



The Honorable Janet Yellen  
Secretary of the Treasury  
U.S. Treasury Department  
1500 Pennsylvania Avenue, NW  
Washington, D.C. 20220

The Honorable Ben Cardin Chairman  
U.S. Senate Committee on Small Business &  
Entrepreneurship  
428A Russell Senate Office Building  
Washington, DC 20510

The Honorable Nydia Velázquez Chairwoman  
U.S. House Committee on Small Business  
2361 Rayburn House Office Building  
Washington, DC 20515

The Honorable Isabel Guzman  
Administrator  
U.S. Small Business Administration  
409 3rd St., SW  
Washington, DC 20416

The Honorable Rand Paul  
Ranking Member  
U.S. Senate Committee on Small Business &  
Entrepreneurship  
428A Russell Senate Office Building  
Washington DC, 20510

The Honorable Blaine Luetkemeyer  
Ranking Member  
U.S. House Committee on Small Business  
2361 Rayburn House Office Building  
Washington, D.C. 20515

February 17, 2022

Dear Secretary Yellen, Chairman Cardin, Ranking Member Paul, Chairwoman Velázquez, Ranking Member Luetkemeyer, & Administrator Guzman,

Small businesses provide almost half of all jobs in the U.S. and create nearly two-thirds of all new jobs.<sup>1</sup> Prior to the pandemic, however, almost half of all small businesses in the U.S. reported two weeks or less of cash liquidity – leaving them without reserves to maintain payroll and operations through the prolonged and widespread shutdowns implemented in the wake of the COVID-19 public health emergency.<sup>2</sup> Recognizing this unprecedented economic crisis, Congress came together to create the Paycheck Protection Program (“PPP”), delivering urgently needed funds to small businesses to limit closures and mass unemployment. Designed as a forgivable loan, Congress explicitly promised that PPP funds spent properly would not have to be repaid, and America’s small businesses relied on that promise to keep their doors open and their employees paid. Unfortunately, for too many of America’s most economically vulnerable small businesses – underserved microbusinesses and businesses owned by people of color – Congress’s promise is not being kept.

We, the undersigned organizations supporting microbusinesses and businesses owned by people of color, respectfully urge you to refrain from unfairly denying small business owners the relief they were promised by implementing the following three changes:

1. **Eliminate “gotcha” denials of loan forgiveness due to sudden changes in rules that were imposed without advance notice, both for loans that have not yet applied for forgiveness and loans that have been denied full forgiveness due to changes without advance notice.**

- 2. Rescind and reverse SBA's January 15, 2021 rule denying forgiveness to microbusinesses that made good faith errors, provided funds were used for eligible purposes, both for loans that have not yet applied for forgiveness and loans that have been denied full forgiveness under SBA's unfair January 15, 2021 standard.**
- 3. Alleviate unnecessary paperwork burdens for microbusinesses by implementing automatic forgiveness for loans of \$25,000 or less that have not yet applied for forgiveness.**

Although Congress and SBA acted quickly to create and implement PPP, the roll-out of the program was chaotic. Initial funding was limited and quickly depleted by the overwhelming need, resulting in repeated starts and stops for the program. General program rules and forms were issued mere hours before the program opened to small businesses, and over the following weeks and months, SBA issued hundreds of pages of additional rules and updates. In April of 2020 alone, SBA and Treasury issued over twenty separate PPP rules documents and guidance updates.<sup>3</sup>

Caught up in this maelstrom were America's smallest businesses. Unlike all other SBA loan programs, under PPP, applicants were responsible for determining their own eligibility under the complex program rules.<sup>4</sup> While eligibility for SBA loan programs is typically determined by the lender and SBA, for PPP this burden was shifted to the small business borrower. Despite this change, each new PPP rule issued was immediately effective, with no grace period to allow small businesses to review and understand changes to eligibility or program requirements.<sup>5</sup> Further, because PPP was enacted under the umbrella of the SBA §7(a) program, §7(a) general eligibility rules also applied. Not all of these separate rules, however, were clearly referenced by SBA in its PPP application, nor were they published with other PPP rules documents.

Navigating complex and ever-changing eligibility rules was challenging for all small businesses, but for microbusinesses, which are unlikely to have accountants or attorneys on staff and often lack the resources to access these professionals, it was overwhelming. For "non-employer firms" (self-employed individuals, independent contractors, and sole proprietors with no employees other than the business owner), it was practically impossible. As a result, despite applying in good faith under the rules as they understood them, being approved by SBA-approved lenders and by the SBA, and using the funds as Congress intended, many of these microbusinesses are being denied full forgiveness.<sup>6</sup> A review of SBA's forgiveness data for 2020 PPP loans underscores the enormity of this issue: loans of \$25,000 or less make up 60% of all unforgiven or partially forgiven loans.<sup>7</sup> Over 400,000 microbusinesses that received emergency funding of \$25,000 or less in 2020 have been denied full forgiveness and must repay all or a portion of their PPP loans.<sup>8</sup> For too many of America's smallest, most vulnerable businesses, Congress's promised PPP lifeline has left them sinking under the weight of unexpected debt.

These statistics are especially troubling in light of the fact that more than 90% of all businesses owned by people of color are non-employer firms.<sup>9</sup> Despite Congress's explicit requirement to prioritize small businesses in underserved and rural markets, including businesses owned by socially and economically disadvantaged individuals,<sup>10</sup> barriers to access PPP for microbusinesses and businesses owned by people of color have been well-documented.<sup>11</sup> In large part due to the challenges in accessing PPP relief, the number of Black-owned businesses declined at nearly three times the rate of other demographic groups during the first few months of the pandemic.<sup>12</sup> Despite significant changes made to improve PPP access for microbusinesses and businesses owned by people of color in the final weeks of the program, the chaotic roll-out of PPP, combined with current forgiveness rules, penalizes microbusinesses and businesses owned by people of color by unfairly withholding the full forgiveness promised by Congress.

We, the undersigned organizations supporting microbusinesses and businesses owned by people of color, respectfully urge you to adjust the forgiveness requirements and refrain from unfairly denying small business owners the relief they were promised. Without changes, the forgiveness stage of PPP will exacerbate pre-existing inequities, inadvertently causing further harm to those who are least able to sustain it. Failure to act will turn Congress's PPP promise into a bait and switch.

- 1. Eliminate “gotcha” denials of loan forgiveness due to sudden changes in rules that were imposed without advance notice.** Recognizing the urgency of implementation, SBA made each set of PPP rules immediately effective upon issuance, rather than following standard 30- to 60-day review periods.<sup>13</sup> Given that small business applicants were responsible for determining their own eligibility and loan amount, however, immediate effectiveness had the unintended consequence of causing significant harm by denying small businesses a reasonable period of time to review and understand program clarifications and changes. SBA should allow a 30-day grace period for changes that made eligibility or loan amount calculation more restrictive, both for business owners that have not yet applied for forgiveness and those who have been denied full forgiveness due to changes without advance notice.
- 2. Rescind and reverse SBA’s January 15, 2021 rule denying forgiveness to microbusinesses that made good faith errors, even where the borrower spent the funds for eligible purposes in good faith reliance on promised forgiveness.** Given that the complexities and ambiguities of the program rules and the chaotic roll-out made mistakes inevitable, good faith errors should be decided in favor of the small businesses PPP was designed to help. This approach should be applied both for business owners who have not yet applied for forgiveness and those who have been denied full forgiveness under SBA’s unfair January 15, 2021 standard.
- 3. Alleviate unnecessary paperwork burdens for microbusinesses by implementing automatic forgiveness for loans of \$25,000 or less that have not yet applied for forgiveness.** For microbusinesses, the administrative burden of applying for forgiveness is daunting. Whether working with their lender directly or through the SBA Direct Forgiveness Portal, there are several steps to figure out and multiple rules to parse in order to apply for forgiveness – all while continuing to keep their business operating so they can avoid unemployment for their employees and themselves. Especially in the case of non-employer firms – self-employed individuals, independent contractors, and sole proprietors with no employees other than the business owner – the forgiveness application is a mere formality. Under SBA rules, because the loan amount for non-employee firms was based on documented owner income and included a strict maximum cap, and because they were permitted to use their entire PPP loan to replace their lost income, no additional supporting documentation is necessary at forgiveness. Yet if these microbusiness owners fail to navigate what continues to be a multi-step process to complete their forgiveness application, their promised PPP lifeline will leave them sinking under the weight of unexpected debt. Automatic forgiveness of loans of \$25,000 or less would ensure that these smallest businesses are not unfairly penalized – and further harmed – by an unnecessary administrative burden.

In requesting these three changes to the forgiveness process, we recognize and strongly support SBA’s diligence in rooting out fraud. None of these requested changes would impede SBA’s ability to continue ensuring that cases of fraud are prosecuted, and misused funds are repaid. SBA may review a PPP loan at any time, either before, during or after forgiveness, and PPP borrowers are required to maintain their

records for three to six years following the date forgiveness is granted.<sup>14</sup> Ensuring that deserving small businesses receive the forgiveness they were promised by Congress does not compromise SBA's ongoing efforts to diligently prosecute fraud and recover funds obtained through fraudulent means. Bad actors who knowingly committed fraud to take advantage of a public health and economic emergency can and should be held accountable, and SBA has the authority to do so even after the loan has been forgiven.

We appreciate your immediate attention to this request and thank you for your continued work to mitigate the impact of this public health crisis on small businesses, and to ensure fairness for underserved microbusinesses and businesses owned by people of color.

Sincerely,

American Business Immigration Coalition  
American Latino Veterans Association (ALVA)  
Arcata Economic Development Corporation  
Appleseed Network  
Business Expansion Funding Corp.  
CAMEO - California Association for Micro Enterprise Opportunity  
California Capital Finance Development Corporation  
California Hispanic Chambers of Commerce  
California Reinvestment Coalition  
CDC Small Business Finance  
CDFI Coalition  
Center for Responsible Lending  
Community Reinvestment Fund, USA  
Consumer Action  
Crowdfund Better  
Economic Policy Institute  
Fresno Metro Black Chamber of Commerce  
Illinois Business Immigration Coalition  
Illinois Hispanic Chamber of Commerce  
Hope Policy Institute  
Jefferson Economic Development Institute  
Latino Coalition  
League of United Latin American Citizens (LULAC)  
Local First Arizona  
Local Initiatives Support Coalition (LISC)  
M&F Bank  
Main Street Launch  
Main Street Alliance  
Microenterprise Collaborative of Inland Southern California  
Mission Economic Development Agency  
Mountain BizWorks  
Nogales-Santa Cruz County Chamber of Commerce  
National Association for Latino Community Asset Builders  
National CAPACD - National Coalition for Asian Pacific American Community Development

National Cooperative Bank  
National Urban League  
NCRC Community Development Fund  
North Virginia Hispanic Chamber of Commerce  
Opportunity Finance Network  
Pacific Community Ventures  
Partner Community Capital  
Prosperity Now  
Rochdale Capital  
Self-Help Federal Credit Union  
Small Business & Entrepreneurship Council  
Small Business for America's Future  
Small Business Majority  
TELACU  
The Leadership Conference on Civil Rights  
The Resurrection Project  
UnidosUS  
United States Hispanic Chamber of Commerce

**Exhibit A**  
**Microbusinesses Unfairly Harmed by Current Forgiveness Rules**

- A product design microbusiness in Illinois was approved by his lender and SBA for a PPP loan of just under \$20,000. Just days before his application was submitted, SBA issued a new rule, effective immediately, that limited the types of documentation self-employed individuals could use to apply. Despite completing his application in good faith, providing documentation to support his request, and spending the funds appropriately, his loan will not be forgiven. Instead of receiving the forgiveness promised by Congress, this microbusiness is being held back by an unexpected \$20,000 debt trap.<sup>15</sup>
- A recording studio microbusiness in New Jersey was approved by her lender and SBA for a PPP loan of approximately \$14,000 to cover the lost income of her only staff – the owner and her husband. Receiving PPP funds allowed them to avoid drawing the unemployment for which they were eligible and saved them from shutting down the business altogether. The owner applied in good faith under the rules as she understood them, was approved by her lender and SBA, and used the funds as intended – to replace her and her husband’s lost income. Because rules for how a microbusiness may document owner income were confusing, with piecemeal changes and clarifications rolled out by SBA over time, she was unaware that their documented lost income did not provide a sufficient basis for obtaining a PPP loan.<sup>16</sup>
- A small family-owned microbrewery in California made a good-faith error in calculating its loan amount due to confusion concerning NAICS code requirements for restaurants and was approved for approximately \$13,000 in PPP funding. Despite spending the funds properly on employee payroll and eligible uses, this microbusiness must now repay a portion of its loan, even though it is still struggling due to the impact of the pandemic.<sup>17</sup>
- A mediation and arbitration microbusiness in Massachusetts was approved by her lender and SBA for a \$5,800 PPP loan. When she applied for forgiveness, her lender informed her she was not eligible for her loan amount, and therefore would be required to repay a portion of her loan. Disabled and on a fixed income, she believes this will result in permanent closure of her business.<sup>18</sup>
- An events microbusiness in Florida was approved by his lender and SBA for a PPP loan of \$5,494, and meticulously documented his proper use of funds to ensure his PPP loan would be forgiven. But at forgiveness, his lender told him that because his income is seasonal, he is not eligible for full forgiveness. A portion of his PPP loan will become unexpected debt, which he notes will prevent him from investing in new equipment and staff.<sup>19</sup>
- A massage therapy microbusiness in New York was approved by her lender and SBA for a \$10,000 PPP loan but has been denied forgiveness and will have to repay the full amount. She was told by her lender that she wasn’t eligible for any PPP funds because her Schedule C showed negative net income – despite the fact that her negative net income was the result of investing her net profits back into her business. Because of the continuing impact of COVID-19 on her business, her business may not be able survive this additional blow.<sup>20</sup>
- A personal training microbusiness in Florida was approved by his lender and SBA for a \$5,000 PPP loan. At forgiveness, his lender told him he was not eligible for a loan that size. Faced with the continuing impact of COVID-19 on his business and unexpected debt of approximately \$4,000, he has decided to close his business permanently.<sup>21</sup>
- A Black sole proprietor was approved by his lender and SBA for a \$1,200 PPP loan in May 2020.

At forgiveness, his lender notified him that he was only eligible for a loan of \$600, saddling him with \$600 of unexpected debt. When he contacted his lender to seek clarification on why he had not received full forgiveness for his loan, he was told that he could appeal with SBA through SBA's Capital Access Financial System borrower help desk, which he did; however, he reported that SBA referred him back to his lender. This microbusiness noted that the \$600 he is expected to repay is the difference between making one month's rent or not.<sup>22</sup>

## Endnotes

<sup>1</sup> Dilger, R. J. (2021). *Small Business Administration and Job Creation* (No. R41523). Congressional Research Service. <https://sgp.fas.org/crs/misc/R41523.pdf>.

<sup>2</sup> Farrell, Diana, Christopher Wheat, and Carlos Grandet (2019) *Place Matters: Small Business Financial Health in Urban Communities* JPMorgan Chase Institute. <https://www.jpmorganchase.com/corporate/institute/report-place-matters.htm>.

<sup>3</sup> *Paycheck protection program*. (n.d.). U.S. Department of the Treasury. Retrieved November 23, 2021, from <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-small-businesses/paycheck-protection-program>

*PPP lender information*. (n.d.). PPP Lender Information. Retrieved November 23, 2021, from <https://www.sba.gov/funding-programs/loans/covid-19-relief-options/paycheck-protection-program/ppp-lender-information#section-header-4>

<sup>4</sup>*Paycheck protection program*. (n.d.). Paycheck Protection Program. Retrieved November 23, 2021, from <https://www.sba.gov/funding-programs/loans/covid-19-relief-options/paycheck-protection-program>

<sup>5</sup> *Business Loan Program Temporary Changes; Paycheck Protection Program*. (April 15,2020). U.S. Small Business Administration Federal Register Vol. 85, No. 73, Section II, April 15, 2020 PPP PPP--IFRN FINAL.pdf (treasury.gov)

<sup>6</sup> See Exhibit A attached hereto.

<sup>7</sup> CRL calculations using PPP loan data downloaded from the SBA website on February 9, 2022. To determine the share of fully forgiven loans, CRL calculated the number of loans whose currently approved PPP loan amount exceeded the forgiveness amount listed in the data. Loans with actively undisbursed funds (N<1,900) were excluded from calculations because these funds had not been distributed to borrowers and therefore borrowers would not be seeking forgiveness for funding received. Loans with “Current Approval Amounts” that were equal to 0 (N<10) were also omitted from the analysis. This analysis includes all data files in the SBA data library for PPP loans. Fully Paid loans were not omitted from the dataset as per the purpose of this analysis is to determine borrowers who did not receive full forgiveness regardless of whether or not the loan has been fully paid off.

<sup>8</sup> *Ibid*.

<sup>9</sup> *Employer and Nonemployer Firms: Firms and Receipts for Minority-Owned Businesses for 2018*. (December 2021). United States Census Bureau <https://www.census.gov/library/visualizations/2021/comm/employer-and-nonemployer-firms.html>; see also *Small Business Credit Survey, 2021 Report on Firms Owned by People of Color*. (2021). Federal Reserve. [sbc-report-on-firms-owned-by-people-of-color](https://www.federalreserve.gov/econres/banks/sbcs-report-on-firms-owned-by-people-of-color) (fedsmallbusiness.org) ; and *Survey of Business Owners*. (2016). <https://www.census.gov/library/publications/2012/econ/2012-sbo.html#1/25> note: over 95% of all Black-owned businesses and over 91% of all Latino-owned businesses are non-employer firms.

<sup>10</sup> CARES Act, Pub. L. No. 116-36. Section 1102(a)(2)(36)(P)(iv)(2020).

<https://www.congress.gov/116/plaws/publ136/PLAW-116publ136.pdf>

<sup>11</sup> Parilla, S. L. and J. (September 17, 2020). *New data shows small businesses in communities of color had unequal access to federal COVID-19 relief*. Brookings.

<https://www.brookings.edu/research/new-data-shows-small-businesses-in-communities-of-color-had-unequal-access-to-federal-covid-19-relief/>

Paycheck Protection Program: Loan Forgiveness and Other Challenges, 116<sup>th</sup> Cong. House Small Business Committee. (June 17,2020).

<https://smallbusiness.house.gov/calendar/eventsingle.aspx?EventID=3296>

<sup>12</sup> Wilmoth, D. (2020, August). *Black Business Owners Hit Hard by Pandemic*. U.S. Small Business Administration Office of Advocacy.

<https://cdn.advocacy.sba.gov/wp-content/uploads/2020/08/31083212/Black-Business-Owners-Hit-Hard-By-Pandemic.pdf> 20.

<sup>13</sup> See Administrative Procedure Act at 5 U.S.C. 553(d)(3); see also Congressional Review Act at 5 U.S.C. 808(2).

<sup>14</sup> *Business Loan Program Temporary Changes; Paycheck Protection Program-Loan Forgiveness Requirements and Loan Review Procedures as Amended by Economic Aid Act*. (February 5, 2021). 86 Fed. Reg. 8294 (13 C.F.R. pt. 120)

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<sup>15</sup> Borrower profiles were collected through 2021 by staff of CRL and its affiliates. Profiled individuals shared their stories with the condition that their identities would remain anonymous. The purpose of collecting anecdotal evidence was to demonstrate the myriad of reasons for which microbusinesses were unfairly penalized and denied full forgiveness for their PPP loan.

<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*

<sup>18</sup> *Banks are Reversing Course on PPP Loans to Small Business Owners.* (July 12, 2021). *The Intercept* (<https://theintercept.com/2021/07/12/covid-banks-sba-ppp-loans/>).

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*

<sup>22</sup> Burt, Kiyadh (2021). *Problems Remain for Minority Businesses after PPP Ends.* Hope Policy Institute <http://hopepolicy.org/blog/problems-remain-for-minority-businesses-after-ppp-ends/>.