

April 17, 2020

*Submitted via [www.regulations.gov](http://www.regulations.gov)*

Jovita Carranza  
Administrator  
U.S. Small Business Administration  
409 Third St. SW  
Washington, DC 20416

Re: Comment on SBA Interim Final Rule, “Business Loan Program Temporary Changes; Paycheck Protection Program”  
RIN 3245-AH34; Docket No. SBA-2020-0015

Dear Administrator Carranza:

Citizens for Responsibility and Ethics in Washington (“CREW”) submits this comment on the above-referenced Interim Final Rule of the U.S. Small Business Administration (“SBA”). The rule implements provisions of the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), an unprecedented \$2 trillion aid package that allots \$349 billion for the SBA to provide financial relief to small businesses affected by the COVID-19 pandemic. The CARES Act establishes the Paycheck Protection Program (“PPP”), through which small businesses may obtain SBA-guaranteed loans that will be fully forgiven if certain conditions are met.<sup>1</sup> SBA’s Interim Final Rule “outlines the key provisions of SBA’s implementation of” the PPP and “requests public comment.”<sup>2</sup>

Notably absent from the Interim Final Rule are *any* provisions requiring SBA to publicly disclose details of approved PPP loans, including who is receiving the loans. SBA should correct this omission. The public is entitled to know, in a timely manner, precisely how SBA is distributing billions of taxpayer dollars. The need for such transparency is all the more pressing given the sheer size of the PPP and the rapid pace at which it is being implemented, all of which creates a high risk for waste, fraud, and abuse. Indeed, SBA announced on April 16 that it had already exhausted the PPP’s \$349 billion budget, having approved over 1.3 million applications.<sup>3</sup> This came on the heels of troubling reports of hedge funds and trading firms opportunistically applying for PPP loans,<sup>4</sup> as well as family members of top Trump Administration officials

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<sup>1</sup> CARES Act, Pub. L. No. 116-136, §§ 1102, 1106.

<sup>2</sup> SBA Interim Final Rule, Business Loan Program Temporary Changes; Paycheck Protection Program, 85 Fed. Reg. 20,811 (Apr. 15, 2020).

<sup>3</sup> Thomas Franck and Kate Rogers, Small business rescue loan program hits \$349 billion limit and is now out of money, *CNBC*, Apr. 16, 2020, available at <https://cnb.cx/34HZRbw>.

<sup>4</sup> Katherine Burton and Joshua Fineman, Hedge Fund Managers Are Claiming Bailouts as Small Businesses, *Bloomberg*, Apr. 14, 2020, available at <https://bloom.bg/3aeTspz>.

seeking such funds.<sup>5</sup> Amid these reports, SBA has not publicly released any loan-specific data on approved PPP loans, leaving the public largely in the dark as to how its money is being spent.

SBA itself recognizes that it is legally required to disclose details of approved PPP loans. In the Borrower Application Form for the PPP, SBA states that the Freedom of Information Act (“FOIA”) requires the agency to release non-exempt “information reflected in agency files and records to a person requesting it.”<sup>6</sup> The form adds that SBA will “*automatically release[]*” information “about approved loans,” including “statistics on our loan programs (individual borrowers are not identified in the statistics) and *other information such as the names of the borrowers (and their officers, directors, stockholders or partners), the collateral pledged to secure the loan, the amount of the loan, its purpose in general terms and the maturity.*”<sup>7</sup> A notice on SBA’s FOIA webpage acknowledges that while the agency has released some “statistical information” on approved PPP loans, it has not yet disclosed any “loan-specific data to the public.”<sup>8</sup> The notice adds that SBA may do so “[i]n the near future,” without committing to a timeline or clarifying the particular “loan-specific data” it may choose to disclose.

We urge SBA to use the present rulemaking as an opportunity to adopt clear requirements for prompt, efficient, proactive disclosure of loan-specific data for approved PPP loans. Specifically, SBA should proactively release “the names of the borrowers (and their officers, directors, stockholders or partners), the collateral pledged to secure the loan, the amount of the loan, its purpose in general terms and the maturity,” all information SBA has recognized must eventually be disclosed in any event.<sup>9</sup> Proactively disclosing such information in a timely manner is in the interests of not only the public, but also SBA, as it could substantially reduce the number of FOIA requests SBA is likely to receive seeking information on approved PPP loans and, in turn, minimize administrative burden to the agency.

Such proactive disclosure is also firmly in line with guidance recently issued by the Office of Management and Budget (“OMB”) to all agency heads regarding distribution of COVID-19 relief funding.<sup>10</sup> That guidance identifies “[t]ransparency and accountability” as “core principles” guiding agencies’ implementation of the CARES Act, and, to that end, instructs agencies to “report information on awards to provide the public with information in a *clear, accurate, and timely manner.*”<sup>11</sup> The guidance adds that agencies should “provide open data for analysis and public use,” and “must have processes to ensure that the data reported is of sufficient quality for public reporting.”<sup>12</sup> As OMB recognizes, “[a]ccurately recording and

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<sup>5</sup> Mariam Khan and Jordyn Phelps, Trump economic adviser’s wife applies for small business loan amid rollout chaos, *ABC News*, Apr. 13, 2020, available at <https://abcn.ws/2REW8WR>.

<sup>6</sup> PPP Borrower Application Form, SBA Form 2483 (04/20), at 4, available at <https://bit.ly/2Vwfvmg>.

<sup>7</sup> *Id.* (emphasis added).

<sup>8</sup> SBA FOIA Homepage, available at <https://bit.ly/2KaUxE1>.

<sup>9</sup> PPP Borrower Application Form, SBA Form 2483 (04/20), at 4, available at <https://bit.ly/2Vwfvmg>.

<sup>10</sup> OMB Memorandum for the Heads of Departments and Agencies, Implementation Guidance for Supplemental Funding Provided in Response to the Coronavirus Disease 2019 (COVID-19), M-20-21, Apr. 10, 2020, available at <https://bit.ly/2XwqSNr>.

<sup>11</sup> *Id.* at 1 (emphasis added).

<sup>12</sup> *Id.* at 3-4.

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tracking funding for awards made under the new relief legislation is essential to providing relief to citizens and businesses, facilitating oversight, and creating accountability for results.”<sup>13</sup> Per this guidance, it is incumbent on SBA to promptly adopt requirements to ensure “clear, accurate, and timely” public disclosures concerning approved PPP loans. Yet the Interim Final Rule lacks any such disclosure requirements.

For all these reasons, we urge SBA to include the above-referenced proactive disclosure requirements in the final PPP rule. Doing so is in the best interests of both the agency and the American people.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Noah Bookbinder', with a long horizontal flourish extending to the right.

Noah Bookbinder  
Executive Director

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<sup>13</sup> *Id.* at 3.