



Quality Housing • Ethics • Professionalism



May 11, 2020

Jovita Carranza
United States Small Business Administration
409 3rd St., SW
Washington DC 20416
Submitted via Federal eRulemaking Portal at www.regulations.gov

Re: Business Loan Program Temporary Changes; Paycheck Protection Program, Docket No. SBA-2020-015

Dear Ms. Carranza:

The California Apartment Association (CAA) is the largest statewide rental housing trade association in the country, representing more than 50,000 single family homeowners and multi-family apartment owners and managers, who are responsible for over 2 million affordable and market-rate rental housing units throughout California. CAA's mission is to promote fairness and equality in the rental of residential housing and to promote and aid in the availability of high-quality rental housing in California.

On March 27, 2020, the President signed the Coronavirus Aid, Relief, and Economic Security (CARES) Act to provide emergency assistance to individuals, families, and businesses affected by the COVID-19 pandemic. Among other things, the CARES Act creates the Paycheck Protection Program (PPP), a new loan program to assist small businesses that are adversely impacted by the pandemic. The interim rule adopted to implement the PPP states that small businesses in operation on February 15, 2020, are eligible, including business that operate under sole proprietorship or as an independent contractor or eligible self-employed individual. However, the rule goes on to state that some small businesses are *ineligible* for the PPP and that those businesses are identified in a preexisting rule, 13 CFR 120.110, and described further in SBA's preexisting Standard Operating Procedure (SOP) 50 10, Subpart B, Chapter 2. Those referenced documents indicate that "passive businesses owned by landlords that do not actively use or occupy the assets acquired or improved with the loan proceeds" are generally ineligible for SBA business loans. (13 C.F.R. § 120.110(c); SOP 50 10 5(B).) This means that many of our members are ineligible for the PPP.

While we commend the Small Business Administration on its swift implementation of this new program, we take issue with the SBA's exclusion of many rental housing providers from eligibility for this program. For the reasons discussed below, that exclusion is not supported by the text or intent of the CARES Act and is not appropriate in the current crisis.

I. The exclusion of rental housing providers from PPP eligibility is not supported by the text or intent of the CARES Act.

Section 1102 of the CARES Act expressly indicates that it provides "increased eligibility for certain small businesses and organizations," thereby indicating that businesses otherwise generally ineligible for loans from the SBA are eligible for the PPP. (15 U.S.C. § 636 (a)(36)(D).) The text of the statute goes on to specify that "in addition to small business concerns, *any business concern*, nonprofit organization, veterans organization,

or Tribal business concern *shall be eligible* to receive a covered loan” if the business employs no more than a certain number of employees. (15 U.S.C. § 636 (a)(36)(D)(i) (Emphasis added).) Individuals who operate under a sole proprietorship or as an independent contractor or self-employed individuals are also eligible to receive a loan. (15 U.S.C. § 636 (a)(36)(D)(ii).) Thus, the plain language of the CARES Act indicates that Congress intended to make *all* businesses with employee numbers below a certain threshold eligible for these loans.

The interim rules on the PPP partially acknowledged Congress’ intent to dispense with traditional SBA loan eligibility rules in 13 CFR 120.110. For example, those traditional SBA loan eligibility rules specify that nonprofit businesses are **ineligible** for SBA loans (see 13 CFR § 120.110(a)); however, consistent with the text and intent of the CARES Act, the interim rule specifies that nonprofit organizations are **eligible** for loans under the PPP. (85 Fed. Reg. 20811, 20812.) But the interim rule ignores Congress’ clear intent not only to make these loans available to nonprofits but also to make them available to *any* business meeting a certain size threshold, including business that would otherwise be considered passive businesses under traditional SBA loan rules.

The certifications that a business must make to receive a PPP loan also show that Congress intended to make these loans available to active and passive business alike. An eligible recipient must make a good faith certification “that the uncertainty of current economic conditions makes necessary the loan request to support the ongoing operations of the eligible recipient” and “acknowledging that the funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments.” (15 U.S.C. § 636 (a)(36)(G)(i).) The landlords we represent are just the type of businesses that are (1) experiencing extreme economic uncertainty due to the economic fallout of the pandemic and (2) needing these type of payments to retain workers and pay mortgage and utility payments. Thus, we think Congress clearly did not intend to exclude rental housing providers from eligibility for this program and contend that the provision of the interim rule to the contrary was made in error.

II. The exclusion of rental housing providers from PPP eligibility is not appropriate in the current crisis.

Federal, state, and local governments have taken drastic measures to slow the spread of the virus. They have ordered residents to remain in their homes subject to strict limitations – our members provide the shelter needed to comply with those orders. Such stay at home orders have shuttered many businesses and slowed economic activity to a standstill, causing many Californians to lose their jobs or significant income. In California, as in many parts of the country, unemployment claims have reached record numbers and the unemployment percentage is expected to reach levels higher than the end of World War II. Under those economic conditions, rental housing providers will be one of the first dominoes to fall as renters choose to feed their families instead of paying the rent. For many of our small members, which make up over half of the rental housing market in California, rental income is their main source of income.

Moreover, the business of a rental housing provider is an **active** business, not a passive one, particularly in California. In this state, the business of rental housing is heavily regulated. Landlords do not sit by idly while cashing rent checks. In this state, landlord-tenant laws place heavy burdens on landlords, imposing

Jovita Carranza
United States Small Business Administration
May 11, 2020
Page 3

mandates that increase their costs of operation while also limiting what they can charge. Last year, the state was the second in the nation to adopt statewide rent control and just-cause eviction rules, limiting housing providers in how much they can increase rent every year and requiring owners to follow narrow rules in order to terminate a tenancy. (See CA Civ. Code §§ 1946.2 & 1947.12.) During the current crisis, over 100 local jurisdictions have adopted ordinances protecting renters – those ordinances restrict evictions based on nonpayment, restrict evictions to sell the property even when the owner cannot afford to keep that property, freeze rent increases for lengthy periods, and make landlords unable to collect rent for extended periods ranging from 4 months to over two years.

In sum, in excluding passive businesses owned by landlords from eligibility for the Paycheck Protection Program, we think the interim rule is inconsistent with the plain language and spirit of the CARES Act. Furthermore, that exclusion is inappropriate given the active role that landlords play in our state, particularly during the current crisis. We request that the Small Business Administration amend the interim rule to make rental housing providers eligible for the Paycheck Protection Program.

Sincerely,

California Apartment Association



By
Stephanie L. Shirkey
Senior Policy and Compliance Counsel