevant provisions of the *CARES Act* as well as an additional SBA-imposed restriction that no

more than 25 percent of the amount forgiven may have been used for eligible non-payroll expenses^[1]. The Department of Treasury has also issued a Frequently Asked Questions (FAQ) document^[2] that mentions forgiveness a handful of times, basically restating the aforementioned Interim Final Rule provided by SBA.

This is entirely insufficient. As small businesses approach the end of the 8-week period for which payroll expenses are currently eligible for forgiveness, they need clarity and certainty about the terms of what comes next, so they can plan for the future. Therefore, I respectfully request that you immediately issue guidance regarding the parameters for forgiveness of loans under the PPP. To fully address the growing concerns of small businesses, this guidance should provide answers to the following questions:

- What documentation is required to demonstrate eligibility for forgiveness of a particular expense?
- How will small businesses be expected to calculate eligible payroll expenses, particularly as many employees may have been moved from full- to part-time?
- Are there specific considerations for sole proprietors, independent contractors and self-employed individuals?
- How will forgiveness of PPP principal balance be achieved for loans that may have been sold to third parties in the secondary market?
- What will ultimately be the tax treatment of forgiven PPP principal?

The COVID-19 pandemic represents an existential threat to small businesses in this country, but the PPP program offers a lifeline. It is vital this program works well for small businesses from application through forgiveness.

I appreciate your attention to this issue and look forward to your timely reply and forthcoming guidance regarding for forgiveness of loans under PPP.

Sincerely,

A handwritten signature in blue ink that reads "Jeanne Shaheen". The signature is fluid and cursive, with a horizontal line underneath it.

Jeanne Shaheen
United States Senator

^[1] 13 CFR Parts 120 and 121

^[2] <https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf>