



March 19, 2021

The Honorable Joseph Biden
President of the United States
The White House
Washington, DC 20500
president@whitehouse.gov

The Honorable Kamala Harris
Vice President of the United States
The White House
Washington, DC 20500
vice_president@whitehouse.gov

The Honorable Charles Schumer
Majority Leader
U.S. Senate
Washington, DC 20510
senator@schumer.senate.gov

The Honorable Mitch McConnell
Minority Leader
U.S. Senate
Washington, DC 20510
senator@mcconnell.senate.gov

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: Extending the Paycheck Protection Program with
Further Improvements to Support Micro Businesses**

Dear Mr. President, Madam Vice President, and Congressional Leaders:

Start Small Think Big is a nonprofit organization that provides free legal, financial and marketing services to under-resourced entrepreneurs around the country. As of today¹, ninety-five percent of our clients are Black, Indigenous, and People of Color (“BIPOC”) or women business owners. On September 29, 2020, we joined 35 partner organizations, including national law firms, community-based organizations, and educational institutions, to urge Congress to immediately restart the Paycheck Protection Program (“PPP”) and adopt specific improvements to make the

¹ Data as of March 19, 2021.

program more responsive to the financial needs of BIPOC-owned micro businesses employing 10 or fewer employees.² Our recommendations were based on our direct experience counseling close to 500 small businesses on their PPP loan and forgiveness applications since the PPP opened in April 2020.³

We thank Congress for restarting the PPP by passing the Economic Aid to Hard-Hit Small Businesses, Nonprofits and Venues Act (“Economic Aid Act”), which became law on December 27, 2020. The Economic Aid Act extends the authority of the Small Business Administration (“SBA”) to make first- and second-draw PPP loans through March 31, 2021. We were pleased that the Economic Aid Act adopted many of the recommendations made in our September 29, 2020 letter: collecting demographic data for loan recipients, earmarking funds for micro businesses, enhancing spending flexibility and improving PPP outreach and access in low-income communities, among other improvements. These improvements are meaningful steps towards increasing access to the PPP for the most vulnerable firms.

We also welcome the Administration’s focus on ensuring equitable access to PPP funding for historically marginalized borrowers. On February 22, 2021, the Administration announced an exclusive PPP loan application period for borrowers with 20 or fewer employees. On March 3, 2021, the SBA issued an Interim Final Rule (the “March 3 IFR”) to allow sole proprietors, independent contractors and other self-employed borrowers (collectively “Self-Employed Borrowers”) – many of whom are people of color and/or women – to qualify for larger PPP loans.⁴

The American Rescue Plan Act signed into law on March 11, 2021 opens additional critical avenues of relief for small businesses in crisis, including by providing additional funding for the PPP, the Economic Injury Disaster Loan Program (“EIDL”) and the Shuttered Venue Operators Grant Program, and by establishing the Restaurant Revitalization Fund. We, alongside our clients, welcome this support. However, we are deeply concerned that the PPP, as it currently stands, does not go far enough to advance the Administration’s lending equity goals. We are concerned that Self-Employed Borrowers will not be able to take advantage of the program before the PPP closes later this month, on March 31. Now remains an urgent and opportune time for Congress and the Administration to work together to make additional improvements to the PPP to ensure that micro business owners hopeful to rely on the PPP for relief actually benefit from the program.

² Start Small Think Big et al., *Restarting the Paycheck Protection Program with Improvements to Support Black and other Minority-Owned Micro Businesses* (September 29, 2020), <https://www.startsmallthinkbig.org/letter-to-congress>.

³ Data as of March 19, 2021.

⁴ The March 3 IFR includes a more favorable formula that Self-Employed Borrowers may use to calculate their maximum PPP loan. Under this Interim Final Rule, borrowers who file the IRS Form 1040, Schedule C (which includes most Self-Employed Borrowers) may now calculate their PPP loan amount using their gross business income. Previously, the PPP rules required Self-Employed Borrowers to use their net business income, which resulted in negligible PPP loan amounts for many borrowers.

Specifically, we ask that the Administration and Congress:

- extend the deadline for borrowers to submit their PPP applications to December 31, 2021;
- allow Self-Employed Borrowers to add to their existing loans;
- issue clear guidance for an equitable interplay of unemployment assistance and PPP funding;
- eliminate the 60% payroll spending requirement for borrowers with no employees; and
- extend the forgiveness reduction exemption for workforce and wage reductions for loans up to \$150,000.

1. *Extend the PPP Application Deadline to December 31, 2021*

The PPP loan application period is currently set to close on March 31, 2021. This provides only a handful of days for Self-Employed Borrowers, the intended beneficiaries of the March 3 IFR, to identify a lender and submit their PPP loan applications. There is already widespread bipartisan support for a two-month extension of the application period under the Paycheck Protection Program Extension Act of 2021.⁵ In addition, many organizations have endorsed extending the PPP deadline, including the U.S. Chamber of Commerce and numerous lenders.⁶ We know from our extensive experience advising PPP borrowers that following significant PPP rule changes, lenders may take several weeks to update their PPP lending portals. We point out that the March 3 IFR was only released one week after the two-week exclusive PPP loan application period for small firms had begun. We are concerned that Self-Employed Borrowers will have insufficient time to successfully submit their applications before the PPP expires. We feel strongly that the currently proposed two-month extension of the PPP would be insufficient for many marginalized borrowers to learn about and apply for the program. A longer extension is needed to allow historically disadvantaged borrowers to apply for first- and potentially second-draw loans under the more favorable PPP rules, and increase the likelihood that BIPOC-owned businesses are able to survive through the crisis. We therefore respectfully request that Congress extend the PPP application deadline to December 31, 2021 and redouble outreach efforts to BIPOC-owned businesses.

⁵ *Paycheck Protection Program Extension Act of 2021*, H.R. 1799, 117th Cong. (2021) (proposing an extension of the PPP application deadline to May 31, 2021).

⁶ U.S. Chamber of Commerce, Coalition Letter on Extension of the Paycheck Protection Program Deadline (March 3, 2021), available at <https://www.uschamber.com/letters-congress/coalition-letter-extension-of-the-paycheck-protection-program-deadline>; John Reosti, *Banks Lobby Congress to Postpone PPP Deadline*, American Banker (March 3, 2021), available at <https://www.americanbanker.com/news/banks-lobby-congress-to-postpone-ppp-deadline>.

2. Allow Self-Employed Borrowers to Add to Their Existing Loans

Self-Employed Borrowers who applied for a PPP loan between April 2020 and March 2, 2021 were required to calculate their maximum loan amount based on their net income, a metric that did not take into account fixed and other business expenses that small businesses must cover to stay afloat. Would-be borrowers who had negative net profit (including some startups and small businesses in an expansion phase) were unable to qualify for a PPP loan at all. Borrowers who were able to qualify often received very small loans. Regrettably, the March 3 IFR states that Self-Employed Borrowers whose PPP loans were approved before March 3 are ineligible to increase their PPP loan amount based on the new calculation methodology. We recommend that the Administration and/or Congress modify this rule to allow existing Self-Employed Borrowers to add to their existing loans by applying for additional funding equal to the difference between their pre-March 3 PPP loan amount and the amount they would be eligible for under the March 3 IFR. This would be consistent with the SBA's approach of allowing partnerships that received a PPP loan early in the program that did not include compensation for their partners to apply to their lender to increase their approved loan amount.⁷

3. Issue Clear Guidance for an Equitable Interplay of Unemployment Assistance and PPP Funding

The most frequent question we receive from clients is how receiving a PPP loan will affect their unemployment benefits. For many sole proprietors, independent contractors, and other self-employed individuals, Federal Pandemic Unemployment Assistance ("PUA") has been a critical lifeline during the pandemic. These individuals are understandably frightened that merely applying for a PPP loan will jeopardize their unemployment payments, even if they intend to use the PPP for non-payroll expenses. We believe that the ambiguous relationship between the two programs is a primary deterrent to self-employed people (who are overwhelmingly people of color and/or women) applying for PPP loans.

To date, only one of the 29 IFRs issued by the SBA has addressed this issue, and it did so with little clarity, warning borrowers that they "should be aware that participation in the PPP may affect . . . eligibility for state-administered unemployment compensation or unemployment assistance programs, including the programs authorized by Title II, Subtitle A of the CARES Act, or CARES Act."⁸

Many lawyers and accountants have taken a conservative approach and have counseled clients that they should not compensate themselves from PPP funds while also receiving unemployment assistance. Yet this approach disadvantages a subset of low-income borrowers

⁷ 86 Fed. Reg. 9, 3710 (Jan. 14, 2021).

⁸ 86 Fed. Reg. 9, 3696 (Jan. 14, 2021).

who would receive less owner compensation from their PPP loan than from PUA. These borrowers must forego a PPP loan altogether, or use the loan for non-payroll expenses and forfeit forgiveness. To increase lending equity, we believe that borrowers whose PPP owner compensation payments would be less than their PUA payments should be able to collect from both funding sources at the same time.

We call on the Administration and Congress to issue plain-language guidance to clarify that recipients of PUA compensation may apply for a PPP loan without violating PUA rules, provided that the borrower accurately reports their PPP owner compensation (if any) to their state unemployment agency and monitors their unemployment payments. These safeguards would help to ensure that weekly unemployment benefits are proportionately reduced by the amount of PPP income. PPP borrowers who accurately report their PPP owner compensation to their state unemployment agencies should not be penalized for mistakes or overpayments that their state agencies may make when processing unemployment claims. In our experience, state unemployment agencies are the primary source of information for low-income PPP borrowers. We urge the Administration and Congress to work with state agencies to ensure that guidance on the interplay of PUA and the PPP is widely disseminated through state unemployment agency websites.

4. Eliminate the 60% Payroll Spending Requirement for Borrowers With No Employees

Our September 29, 2020 letter urged Congress to dispense with the 60% payroll spending requirement for the smallest businesses, as the majority of these enterprises' expenses are overhead rather than payroll. We continue to recommend that Congress shift the focus of the PPP—particularly with respect to Self-Employed Borrowers—from funding payroll to keeping small businesses alive through the crisis. To effectuate this recommendation, we encourage Congress to clarify that the 60% payroll requirement does not apply to Self-Employed Borrowers with no employees, and that such borrowers may use up to 100% of their PPP loan for non-payroll covered expenses (*e.g.*, rent, utilities, operating expenses, supplier costs, and worker protection expenses) and still qualify for full forgiveness. Such a clarification would ensure that more BIPOC-owned businesses, as well as women-owned businesses, benefit from the PPP. Specifically, it would allow many under-resourced entrepreneurs to continue receiving unemployment payments to meet their basic household needs, while also receiving PPP funds that will keep their businesses afloat through the crisis.

5. Extend the Forgiveness Reduction Exemption for Workforce and Wage Reductions to Loans Up to \$150,000

Finally, we wish to highlight what may be an oversight in the SBA rules relating to PPP loan forgiveness for loans between \$50,000 and \$150,000. In October 2020, the SBA deemed that

PPP loans of \$50,000 or less are exempt from loan forgiveness reductions based on reductions a borrower may make to workforce and wages during its covered period.⁹ The intent of the exemption was to facilitate the PPP forgiveness process for small borrowers. The Economic Aid Act enacted on December 27, 2020 further streamlined the PPP forgiveness process by requiring the SBA to publish a one-page forgiveness application for PPP loans up to \$150,000. The SBA has published this simplified form, but it does not extend the *de minimus* exemption to loans between \$50,000 and \$150,000. As you are aware, the protracted pandemic has forced some small businesses to shut their operations partially or completely and make business decisions to furlough or lay off employees or reduce employee hours. Employees in turn may be unwilling or unable to return to work during their employer's covered loan period, for fear of losing their unemployment benefits or a myriad of other valid reasons. Micro business borrowers should not be punished for what is beyond their control.

The uncertainty around loan forgiveness continues to deter many micro businesses from applying for a PPP loan. To remedy this barrier, we ask Congress to approve automatic and guaranteed forgiveness of all PPP loans under \$150,000 for borrowers who certify that they used the funds for approved purposes. We believe that automatic forgiveness would further reduce the inequities that have diminished the program's reach into low-income communities.

* * *

We appreciate the centrality that the Administration (including the SBA) and Congress have given to lending equity in the latest iteration of the PPP. Thank you for considering our additional recommendations to ensure that more historically disenfranchised and disadvantaged borrowers can benefit from the program.

Sincerely,

Jennifer DaSilva, Founder & Executive Director
Alex Stepick, Legal Program Director
Stephanie Charles, Cleary Gottlieb Fellow
Start Small Think Big

Gary M. Wingens, Chairman and Managing Partner
Christina T. Holder, Corporate Public Interest Counsel
Lowenstein Sandler LLP

⁹ 85 Fed. Reg. 66214 (Oct. 19, 2021), available at <https://www.federalregister.gov/documents/2020/10/19/2020-23091/business-loan-program-temporary-changes-paycheck-protection-program-additional-revisions-to-loan>.

Chester County Chamber of Business & Industry

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

Katherine Katcher, Founder & Executive Director
Root & Rebound

Latino Economic Development Center

Main Street Launch

Michael Winn
Director, Pro Bono & Externship Programs + Lecturer in Law
Levin Center for Public Service & Public Interest Law
Stanford Law School

Naveen Thomas
Director, Business Transactions Clinic
New York University School of Law

Norville Barrington, Vice President of Business Development & Communications
Metro New York Chapter, National Black MBA Association

Opportunity Fund

Professor Amelia Miazad, Director and Senior Research Fellow
Business in Society Institute
UC Berkeley School of Law

Sydney Groll and Stephanie Mignogna
Co-Chairs, Know Your Rights Initiative
Rutgers Law School

Volunteers of Legal Service (VOLS)

cc:

The Honorable Ben Cardin
Chairman
Senate Committee on Small Business and
Entrepreneurship
senator@cardin.senate.gov

The Honorable Nydia M. Velázquez
Chairwoman
House Committee on Small Business
nydia.velazquez@mail.house.gov

The Honorable Isabella Casillas Guzman
Administrator
Small Business Administration
isabella.guzman@sba.gov