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United States Small Business Administration
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**RE: NJBIA Comments on SBA Interim Final Rule on Business Loan Program Temporary Changes: Paycheck Protection Program
Docket Number: 85 FR 20811; CFR:13 CFR 120; Agency/Docket Number: SBA-2020-0015 RIN: 3245-AH34; Document Number: 2020-07672**

To Whom It May Concern,

On April 15, 2020, the U.S. Small Business Administration (SBA) published an interim final rule for the implementation of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act or the Act). The CARES Act temporarily adds a new product, titled the "Paycheck Protection Program," to SBA's 7(a) Loan Program. It provides for forgiveness of up to the full principal amount of qualifying loans guaranteed under the Paycheck Protection Program (PPP) in order to provide economic relief to small businesses nationwide adversely impacted by COVID-19. NJBIA, the largest statewide business association in New Jersey, submits the following comments on behalf of our members.

Time is of the essence, which is why we are asking that you act expeditiously to address additional funding needs, the shortfalls of the CARES Act, and to take action on new measures that will assist in our recovery efforts. The immediate closure of large parts of our economy by this pandemic has resulted in unprecedented hardships.

With the second most cases of COVID-19 in the country, more than 1 million New Jerseyans have filed for unemployment insurance benefits since March 7, with total unemployment now exceeding 1,166,000 individuals, or 26% of our civilian labor force. In addition, over 34,000 small employers (1-10 employees) applied for the New Jersey Economic Development Agency's (NJEDA) \$5 million grant program and about 2,500 businesses applied for its \$10 million loan program in just one day. As NJEDA CEO Tim Sullivan has stated numerous times, the programs are widely oversubscribed and most of the businesses that applied will not receive funding.

The Paycheck Protection Program is a good first step in helping job-creators and the workers they employ. However, PPP rules that restrict how the loans can be spent have set an unrealistic eight-week timeframe for doing so and need to be changed immediately.

Many New Jersey companies had to lay off or furlough employees weeks ago, before the program was even enacted, when the state mandated the closure of their business operations. In our state there is no definitive timeframe to reopen businesses and not even firm metrics by which a business can plan to reopen. We note that some jurisdictions, like Los Angeles County, have indicated they may have stay-at-home orders continuing throughout the summer.

Many employees will not be able to come back to work within the eight-week timeframe required by the law and businesses that took PPP loans will lose the ability to apply for loan forgiveness. The PPP program needs to recognize the reality on the ground. To the extent that the original intent of the PPP was to keep these employees on the payroll and off unemployment, it has largely failed for those businesses that were forced to close. The 75% payroll requirement and eight-week expenditure from the receipt of money needs to be changed in light of current circumstances. The PPP should be refocused on the needs of small businesses that cannot reopen until governments allow.

Certain program changes are essential to help small businesses. We request the following:

- Greater flexibility in the permitted use of the funding by modifying the requirement that 75% of the monies be spent on payroll costs in order to receive loan forgiveness and clarification that failure to meet the payroll cost levels should result in prorated reductions of forgivable amounts not a complete denial. By design, every loan will fail the 75% payroll cost spend rule due to a mismatch of the costs that went into the loan amount calculation vs the loan forgiveness calculation. Example: \$100,000 salaried employee's average monthly salary in loan base is \$8,333.33 multiplied by 2.5 = \$20,833.33 loan. Same employee receives \$1,923.07 per week for 8 weeks or \$15,384.61 for the 8-week spend period. The payroll costs in the 8-week spend period are 73.85% of the loan;
- An expanded timeframe to begin the loan forgiveness period beyond eight weeks, and allowing the forgiveness period to begin at a later date chosen by the small business;
- Additional startup funding to allow businesses to resume operations when the economy is reopened;
- Relax the requirement that an employer must maintain 100% of prior FTE level in order to receive full loan forgiveness;
- Extension of the June 30th deadline;
- Distribution of funding directly to the business community, in addition to the banking community;
- Re-evaluation of the affiliation rules so that additional businesses which have multiple locations can qualify for the program;

- Additional guidance on what makes up payroll costs included in forgiveness (75%/25% forgiveness and prorated amounts need more clarity);
- With the additional guidance issued, employers may find the loan they received is too large, as the original calculations issued were not as specific as they are now, specifically for the payroll for employees earning over \$100,000 a year. Therefore, the 75% to be spent on payroll may not be reachable and the loan should be allowed to be partially returned in order to adjust the amount subject to the payroll limits;
- Additional guidance is needed regarding how to determine what portion of allowable expenses are includable for purposes of the forgiveness calculations with respect to the “incurred and paid” language as it relates to the covered period; and
- Expanded eligibility to more organizations, such as the 501(c)6 nonprofits.

While we recognize that the PPP was recently reauthorized with \$320 billion on April 24, 2020 and that roughly \$120 billion remains unspent, we believe that if the changes above are incorporated into the program that the PPP will be significantly more useful and quickly become oversubscribed again. Thus, we are advocating for a third replenishment of the PPP, this time with a focus on businesses restarting and reopening our economy.

Thank you for your consideration of our comments and continued support of New Jersey residents during this unprecedented health crisis. If you have questions, please contact Chrissy Buteas, NJBIA Chief Government Affairs Officer, at cbuteas@njbja.org or 908-447-3466.

Sincerely,



Chrissy Buteas
Chief Government Affairs Officer