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Wednesday, April 29, 2020

The Honorable Steven T. Mnuchin
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

The Honorable Jovita Carranza
Administrator
Small Business Administration
409 Third Street, S.W.
Washington, D.C. 20416

Dear Secretary Mnuchin and Administrator Carranza:

We are writing to urge you to publish additional guidance related to the certifications made during the Paycheck Protection Program (PPP) application process.

Under the Small Business Administration (SBA)'s interim final rule "Business Loan Program Temporary Changes; Paycheck Protection Program" amending 13 CFR 120, borrowers are required to make certain certifications, as required by the CARES Act. In section III(2)(t), "What certifications need to be made?", applicants are advised that they must certify that they have not and will not receive additional loans under the PPP. It further requires the applicant to certify that all statements made are "true and accurate in all material respects."

Many small business owners tell us that they have applied for PPP a second time out of desperation, frustrated with delays and lack of communication from lenders, regarding their first application. This makes their second application a violation of the interim final rule, and renders certifications made on the second application "bad faith." These businesses are struggling. They were forced to suddenly close their doors as bills and payroll obligations continued to grow. Their attempts to cut through red tape and find capital to support their operations are not attempts to defraud the United States, and should not be treated as such.

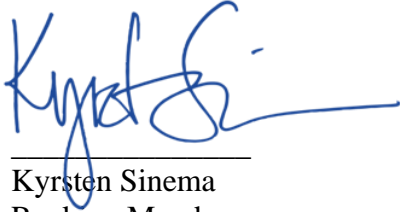
The Paycheck Protection Program Loans: Frequently Asked Questions guidance addresses the problem of large companies with adequate sources of liquidity in Question 31. As part of the answer, the SBA provides a safe harbor for such a borrower to maintain the good faith certification requirement. If the borrower returns the loan, the SBA will maintain a presumption that the certification was made in good faith, allowing the borrower to avoid punitive action under the False Claims Act. It is imperative that the smallest businesses are protected, as well.

New guidance must provide an opportunity for those borrowers who have already received multiple PPP loans to return all loans received after the first approval. Further, the SBA must institute a verification process that automatically denies a second loan application. Such a process

will ensure that businesses are not penalized for an honest mistake, while still protecting the PPP from waste, fraud, and abuse.

We appreciate your prompt attention to this matter. If you have any questions, please contact Anthony Papian (Sinema) at Anthony_Papian@hsgac.senate.gov and Phillip Moran (Lankford) at Phillip_Moran@lankford.senate.gov.

Sincerely,



Kyrsten Sinema
Ranking Member
Subcommittee on Regulatory Affairs and
Federal Management



James Lankford
Chairman
Subcommittee on Regulatory Affairs and
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