

Chris Netram

*Vice President,
Tax and Domestic Economic Policy*

April 13, 2020

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

Re: Docket No. SBA-2020-0015: *Business Loan Program Temporary Changes; Paycheck Protection Program (RIN 3245-AH34)*

Dear Administrator Carranza,

The National Association of Manufacturers appreciates the Small Business Administration's ongoing efforts to implement the Paycheck Protection Program, the vital \$349 billion small business lending program authorized by the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

Small businesses, including small manufacturers, are facing significant disruptions due to the COVID-19 crisis. As a result, manufacturers welcomed Congress's work on the PPP, which is designed to provide an immediate capital injection to small businesses in the form of forgivable loans to be used to keep workers employed during the crisis. As the crisis continues, we believe that additional support is needed for American small businesses, and we are encouraging Congress to act expeditiously to approve additional funds for this program.

Many small manufacturers have already been in contact with their local lenders about participating in the PPP. However, both borrowers and lenders would benefit from further clarity around certain implementation issues that have arisen in the early days of the program. We encourage the SBA and the Department of the Treasury to take all necessary steps to provide regulatory certainty and ease the implementation of this vital program to ensure that small manufacturers across the country have access to the capital they so desperately need to weather this crisis.

I. Affiliation Rules

The CARES Act provides for specific exemptions from the SBA's standard affiliation rules for franchise businesses and for businesses in the accommodation and food services industries. However, the law provides a level of regulatory flexibility to the SBA with respect to how it will apply the affiliation rules to businesses that do not qualify for one of the specific CARES Act exemptions. The NAM encourages you to utilize this flexibility in order to broaden the universe of small businesses eligible for the PPP and to provide clarity as to how the affiliation rules apply across a wide range of business relationships. Definitive SBA action would speed the deployment of PPP funds, and in many cases the SBA has the authority to act without needing to wait for further authorization from Congress.

- At present, the SBA's interpretation of "ownership" and "control" under its affiliation rules excludes start-ups and small businesses with private equity and venture capital investment from qualifying for the PPP. By requiring these companies to aggregate their employees with a range of unrelated business in which their investors also hold a stake, this interpretation pushes otherwise eligible businesses over the 500-employee size threshold. The NAM encourages the

SBA to treat these small businesses as standalone entities for purposes of PPP eligibility and thus to allow them to access needed funds.

- The interim final rule clarifies that a business must only count its U.S.-domiciled employees for purposes of determining its eligibility for the PPP. However, the rule is less clear about how to count any foreign employees that may be aggregated with a business's U.S. employees when applying the affiliation rules. It is clear that a business's U.S.-based employees count toward its headcount and that its foreign-based employees do not; likewise, it is clear that any affiliated U.S. employees count toward the business's headcount, but it is less clear how to treat affiliated foreign employees. The NAM urges the SBA to make clear that any affiliated non-U.S. employees do *not* count toward a business's headcount for purposes of determining its eligibility for the PPP.
- As noted above, the CARES Act provides a specific exemption for businesses that have received a franchise identifier code from the SBA. However, many manufacturers have business relationships that mirror that of a franchisor-franchisee affiliation, such as nationwide dealer networks, that may or may not result in a specific listing in the SBA's Franchise Directory. The NAM urges the SBA to treat all small businesses operating as a franchise, dealer, distributor, or other similar entity as standalone businesses, irrespective of how their franchise-like relationship is structured and whether they are listed in the Franchise Directory. The NAM also encourages the SBA to expeditiously approve applications for the Franchise Directory in order to increase access to PPP funds for businesses relying on the CARES Act franchise exemption.
- The SBA should clarify how the affiliation rules and the requirement to document payroll costs apply when an eligible entity is deemed affiliated with an ineligible entity or when an eligible entity's payroll costs are paid by a third party. For example, a 501(c)(3) non-profit might be affiliated with an entity organized under Section 501(c)(6) of the Internal Revenue Code, leaving open the question of how the (c)(6)'s employees should be counted when determining the (c)(3)'s eligibility. Furthermore, from an implementation point of view, when those organizations' employees share a common paymaster (whether one of the two entities, or an unrelated third party), the entities would benefit from SBA clarity as to how to document both their eligibility and their payroll costs. Regulatory certainty on these questions would benefit small manufacturers with affiliated (c)(3)s, as well as the wide range of manufacturing-focused (c)(3)s and (c)(6)s across the country.
- Finally, the NAM generally encourages the SBA to think expansively about the application of the affiliation rules as it continues to implement the PPP. Even in seemingly clear-cut relationships like that of a subsidiary to its parent, it may be the case that a one-size-fits-all application of the affiliation rules is not consistent with the congressional intent behind the PPP. The SBA should allow for flexibility in determining whether small businesses are operating independently—even if an existing business relationship might usually trigger the affiliation rules. The current economic crisis is unique in our nation's history, and the NAM strongly believes that the federal government should continue to take aggressive steps to ensure that small businesses have the capital to survive.

II. Eligibility

While the CARES Act is largely prescriptive with regard to which entities are eligible for the PPP, additional clarification from the SBA on certain topics (in addition to the affiliation issues raised above) will enable lenders to process loans quickly and borrowers to receive funds to maintain their payroll during these challenging times.

- The interim final rule makes clear that only U.S.-domiciled employees count for purposes of determining a business's eligibility for the PPP under Section 7(a)(36)(D)(i)(I) of the Small Business Act (as amended by the CARES Act). However, if a businesses has more than 500 U.S.-based employees, Section 7(a)(36)(D)(i)(II) allows it to qualify based on size standards established by the SBA, which has set forth headcount tests based on a business's NAICS code. Because those NAICS-based tests predate the CARES Act, it is unclear whether, for purposes of qualifying for the PPP, they should be applied with respect to a business's U.S.-based employees or all of its employees. Eligibility for other 7(a) loans is determined based on global headcount, but the interim final rule makes clear that PPP loan eligibility should be based on U.S. headcount. In order for PPP qualifications to be consistent across all entities, the NAM urges the SBA to clarify that foreign-based employees do not count for purposes of determining a business's eligibility for the PPP when utilizing the NAICS-based eligibility test.
- In addition to the more than 14,000 manufacturing businesses that are members of the NAM, we also represent more than 350 manufacturing industry associations in all 50 states. For the most part, these associations are organized under Section 501(c)(6) of the Internal Revenue Code and are thus ineligible for the PPP. Like the small manufacturers they represent, these small organizations face enormous economic uncertainty due to the ongoing COVID-19 crisis. Moreover, these associations may also provide health or retirement benefits to the employees of the companies they represent. We urge you to work with Congress to extend eligibility for the PPP to Section 501(c)(6) organizations, allowing them to maintain their employees and continue to serve as a resource for the manufacturing economy during these uncertain times.

III. Loan Forgiveness

The interim final rule notes that the SBA plans to issue additional guidance on loan forgiveness. As you consider that guidance, the NAM strongly encourages you to provide certainty in the form of clear processes for borrowers and lenders to ensure that eligible PPP loans are fully forgiven.

When the eight-week period following the origination of a PPP loan has passed, there should be clear steps that a borrower can take to demonstrate that the funds were used for allowable purposes and document that the business maintained its employee headcount and payroll throughout the loan period in accordance with CARES Act restrictions. Likewise, there should be clear processes for lenders to review and approve forgiveness requests, and to have confidence that the federal government will ultimately provide the necessary dollars to backfill the funds that were dispersed and subsequently forgiven.

IV. Implementation Issues

The NAM appreciates the SBA's sustained effort to inform program participants and potential program participants about the requirements and processes relevant to the PPP. We encourage you to continue these vital education efforts in order to further smooth implementation of the program.

- The NAM strongly encourages the SBA to continue to provide useful information to lenders to ease implementation of the PPP. For instance, we were encouraged by the recent guidance to allow non-bank lenders to offer loans under the program. Continued efforts to expand the universe of PPP lenders and to provide clarity to existing lenders will go a long way in ensuring that companies receive needed loans under the program. As noted above, we are also encouraging Congress to ease the application process by approving additional funds for the PPP.
- Small businesses would also benefit from enhanced clarity with respect to the Economic Injury Disaster Loan program. We appreciate the SBA's dedication to maintaining the vital EIDL program as you continue to implement the PPP, and we encourage you to ensure that EIDL

borrowers, like PPP borrowers, are able to access loans in a timely and efficient manner. Furthermore, while the CARES Act is clear that EIDL funds cannot be used to cover payroll costs if a business is utilizing a PPP loan for those purposes, the SBA should ensure that borrowers and lenders are aware that that prohibition is *not* a blanket exclusion on receiving loans under both programs.

- Due to significant processing delays at many banks, some businesses have contacted numerous prospective lenders about participating in the PPP; in some cases, these businesses have gone so far as to submit multiple applications. The SBA has made clear that entities cannot *receive* multiple PPP loans, but the NAM would support definitive language clarifying that there is no penalty for *applying* multiple times in an effort to find a lender who can process the loan.
- As the SBA works with other agencies to respond to the economic crisis, the NAM encourages the federal government to be mindful of the interactions between the various new lending programs and facilities. The COVID-19 outbreak has impacted companies of all sizes, and it is vital that any business in need of liquidity be able to access financing. Size-based eligibility criteria for the PPP has been set by Congress, but the SBA, Treasury, the Federal Reserve, and other agencies can and should exercise flexibility with respect to the Main Street Business Lending Program, the Primary Market Corporate Credit Facility, the Secondary Market Corporate Credit Facility, and the Term Asset-Backed Securities Loan Facility. Ensuring that companies of all sizes, credit ratings, business models, and more can access financing to weather the crisis should be the primary goal of the government at this difficult time.

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The NAM applauds the SBA for issuing an interim final rule to implement the PPP. Manufacturers are eager to utilize the financing available under the program; many small manufacturers are already doing so. The NAM urges you to continue your important work implementing the program and providing needed clarity to lenders and borrowers alike so that small businesses across the country can access the capital they need to keep their workers on the payroll during the COVID-19 crisis.

On behalf of the NAM and the 13 million men and women who make things in America, thank you for your attention to these concerns.

Sincerely,



Chris Netram
Vice President, Tax and Domestic Economic Policy

cc: The Honorable Steven Mnuchin
The Honorable Mitch McConnell
The Honorable Chuck Schumer
The Honorable Nancy Pelosi
The Honorable Kevin McCarthy
The Honorable Marco Rubio
The Honorable Ben Cardin
The Honorable Nydia Velázquez
The Honorable Steve Chabot