



Catherine Weiss
Partner and Chair,
Lowenstein Center for the
Public Interest

One Lowenstein Drive
Roseland, New Jersey 07068

T: 973.597.2438
F: 973.597.2439
E: cweiss@lowenstein.com

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The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515
<https://www.speaker.gov/contact>
Scheduler.Pelosi@mail.house.gov

The Honorable Kevin McCarthy
Minority Leader
U.S. House of Representatives
Washington, DC 20515
kevin.mccarthy@mail.house.gov

Re: **Paycheck Protection Program—Safeguards for Nonprofits and Under-Resourced Small Businesses**

Dear Speaker Pelosi and Leader McConnell:

We write on behalf of pro bono organizations that provide business and transactional legal services to nonprofits and under-resourced businesses, including Start Small Think Big, New York Lawyers for the Public Interest, the Rutgers Community and Transactional Lawyering and Entrepreneurship Clinics, the Rutgers Law School Pro Bono and Public Interest Program, the Rutgers Center for Corporate Law and Governance, and the Center for Social Justice at Seton Hall University School of Law. In collaboration with these organizations and others, Lowenstein Sandler launched a pro bono initiative two weeks ago through which we have assisted nearly sixty nonprofit organizations and under-resourced small businesses in applying for loans under the Paycheck Protection Program (“PPP”) established by the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”).

We are grateful to Congress for the speed with which it established the PPP to help employers keep employees on the payroll during the COVID-19 health crisis. We also thank the Small Business Administration for its extraordinary efforts in processing fourteen years’ worth of loan applications in fourteen days.¹ The government’s decisive action has helped many small businesses and nonprofits stay afloat during this period of unprecedented disruption.

Unfortunately, however, many of our pro bono clients encountered significant barriers in applying for PPP loans before program funding was exhausted last week. As organizations

¹ U.S. Department of the Treasury, Statement by Secretary Mnuchin and Administrator Carranza on the Paycheck Protection Program and Economic Injury Disaster Loan Program (April 15 2020), <https://home.treasury.gov/news/press-releases/sm981>.

committed to equality of opportunity and social and economic justice for all members of our community, we encourage Congress and the SBA to ensure that the next round of PPP funding provides equitable access to loan funds for America's nonprofits—many of which serve the most vulnerable members of our communities—and under-resourced small businesses operated by women, people of color, and others with historically weaker ties to the national banking system.

One barrier we identified through our pro bono work was that small nonprofits and under-resourced small businesses experienced a disconcerting lack of responsiveness from national banks after submitting their applications. A survey conducted by the National Federation of Independent Businesses found that nearly 80% of small businesses that submitted PPP loan applications were still waiting to hear from the banks on the status of their applications when the program closed last week.² The PPP regulations required lenders to process loans on a first-come-first-served basis,³ but it is not clear that the banks did so. We are concerned by reports that certain national banks may have given preference to entities seeking larger loan amounts.⁴ The troublesome results are that larger, well-connected businesses with long established banking relationships made their way to the front of the line, while nonprofits and smaller businesses, even when they applied early, often received no answer on their applications. The least well-connected entities often lacked solid banking relationships and therefore had to search for qualified lenders, delaying their applications or precluding them altogether from submitting an application before the program ran out of funding.⁵

It is imperative to ensure that nonprofits and under-resourced small businesses have equitable access to PPP loans. We present three recommendations that we believe would go a long way to realizing this objective.

First, we recommend that Congress reserve at least a quarter of newly appropriated PPP funding for processing by community banks. Community banks serve local nonprofits and small, independent businesses that are not served by national banks, and community banks are closer to marginalized populations. Furthermore, we are aware from our experience advising pro

² National Federation of Independent Businesses, *Covid-19 Small Business Loans (PPP and EIDL)*, <https://www.nfib.com/assets/Covid-19-survey-loans-2.pdf>

³ 85 Fed. Reg. 20813 (April 15, 2020), https://www.sba.gov/sites/default/files/2020-04/PPP%20Interim%20Final%20Rule_0.pdf.

⁴ Dalvin Brown, *Lawsuit alleges Wells Fargo unfairly shuffled Paycheck Protection Program applications*, USA Today (April 19, 2020), <https://www.usatoday.com/story/money/2020/04/19/wells-fargo-lawsuit-small-business-ppp-loans/5162801002/>; Dalvin Brown, *Chase and other banks shuffled Paycheck Protection Program small business applications, lawsuit says*, USA Today, <https://www.usatoday.com/story/money/2020/04/20/small-businesses-sue-chase-bank-over-handling-stimulus/5163654002/>.

⁵ Many of the national banks qualified by the SBA to participate in the PPP decided only to accept applications from existing customers, which effectively excluded less well-connected nonprofits and small businesses from the application process. For example, national banks such as Bank of America and JPMorgan Chase only accepted applications from existing business customers. See <https://about.bankofamerica.com/promo/assistance/faqs/small-business-paycheck-protection-program#anchor2> and <https://recovery.chase.com/cares1>.

bono clients that many community banks have stepped up to review and approve applications quickly, even for new customers.

Second, we recommend that Congress expand nonprofit access to credit by designating a portion of PPP funding exclusively for nonprofits. Many national nonprofits have urged this recommendation to ensure that the organizations dedicated to addressing immediate pandemic-related problems are included in relief efforts and not excluded or pushed to the back of the line. As part of this initiative, incentives could be provided to private lenders to prioritize processing the applications of small nonprofits.⁶

Finally, we recommend lowering the percentage of funds that nonprofits and under-resourced small businesses must spend on payroll-related expenses in order to qualify for PPP loan forgiveness. Small nonprofits that rely on volunteers may have low payroll-to-rent expense ratios, yet still need PPP funding to remain operational. Small businesses in urban areas may employ few workers but pay high rents, and they may need to spend more of their PPP loan funds on rent than on payroll to keep their doors open.⁷ The CARES Act permits some flexibility in structuring loan forgiveness requirements, and modifications could be made that reflect the realities of small, resource-strapped enterprises. Of course, safeguards should be put in place to ensure that flexibility is not abused by wealthy businesses that lay off workers in favor of using PPP loan funds for purposes inconsistent with the CARES Act.

Please ensure that the next phase of the COVID-19 relief plan is responsive to the needs of small but central players in America's economy: nonprofits and under-resourced small businesses that are among the most in need of economic support to weather this crisis.

Thank you for your consideration of our request.

Sincerely,

Catherine Weiss, Partner and Chair
Christina Holder, Public Interest Counsel
Lowenstein Center for the Public Interest
Lowenstein Sandler

Ed Zimmerman, Partner and Chair
Tech Group
Lowenstein Sandler

Jennifer DaSilva, Executive Director
Start Small Think Big

McGregor Smyth, Executive Director
Marnie Berk, Director of Pro Bono
Programs
New York Lawyers for the Public Interest

⁶ Nonprofit Community Letter on Reforms to the CARES Act (April 8, 2020), <https://www.councilofnonprofits.org/sites/default/files/documents/nonprofit-track-reforms-to-the-cares-act.pdf>.

⁷ Tony Nitti, *Ten Things We Need To Know About Paycheck Protection Program Loan Forgiveness* (April 15, 2020), <https://www.forbes.com/sites/anthonymitti/2020/04/15/ten-things-we-need-to-know-about-paycheck-protection-program-loan-forgiveness/#14619bf93291>.

Douglas S. Eakeley, Alan V. Lowenstein
Professor of Corporate and Business
Law, Distinguished Practice Professor,
and Founder/Co-Director, Rutgers
Center for Corporate Law and
Governance
Rutgers Law School

Pamela Mertsock-Wolfe, Director
Pro Bono and Public Interest Program
Rutgers Law School

Jill Friedman, Associate Dean for Pro Bono
and Public Interest
Rutgers Law School

Susan Feathers, Assistant Dean for Pro
Bono and Public Interest
Rutgers Law School

Theodore M. Weitz, Entrepreneurship Clinic
Professor
Rutgers Law School

Tara Pellicori, Entrepreneurship Clinic
Professor
Rutgers Law School

Rutgers Law School Social Justice Scholars
Program

Sydney Groll and Claire Newsome,
Co-Founders, Know Your Rights
Initiative
Rutgers Law School

Linda Fisher, Professor of Law
Kevin B. Kelly, Associate Clinical Professor
Lori Outzs Borgen, Associate Director,
Center for Social Justice
Seton Hall Law School