



Lutheran
Services
in America

DATE

The Honorable Jovita Carranza
Administrator
Small Business Administration
409 Third Street SW
Washington, DC 20416

RE: Comments in Response to SBA Notice of Interim Final Rules "Business Loan Program Temporary Changes; Paycheck Protection Program," SBA-2020-0015 (April 15, 2020)

Dear Madam Administrator:

I submit these comments in response to SBA Notice of Interim Final Rules "Business Loan Program Temporary Changes; Paycheck Protection Program" (SBA-2020-0015) on behalf of [Lutheran Services in America](#) and the one in 50 Americans who rely on the 300 Lutheran health and human services providers throughout the United States that comprise our network. With our active presence in over 1,400 communities in 46 states as seen [on this map](#), our work is critically important in improving the lives of America's most vulnerable people, ranging from seniors, veterans and people with disabilities to children, youth and families, and the homeless.

The COVID-19 pandemic dramatically affects all of the people we serve and services we provide. Our 300 Lutheran social ministry organizations are on the front lines caring for people while taking extraordinary steps to protect their staff and people served. Yet they increasingly struggle with equipment shortages, especially personal protective equipment; severe workforce shortages necessitating hazard pay; declining revenue; and the need to reduce or eliminate needed services. These severe challenges are occurring while our organizations simultaneously face limited cash reserves, decreasing revenue and already-tight margins.

Our work is deeply embedded in communities across the country where we have provided services for over 150 years. Yet our work—which comprises a significant part of the health and human services delivery system—cannot continue without specific measures taken soon to support nonprofits, including those with over 500 employees. Without additional needed resources to support nonprofits during this time of crisis, we will be unable to meet the increasing needs of individuals and communities at their most vulnerable time. For these urgent reasons, we submit the following comments and recommendations.

Summary of Comments and Recommendations

- Eligibility: Expand nonprofit access to “alternative size standards” on an equal basis as for-profit businesses and agricultural concerns.
- Maturity Date: Reject decision to impose a two-year maturity date as based on an unrealistic expectation of economic recovery and replace with a longer maturity date.
- “First-Come, First Served” Promise: encourage Treasury and SBA to take additional steps to ensure equitable access to the program for nonprofits and small employers. Delete Question M and the answer (“yes”) as false given the extensive reports of smaller nonprofits and businesses being forced to the back of the line as lenders gave priority to preferred customers in violation of the Interim Final Rule.
- Need for Nonprofit PPP Data: Immediately publish state-by-state and national data on nonprofit applications, loans granted, loan amounts and averages, and more.
- Payment of Principal and Interest: Extend due date for first payments of principal and interest to one year, recognizing that the proposed start date of six months will occur for most borrowers at a time when scientists expect a second wave of COVID-19 cases and disruptions.
- Loan Forgiveness: Reject the “75%/25%” payout rule as arbitrary and contrary to the will of Congress.
- Certifications: Delete reference to the “75%/25%” payout rule and clarify that payments on pre-existing debt are forgivable.

- Need for Nonprofit-Specific Guidance: Issue guidance providing clarity on unique questions related to nonprofit operations, such as “ownership,” applicability of “alternative size standards,” and impact of government grants and contracts.

Comments on the Interim Final Rule

The close of this public comment period for the initial Interim Final Rule comes six weeks after the opening of the Paycheck Protection Program to loan applications. In the time since these interim regulations were released, Treasury and SBA have issued additional rules and guidance, and published 47 answers to frequently asked questions. While we recognize that time has been and continues to be of the essence in advancing this vital lifeline to nonprofits and other small businesses, the guidance from the government has often been confusing and conflicting. Notably, the SBA warns that the [“Frequently Asked Questions”](#) (FAQs) it has been updating regarding the PPP loans are merely informal and the “document does not carry the force and effect of law independent of the statute and regulations on which it is based.” Given that loan applicants who are trying in good faith to follow the law based in part on the information shared by SBA in avenues such as these FAQs, it is imperative that Treasury and SBA issue legally binding regulations as soon as possible.

We offer the following comments that track the question-and-answer format of the Interim Final Rule, beginning at Section III, “2. What do borrowers need to know and do?” Our comments address only some of the identified questions.

A. AM I ELIGIBLE?

The Interim Final Rule explains that nonprofits are eligible for PPP loans if they have 500 or fewer employees, (i) are 501(c)(3) organizations, and (ii) were in operation on February 15, 2020 and had paid employees or paid independent contractors. SBA has broadened the eligibility requirements for some for-profit business entities, but not for nonprofits. Specifically, the [SBA’s Frequently Asked Questions](#) (FAQs) guidance provides that “a business can qualify for the Paycheck Protection Program as a small business concern if it met both tests in SBA’s ‘alternative size standard’ as of March 27, 2020: (1) maximum tangible net worth of the business is not more than \$15 million; and (2) the average net income after Federal income taxes (excluding any carry-over losses)

of the business for the two full fiscal years before the date of the application is not more than \$5 million.”

Despite repeated requests that SBA clarify that the “alternative size standard” is also available to nonprofits, no clarification has been forthcoming. Yet, in late April, SBA added a new FAQ #34, declaring that “agricultural producers, farmers, and ranchers can qualify for PPP loans as a small business concern if their business meets SBA’s ‘alternative size standard.’”

As a matter of fairness, it is incumbent upon Treasury and SBA to modify the Interim Final Rule as well as SBA’s FAQs to ensure that nonprofits are entitled to qualify for PPP loans under the “alternative size standard.” This would mean that nonprofits with more than 500 employees could still qualify based on a demonstration of net worth of \$15 million or less and average annual net income of \$5 million or less, or an equivalent measure more appropriate to how nonprofit budgets are structured.

J. WHAT WILL BE THE MATURITY DATE ON A PPP LOAN?

The Interim Final Rule proposes just a two-year maturity from the date the borrower applies for loan forgiveness. This is well short of the ten-year maturity authorized under the CARES Act. The proposed rule asserts that “a two year loan term is sufficient in light of the temporary economic dislocations caused by the coronavirus.” It goes on to say that “the considerable economic disruption caused by the coronavirus is expected to abate well before the two year maturity date such that borrowers will be able to re-commence business operations and pay off any outstanding balances on their PPP loans.” We respectfully disagree, as do government officials, business leaders, medical professionals, and economists throughout the country.

By most estimations, the impact of the disease on the lives of its victims, on the health care system, and on the U.S. economy is far worse than Congress anticipated in March 2020 when crafting this program. Congress sought to get money into the hands of nonprofits and small businesses as quickly as possible to prevent layoffs and retain employment for eight weeks in April, May, and June 2020, to get those employers through the presumed nadir of the economic downturn. Based on those presumptions, a

two-year maturity date and commencement of repayment (see comments to Question N, below) may have seemed reasonable. Those presumptions are no longer valid. To give just one example, the economy has lost more than 33 million jobs so far, with the unemployment rate skyrocketing to a level that wasn't seen even during the Great Depression, and on May 10, senior Administration officials acknowledged that unemployment will get worse before it gets better.

With such stark realities confronting the nation for a longer period of time, we strongly urge Treasury and the SBA to change the maturity date to ten years, as authorized in the CARES Act. In the alternative, maturity should be pegged to an objective standard of recovery, such as two years after a return to pre-pandemic economic activity.

M. IS THE PPP “FIRST-COME, FIRST-SERVED?”

The Interim Final Rule offers a one-word answer to this question: “Yes.” While we recognize the good intention of the SBA that the loan program should be fair for all, the data, analyses, and reports from the field prove this statement false. Regardless of good intentions, the truth is that priority was given by some lenders to preferred customers, which left out customers without those prior relationships. Nonprofits and smaller employers appear to have been moved to the back of the line due to factors unrelated to CARES Act criteria. In fact, concerns over this issue were so great that Congress changed the allocation of subsequent funding for the PPP to prioritize lenders perceived to be more likely to process loans to entities left out of the first round. See Paycheck Protection Program and Health Care Enhancement Act (Pub. Law 116-139) Section 101(d).

Therefore, we encourage Treasury and SBA to take additional steps to ensure equitable access to the program for nonprofits and small employers.

The Need for Nonprofit PPP Data

This opportunity for public comment should not pass, however, without a renewed request for data about the experience of charitable nonprofits in seeking loans under the Paycheck Protection Program. [SBA regularly provides updates](#) on lender size, approved loans, and approved dollars. It has released state-specific data and information based on generic industries for [Round One](#) and [Round Two](#) (through May 8) under the program.



To date, SBA has not released any information on efforts of nonprofits to secure PPP loans. SBA must release data showing, on both a state-specific and national basis, the number of nonprofit organizations that have sought PPP loans, the dollar amounts sought, the rates that loans have been issued and declined, the duration of the application and approval process, along with comparisons of this data to the experience of similarly sized for-profit businesses. The data should be readily available and accessible because the very first item on SBA's PPP [Borrower Application Form](#) is a series of boxes for the borrower to check, including a box designated "501(c)(3) nonprofit." The online form does not seek identification of the organization's North American Industry Classification System (NAICS) code number, but the information initially released by SBA aggregated data based on NAICS subsectors, such as construction, retail trade, and "other services."

This data is critical to inform policymakers about the efficacy of the program, evaluate the equitable treatment of nonprofits in the administration of the program, ensure the well-being of the organizations the program is intended to help, and promote transparency at all levels and in all branches of government. We urge the Administration to release data on the experiences of charitable nonprofits in the PPP process so that all can evaluate whether nonprofits have been treated equitably.

N. WHEN WILL I HAVE TO BEGIN PAYING PRINCIPAL AND INTEREST ON MY PPP LOAN?

The interim rule proposes that borrowers must begin making payments on PPP loans six months after disbursement of the loan funds. As acknowledged in the proposed rule published in the Federal Register, the CARES Act authorizes the SBA Administrator and Treasury Secretary to defer loan payments for up to one year. We have already pointed out in comments to Question J (Maturity), above, that the pandemic that brought about the need for the PPP and other drastic actions is not likely to recede as quickly as originally thought. We urge Treasury and SBA to reject the six-month commencement date for paying of principal and interest, and to adopt the one-year rule envisioned by Congress in the CARES Act.

O. CAN MY PPP LOAN BE FORGIVEN IN WHOLE OR IN PART?



The Interim Final Rule seeks to codify in regulation an arbitrary and potentially harmful 75%/25% rule for loan forgiveness. The CARES Act expressly lists allowable uses of covered loans, identifying payroll, salaries, and benefits costs, as well as four types of other costs: interest on mortgage obligations, rent, utilities, and interest on other pre-existing debt obligations. The statute makes no value or business judgment as to which costs are to be given priority, presumably because of the very wide range of services and businesses eligible to apply for the PPP. Despite these statutory and economic realities, Treasury and SBA announced that borrowers spending more than 25 percent of loan proceeds on rent, mortgage, utilities, and interest payments on pre-existing debt will be penalized by not receiving the loan forgiveness guaranteed by Congress.

In its own recent [Flash Report on Implementation of the Paycheck Protection Program Requirements](#), the SBA's Inspector General urged recognition that many small businesses have more operational expenses than employee costs. The IG stated that "Our review of data from round one [of PPP loans] found that tens of thousands of borrowers would not meet the 75-percent payroll cost threshold and would therefore have to repay the amount of nonpayroll costs in excess of 25 percent in less than 2 years." Further, Congress did not impose this 75%/25% restriction in the statute, recognizing the need for all small employers – for-profit and nonprofits alike – to make their own decisions about the future of their missions.

Given all of this, we urge Treasury and SBA to remove this provision from the Interim Final Rule.

T. WHAT CERTIFICATIONS NEED TO BE MADE?

The Interim Final Rule, as well as the loan application, lists eight certifications that the borrower's representative must make in good faith. Some of these certifications raise questions that we believe should be addressed.

The third certification (iii) reiterates the CARES Act requirement that "funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments." The text in the Interim Final Rule, however, inserts the mandate that "not more than 25 percent of loan proceeds may be used for non-payroll costs." As

discussed previously, we urge Treasury and SBA to remove the mandate and the quoted text.

Certifications four (iv) and five (v) relate to documentation needed to secure loan forgiveness. The list of required materials – “the sum of documented payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities” – omits reference to “interest payments on any other debt obligations that were incurred before the covered period.” As made clear in CARES Act Section 1102(F)(i)(VII) and in the answer to preceding question, “r. How can PPP loans be used?,” payment of interest on pre-existing debt obligations is a legitimate usage of PPP loans and appropriately subject to loan forgiveness under CARES Act Section 1106. We believe the failure of the Interim Final Rule to expressly include this statutorily recognized expense in the list of those eligible for forgiveness may lead some lenders or SBA auditors to inappropriately reject legitimate claims of borrowers. Therefore, we request that SBA add reference to pre-existing debt obligations to list in these certifications.

The Need for Nonprofit-Specific Guidance

Nonprofits are confronting numerous challenges and frustrations as they try to maneuver through the PPP application process. Some problems stem from the historic focus on for-profit businesses and how they are structured. Other questions arise based on unique operating models that SBA likely has not encountered in administering loan programs.

Therefore, we formally ask Treasury and SBA to issue guidance pertaining to eligibility and implementation issues specific to nonprofits. These organizations urgently need official guidance on many fundamental questions, including the following:

- The application form – designed for for-profit enterprises – asks the applicant to disclose their percentage of “ownership” of the business. How should nonprofits answer the question pertaining to “owner” since they do not have private owners and are instead dedicated to the public good?
- Can nonprofits be eligible under the alternative size standard? (see comments to Question A, above, regarding eligibility).



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- Governments at all levels frequently hire nonprofits to deliver a wide variety of services and typically pay nonprofits on a reimbursement basis. How are jobs funded under government grants and contracts to be counted in the eligibility headcount and for loan forgiveness, and does it matter whether the source is federal versus state or local governments? How should nonprofits treat payroll expenses for such jobs when prior experience during the Great Recession showed that governments were paying up to a year or more late?
- In many instances, nonprofits establish additional mission-focused activities which operate independently yet exist for IRS purposes under a single employer identification number. Can multiple nonprofit operations that share an EIN be considered for separate loans under the program?

We urge Treasury and SBA to issue answers to these and other questions related to the unique nature of nonprofit operations and legal realities as soon as possible to promote certainty and reduce burdens and excessive costs on borrowers, lenders, and government officials.

We thank you for considering these comments and recommendations. We stand ready to work with you, Congress, and all committed to serving the public good to build the best Paycheck Protection Program and other supports that will help our 300 Lutheran social ministry organizations and the one in 50 Americans we serve each year, especially during this historic pandemic.

Respectfully,

Charlotte Haberaecker
President and CEO