

Congress of the United States

Washington, DC 20515

September 15, 2022

The Honorable Isabella Casillas Guzman
Administrator
United States Small Business Administration
409 3rd Street, SW
Washington, DC 20416

Dear Administrator Guzman:

In response to the COVID-19 pandemic, Congress established the Small Business Administration's (SBA) Paycheck Protection Program (PPP), under which banks and other private lenders made almost \$800 billion in fully guaranteed, forgivable SBA loans to small businesses. The loans were intended to assist small businesses with meeting payroll costs and other expenses, and full loan forgiveness was offered if loan proceeds were spent on such purposes. Importantly, loan amounts were based on employee headcounts and were subject to various complex and rapidly changing rules, especially at the outset of the program.

In April of 2020 alone, SBA and Treasury issued numerous rule changes and guidance updates and did so on a rolling basis throughout the duration of the program. Overall, this included dozens of Interim Final Rules and over 71 answers to Frequently Asked Questions (FAQs) issued across 12 different versions. Some answers to FAQs were revised multiple times, and the most recent is dated over two years after the start of the program, July 8, 2022. The constant and rapidly changing nature of PPP rules combined with numerous other factors created circumstances making it inevitable that the smallest businesses, which are the least likely to have access to attorneys or accountants, would make good faith loan amount miscalculations.

On January 15, 2021, SBA announced that amounts of PPP loans received due to "excess loan amount errors" are not eligible for loan forgiveness and must be repaid.¹ SBA defines an "excess loan amount error" as a borrower or lender error made in good faith that caused a borrower to receive a PPP loan amount exceeding the borrower's correct maximum loan amount under the CARES Act and the Economic Aid Act.² Following that announcement, PPP lenders began notifying their borrowers they would be responsible for repaying the excess amount of the loan.³ This includes cases where loan proceeds were used for eligible and forgivable uses, regardless of whether the borrower or the lender caused the error. Some of the largest PPP lenders have directed borrowers with excess loan amount errors to appeal their cases to SBA.⁴ However, this process requires borrowers to first submit a forgiveness application to lenders for a lower amount than for which they should be eligible due to the evolving program rules. SBA estimates there are 304,384 PPP loans with excess loan amount errors of \$3.775 billion, for an average excess loan amount error of \$12,403.

Multiple witnesses before the Committee on Small Business have testified these loan amounts should be eligible for forgiveness because, in many cases, loan amount miscalculations were caused by confusion over the

¹ U.S. Small Bus. Admin., Procedural Notice 5000-20078, <https://home.treasury.gov/system/files/136/PPP--Procedural-Notice--PPP-Excess-Loan-Amount-Errors.pdf>.

² U.S. Small Bus. Admin., Procedural Notice 5000-20078, <https://home.treasury.gov/system/files/136/PPP--Procedural-Notice--PPP-Excess-Loan-Amount-Errors.pdf>. "Excess loan amount errors" do not include knowing misstatements, which may result in additional action, such as charges for fraud.

³ See, e.g., The Intercept, *Banks are Reversing Course on PPP Loans to Small Business Owners*, (Jul. 12, 2021), <https://theintercept.com/2021/07/12/covid-banks-sba-ppp-loans/>.

⁴ See, e.g., The Intercept, *Bank of America is Refusing to Forgive Some PPP Loans in Full, Giving Small Businesses Little Recourse*, (Feb. 2, 2022), <https://theintercept.com/2022/02/02/bank-of-america-ppp-loans-small-businesses/>.

evolving program rules, especially early in the program.⁵ The unfairness of this situation is especially acute in cases where a *lender* made a good faith error, meaning that there are some PPP borrowers who will now be liable for unexpected debt due to no fault or mistake of their own. The witnesses urged SBA to rescind this policy and allow amounts received due to good faith miscalculations to be eligible for loan forgiveness.

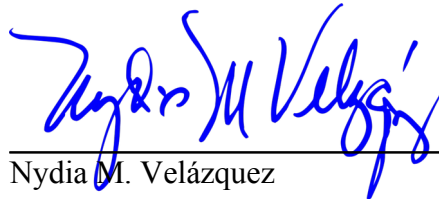
In establishing PPP, Congress and SBA made a deal with small businesses that if loans were spent on forgivable uses, the loan would effectively be converted into a grant. Based on that promise, millions of small businesses turned to SBA and its PPP lending partners during a time of unprecedented uncertainty with the expectation that if all PPP loan proceeds were used for forgivable uses, the loan would be fully forgiven. But now, we're faced with over 300,000 PPP borrowers for whom the promise of PPP is being turned into unexpected and unsustainable debt. Small businesses shouldn't be burdened further by unexpected PPP debt. Though the average good faith error is over \$12,000, surveys show that most small businesses owned by people of color cannot afford an unexpected expense of \$5,000. This looming debt threatens to force the shutdown of thousands of our nation's most vulnerable businesses, jeopardizing the equitable economic recovery to which we're all committed.

For these reasons, we write to inquire whether SBA has the legal authority needed to make amounts of PPP loans received due to "excess loan amount errors" eligible for loan forgiveness, and if not, whether a statutory change to the Small Business Act is required. On May 18, 2022, Associate Administrator for Capital Access Patrick Kelley stated on the record his commitment to finding a solution for PPP borrowers with good faith errors. Doing so would represent the federal government making good on its promise to America's small businesses that they'd receive full PPP loan forgiveness if loans were spent on forgivable uses. This would allow us to bring much-needed fairness to the final stage of PPP and ensure an equitable economic recovery from the pandemic.

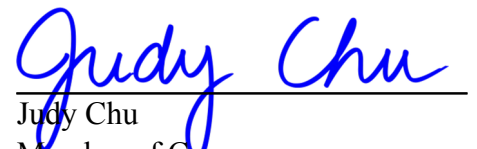
Sincerely,



Chrissy Houlahan
Member of Congress




Nydia M. Velázquez
Chairwoman
Committee on Small Business

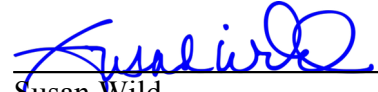


Judy Chu
Member of Congress

⁵ *An Empirical Review of the Paycheck Protection Program: Hearing before the H. Comm. on Small Business*, 117th Cong. (2022) (statement of Mr. Robert Barnes, President and Chief Executive Officer, PriorityOne Bank); *see also, What Comes Next? PPP Forgiveness: Hearing Before the H. Comm. on Small Business*, 117th Cong. (2021) (statements of Tracy C. Ward, Director of the SBA 504 Loan Program, Self-Help Ventures Fund; and Marla Bilonick, President and CEO, National Association of Latino Community Asset Builders).



Sheria Jackson Lee
Member of Congress



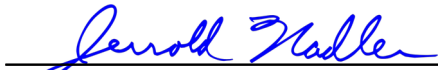
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Thomas R. Suozzi
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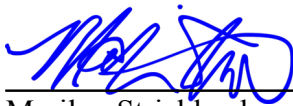
Mark DeSaulnier
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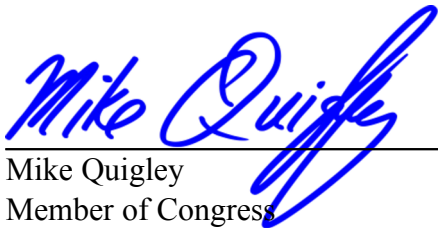
Adam Smith
Member of Congress



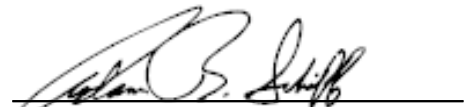
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Ann McLane Kuster
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Mike Quigley
Member of Congress



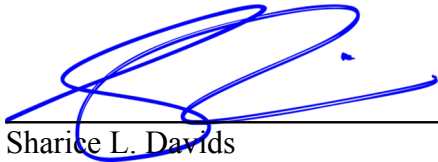
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Sharice L. Davids
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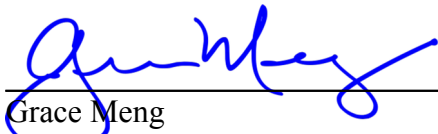
MIKE LEVIN
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Joseph D. Morelle
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Darren Soto
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