



May 15, 2020

The Honorable Jovita Carranza,
Administrator
Small Business Administration
409 3rd Street, S.W.
Washington, DC 20416

Docket No. SBA - 2020-0015
RIN 3245-AH34

Submitted electronically: www.regulations.gov

Dear Administrator Carranza:

On behalf of the National Association of Home Builders (NAHB), I am pleased to submit these comments on the Small Business Administration's (SBA) interim final rule (IFR) for the Coronavirus Aid, Relief, and Economic Security Act's (CARES Act) temporary expansion of the 7(a) Loan Program, titled the "Paycheck Protection Program."

NAHB is a Washington, D.C.-based trade association that represents more than 140,000 members and includes more than 700 affiliated state and local associations in all fifty states, the District of Columbia, and Puerto Rico. NAHB members design, construct, and supply single-family homes, build and manage multifamily projects, and remodel existing homes. In the single-family market, NAHB's members construct custom housing as well as homes for first-time home buyers, including low- and moderate-income families and individuals. NAHB's multifamily members build and manage rental housing for renters in market-rate, affordable and federally assisted multifamily housing. Our members are proud to construct over 80 percent of the homes produced each year that provide shelter for this Nation's families.

Background

On March 27, 2020, President Trump signed the CARES Act into law to provide immediate assistance to individuals, families and businesses affected by COVID-19. The CARES Act includes temporary relief to small businesses under the Paycheck Protection Program (PPP) through loans 100 percent guaranteed by SBA with the possibility of loan forgiveness on the full principal amount. Congress intended PPP loans be broadly distributed to small businesses with fewer than 500 employees, sole proprietors, independent contractors, and self-employed individuals. The U.S. Department of the Treasury (Treasury) and SBA issued the IFR, "Business Loan Program Temporary Changes; Paycheck Protection Program," on April 2, 2020 to implement the program effective immediately.

The PPP is a temporary expansion of SBA's 7(a) loan program, which is SBA's primary program for providing financial assistance to small businesses. The standard 7(a) loan program is meant for small businesses that do not have access to other sources of capital but are financially able to pay back a loan. The existing 7(a) loan program excludes several industries and business models SBA has determined should not qualify for the program, which are listed in the SBA's standard operating procedures, SOP 50 10, Subpart B, Chapter 2 (SOP).

The SOP excludes businesses that build homes for future sale, land developers and multifamily property owners from access to the SBA's existing 7(a) programs. The IFR requires the PPP to follow the same business eligibility requirements as the standard 7(a) loan program and therefore, excludes the same listed businesses from accessing PPP funds.

General Comments

Flawed eligibility requirements must be fixed.

NAHB appreciates the quick efforts of the Trump Administration to implement the small business programs authorized by the CARES Act and the continued work to provide economic relief to Americans during the COVID-19 national emergency. However, by referencing the SBA's SOP list of ineligible businesses, many NAHB members are excluded from participating in the PPP. NAHB believes this is a major flaw in the PPP. The PPP is intended to serve a very different purpose than the existing 7(a) loan program. The PPP is meant for emergency economic relief for small businesses, with loan forgiveness if employers keep employees on the payroll for the required eight-week coverage period and the money is used for payroll, rent, mortgage interest, or utilities.

Excluding many home builders as well as all land developers and multifamily property owners from eligibility in the PPP will have dire consequences for the home building industry. These business entities have qualified payroll expenses, mortgage and rent obligations, utility payments and other allowable costs that should ensure their eligibility for this emergency financing. NAHB believes this exclusion is unwarranted and cautions that precluding home builders and other housing industry participants from access to funds to help them remain financially healthy will limit their ability to contribute to the economic recovery when the COVID-19 crisis abates. Sustaining housing market activity should be a priority for the Trump Administration.

We strongly urge SBA to provide a waiver for home builders engaged in building homes for future sale, land developers and multifamily developers and property owners from SOP 50 10, Subpart B, Chapter 2 during the COVID-19 national emergency and make it clear the residential housing industry can access financing and loan forgiveness through the PPP. The provisions in SBA's SOP were not designed for emergency situations and accordingly should not be applied to the PPP.

Inconsistent application of the PPP guidelines cause confusion.

The IFR states businesses that are not eligible for PPP loans are identified in 13 CFR 120.110 and described further in SBA's SOP 50 10, Subpart B, Chapter 2. This section explicitly excludes "apartment buildings;" "passive businesses owned by developers and landlords that do not actively use or occupy the assets acquired or improved with the loan proceeds;" "businesses primarily engaged in subdividing real property into lots and developing it for resale;" and "speculative businesses" from eligibility. A speculative business is further defined as "building homes for future sale."

However, over the last several weeks, NAHB members have reported inconsistent application of the PPP guidelines by the lenders approved by SBA to make PPP loans. Examples include requests for unnecessary documentation and personal guarantees from borrowers. Importantly, the SOP has caused confusion over which home builders are eligible. While the SOP precludes building homes for future sale from PPP eligibility, it does allow that "a business engaged in building a home under contract with an identified purchaser" may be eligible. (SBA's Standard Operating Procedure (SOP) 50 10, Subpart B, Chapter 2, III.A.18.c.) Additionally, although the SOP states that apartment buildings are not eligible, it is unclear if multifamily builders are also precluded from

eligibility for the PPP. (SOP 50 10, Subpart B, Chapter 2, III.A.3.f.) Without clear guidance, many builders may have unnecessarily been denied funding.

This confusion has also caused some approved borrowers to be concerned that the loans will not be forgiven, even if the use of the funds is consistent with the program guidelines. Along with clarifying builder eligibility, NAHB requests that approved borrowers who made eligibility certifications in good faith remain entitled to loan forgiveness under the PPP regardless of whether it is determined that the lender made the loan in error. Many borrowers, especially very small businesses without the financial means to seek guidance from a legal or financial professional, relied on the finding of an SBA-approved lender that they indeed qualified for a PPP loan.

While these inconsistencies are somewhat understandable considering the little time SBA and the banking industry had to prepare for this program, they must be eliminated as soon as possible. It must be very clear which businesses are eligible, and, NAHB believes it should be clear that home builders and other residential housing market participants are included.

Treasury has expanded access to the PPP for initially ineligible businesses in the gaming and agricultural industries and for non-profit hospitals by issuing updated Frequently Asked Questions (FAQs). It is disappointing that these FAQs have not removed the prohibition preventing the nation's home building and related industries from accessing this important economic relief. The residential housing industry provides one of our nation's most critical necessities—a home.

Assistance for Small Home Building Businesses is Needed

NAHB members are small businesses. Ninety-eight percent of NAHB's home builder members have less than 100 employees with an average of 15 employees. Only nine percent of NAHB's builder members built more than 100 homes in 2018, according to NAHB's latest survey, with the largest percent, 21 percent, building two - three units. Median annual revenue was \$2.7 million, and one-third of NAHB's home builder members had annual revenue of less than \$1 million.

The home building industry needs access to this program during this critical economic time. The growing effects of the COVID-19 pandemic have caused builder confidence in the market for newly built single-family homes to plunge 42 points in April according to the latest NAHB/Wells Fargo Housing Market Index (HMI). The index is based on a monthly survey that asks respondents to rate market conditions for the sale of new homes at the present time and in the next six months as well as the traffic of prospective buyers of new homes. This decline is the largest single monthly change in the history of the index and marks the lowest builder confidence reading since June 2012. Furthermore, multifamily property owners are struggling to meet their essential obligations including payroll, mortgages, and utilities due to missing rental income from residents.

According to non-published NAHB survey data, approximately 56 percent of home builders who responded to our surveys have applied for PPP financing. Of that amount, approximately 50 percent (or 28 percent of all respondents) have been approved. NAHB urges the SBA to provide certainty to these approved borrowers so they will not face difficulties later if it is determined they were incorrectly approved due to unclear eligibility guidelines.

PPP Guidelines should align with Congressional Intent.

Congress intended the PPP to get cash into the hands of small businesses quickly to keep employees on the payroll. It was intended to have relaxed underwriting standards and broader allowable uses than the traditional 7(a) loan program. Congress specifically outlines this intention in the text of the CARES Act Sec. 1102 (a)(2)(D) “Increased Eligibility for Certain Small Businesses and Organizations” where it states:

During the covered period, 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 concern, nonprofit organization, veterans organization, or Tribal business concern employs not more than the greater of, (I) 500 employees; or (II) if applicable, the size standard in number of employees established by the Administration for the industry in which the business concern, nonprofit organization, veterans organization, or Tribal business concern operates.

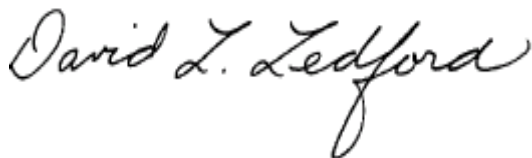
NAHB believes Congress could not have been clearer and the IFR runs counter to the Congressional intent of the CARES Act to allow the broadest universe of small businesses to access funds. Indeed, a recent court opinion reached this exact conclusion, holding that “the text of the PPP makes clear that every business concern meeting the statutory criteria is eligible for a PPP loan during the covered period.”ⁱ NAHB requests that the SBA modify the IFR to comply with Congressional intent.

Conclusion

Again, NAHB appreciates that the Trump Administration and Congress worked quickly to pass the CARES Act in order to provide much needed support to America’s small businesses. The exclusion of home building entities from the PPP must be reversed. As SBA reviews this program and releases additional guidance, we urge you to provide a waiver from eligibility restrictions in the existing 7(a) loan program to allow single-family and multifamily home builders, land developers and multifamily property owners access to the PPP.

Thank you for consideration. NAHB looks forward to working with SBA and Treasury on the continuing efforts to provide critical resources to small businesses in order to increase employment and restore economic growth. If you have questions or would like to discuss NAHB’s comments, please contact Heather Voorman, at hvoorman@nahb.org.

Sincerely,



David L. Ledford
Executive Vice President
Housing Finance and Regulatory Affairs

ⁱ DV Diamond Club of Flint, et al. v. U.S. Small Business Administration, No. 20-10899, slip op. at 23 (E.D. Mich. May 11, 2020).