

United States Senate

April 21, 2020

The Honorable Marco Rubio
Chairman
Committee on Small Business &
Entrepreneurship
United States Senate
Washington, DC 20510

The Honorable Ben Cardin
Ranking Member
Committee on Small Business &
Entrepreneurship
United States Senate
Washington, DC 20510

The Honorable Nydia M. Velázquez
Chairwoman
Committee on Small Business
U.S. House of Representatives
Washington, DC 20515

The Honorable Steve Chabot
Ranking Member
Committee on Small Business
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Rubio, Chairwoman Velázquez, Ranking Member Cardin, and Ranking Member Chabot:

As you move toward a fourth coronavirus stimulus package, we ask that you take a more prescriptive approach that provides the U.S. Small Business Administration (SBA) in statute with more detailed guidelines on how it must administer small business relief programs such as the Paycheck Protection Program (PPP) and the Economic Injury Disaster Loan (EIDL) program. Lacking firm guardrails and with broad discretion to act as it sees fit, SBA has interpreted language in the *Coronavirus Aid, Relief, and Economic Security (CARES) Act* regarding PPP in a manner that has excluded many small businesses from receiving relief, and we urge you to rectify this for that critically important program and others in any forthcoming legislation.

The *CARES Act* represented an unprecedented bipartisan effort to address the ongoing COVID-19 public health crisis and resulting economic downturn. Republicans and Democrats came together to provide relief to working families, seniors, frontline healthcare workers, small businesses, and other members of our communities. With a 96-0 vote in the Senate and a resounding voice vote in the House of Representatives, Members of Congress put aside partisan differences in order to try to save the nation from a global pandemic and stave off economic catastrophe. The President followed suit by signing the landmark bill into law.

While much more work needs to be done to add to this important legislation, including additional funding for our small businesses and more direct support for workers, the Administration's implementation of the *CARES Act* unfortunately has limited the law's potential effectiveness. In particular, the Paycheck Protection Program, designed to provide loans to small businesses who need to meet payroll obligations and want to keep workers employed, has been plagued with challenges. Too many of these errors have been unforced, with the U.S. Small Business

Administration and the U.S. Treasury Department either willfully ignoring Congressional intent or taking extreme license with the authority provided by the *CARES Act*. In doing so, countless small businesses and non-profit organizations have been shut out of PPP.

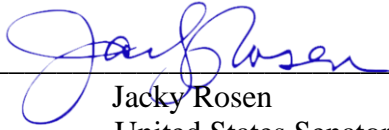
For example, while small businesses in the gaming industry support more than 350,000 jobs in the United States, guidance released by the U.S. Small Business Administration and the U.S. Department of Treasury several weeks ago excluded any small business that derives more than one-third of their revenue from legal gaming activities from participation in PPP. This is despite the fact that, in Section 1102 of the CARES Act, the legislation explicitly states that “in addition to small business concerns, any business concern, nonprofit organization, veterans organization, or Tribal business concern described in section 31(b)(2)(C) shall be eligible to receive a covered loan” if the business has 500 or fewer employees. SBA’s incorrect interpretation of this clear line of statutory text has cut out not only commercial gaming businesses, hotel casinos, and Tribal gaming operations, but also restaurants, bars, grocery stores, and convenience stores that operate gaming equipment and derive revenue from it, along with gaming manufacturers and related businesses. After hearing from Members of Congress from states with legal gaming, SBA amended its guidance this week to raise the exclusion threshold to those entities deriving more than half of their revenue from gaming, with a \$1 million overall cap on annual gaming revenue. While this is a step in the right direction, all small businesses should have access to CARES Act loan programs, and we should not be giving SBA license to exclude anyone.

There are likewise numerous other small businesses and non-profit organizations that lack access to relief, including small businesses that do not have pre-existing lending relationships with banks taking part in PPP and – until recently – religiously affiliated non-profit organizations and farms. Under pressure to comply with Congressional intent, SBA reversed course on religious non-profits and farms, finally allowing them to receive support and pay their workers. We applaud Administrator Carranza and SBA for taking this important step. However, this should serve as a lesson that Congress must not leave such decisions for SBA’s interpretation, but should rather take a more prescriptive approach when updating the contours of PPP and any future programs and what they require of SBA in order to provide relief to our small business communities.

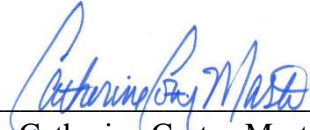
With this in mind, we ask you to take steps to explicitly ensure that all legally-operating small businesses and non-profit organizations that Congress has permitted to access COVID-19 small business relief have full access to PPP, EIDL, and any other COVID-19 small business relief programs by prohibiting SBA from directly or indirectly barring businesses from participating in the program solely because of their involvement in a particular industry, their lack of history of a lending relationship with a particular financial institution, or any other arbitrary criteria that would limit access to capital.

Thank you for your attention to this important issue. We look forward to working with you on finding a solution.

Sincerely,



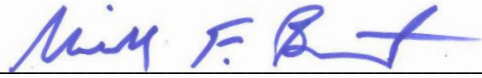
Jacky Rosen
United States Senator



Catherine Cortez Masto
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