

United States Senate

WASHINGTON, DC 20510

April 7, 2020

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

Dear Administrator Carranza:

We write to urge the Small Business Administration (SBA) to act promptly to resolve uncertainty regarding employee stock ownership plans (ESOPs) and the eligibility of ESOP-owned small businesses for SBA's new Paycheck Protection Program (PPP). As you are aware, ESOPs allow employees to share in ownership of the businesses that employ them, and these businesses, to the extent that they are under 500 employees, should be eligible for the federal resources promised to small businesses across the country.

The COVID-19 pandemic and related mitigation efforts have crippled small businesses, causing mass layoffs and closures across the country. Small businesses are the backbone of the U.S. economy, and Congress acted in overwhelmingly bipartisan fashion to pass the Coronavirus Aid, Relief, and Economic Security (CARES) Act. Among other things, the CARES Act created the PPP to provide immediate relief to small businesses and other entities impacted by the COVID-19 pandemic and its accompanying economic uncertainty and distress. This emergency lending program, administered by the SBA and the U.S. Department of the Treasury, accounts for the vast majority of the small business assistance in the CARES Act. ESOP-owned businesses, like other small businesses, are in desperate need for federal assistance during this unprecedented time. Although not specifically enumerated in the PPP, it was Congress's intent to include them in receiving the resources to help.

We appreciate SBA's diligent work on issuing guidance to lenders and applicants at such an unprecedented pace. However, at this time, the eligibility and ability of ESOP-owned businesses to access the PPP is unclear for some lenders. The SBA guidance stipulates that these businesses are eligible for the PPP, but creates confusion for lenders by referencing standing SBA guidance unrelated to the PPP that preclude loans to ESOPs themselves, rather than the ESOP-owned business.

A lack of explicit regulatory clarity effectively prevents some ESOP-owned businesses from accessing PPP loans while other ESOP-owned businesses are being approved for PPP loans. We are concerned about reports of eligible ESOP-owned businesses being turned away by lenders due to this uncertainty. Without equal access to the PPP, many ESOP-owned businesses may never open their doors again.

Providing banks and lenders with the assurance that ESOP-owned businesses are eligible for the PPP and that their loans are similarly eligible for PLP will encourage lenders to confidently extend dollars to ESOPs without delay. Accordingly, we respectfully urge the Small Business Administration to promptly take all appropriate actions to resolve the current uncertainty and publicly provide clarity on ESOP eligibility for the PPP, in line with the intent of the law.

We appreciate your attention to this critical issue, and we recognize the challenge that SBA faces in implementing PPP at an unprecedented rate.

Sincerely,



Ron Wyden
Ranking Member
Senate Committee on Finance



Benjamin L. Cardin
Ranking Member
Senate Committee on Small Business
and Entrepreneurship

Cc: Secretary Steven T. Mnuchin