

June 18, 2020

**BY EMAIL:** [foia@sba.gov](mailto:foia@sba.gov)

Chief, Freedom of Information/Privacy Acts Office  
U.S. Small Business Administration  
409 Third St. SW, Eighth floor  
Washington, DC 20416

Re: Freedom of Information Act Request

Dear FOIA Officer:

Citizens for Responsibility and Ethics in Washington (“CREW”) submits this request for records pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and U.S. Small Business Administration (“SBA”) regulations.

Specifically, CREW seeks interagency and intra-agency communications, meeting documents, or other records of discussions from April 15, 2020 to the date this request is processed relating to (1) the expansion of the SBA’s Economic Injury Disaster Loan (“EIDL”) and EIDL Advance programs exclusively to agricultural businesses (“agribusiness”) as defined by section 18(b) of the Small Business Act (15 U.S.C. 647(b)) on May 4, 2020; and (2) records of any approved EIDL program loans or grants issued to businesses owned by federal government officials, including without limitation records sufficient to identify the recipients of such loans

Please search for responsive records regardless of format, medium, or physical characteristics. We seek records of any kind, including paper records, electronic records, audiotapes, videotapes, photographs, data, and graphical material. Our request includes without limitation all correspondence, letters, emails, text messages, facsimiles, telephone messages, voice mail messages, and transcripts, notes, or minutes of any meetings, telephone conversations, or discussions. Our request also includes any attachments to emails and other records, and anyone who was cc’ed or bcc’ed on any emails.

If it is your position any portion of the requested records is exempt from disclosure, CREW requests that you provide it with an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). If some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. *See* 5 U.S.C. § 552(b). If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document. *See Mead Data Central v. U.S. Dep’t of the Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977).

Please be advised that CREW intends to pursue all legal remedies to enforce its right under the FOIA to access these documents. Accordingly, because litigation reasonably is foreseeable, SBA should institute an agency-wide preservation hold on documents potentially responsive to this request.

### **Fee Waiver Request**

In accordance with 5 U.S.C. § 552(a)(4)(A) and SBA regulations, CREW requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures likely will contribute to a better understanding of relevant government procedures by CREW and the general public in a significant way. *See* 5 U.S.C. § 552(a)(4)(A)(iii). Moreover, the request primarily and fundamentally is for non-commercial purposes. *See, e.g., McClellan Ecological v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987).

On March 27, 2020, President Trump signed into law the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), the largest economic stimulus bill in American history. The \$2 trillion aid package allots \$349 billion for the SBA to provide loans and other financial relief, including EIDL loans and advances, to small businesses affected by the COVID-19 pandemic. Although the Act disqualifies an entity from obtaining certain funds if the President or other government officials hold a controlling interest in the entity, that prohibition does not apply to SBA loans.

On April 15, 2020, the SBA loan portal stopped accepting loan applications, as initial funding for the programs had run out.<sup>1</sup> On April 24, 2020, President Trump signed the Paycheck Protection Program and Healthcare Enhancement Act (the “Act”). The Act provided SBA with additional funding for “farmers and ranchers and certain other agricultural businesses affected by the Coronavirus (COVID-19) pandemic.”<sup>2</sup> Prior to the enactment of the Act, SBA had been prohibited by statute from providing economic assistance to agribusiness, in part because agribusiness is primarily regulated by the United States Department of Agriculture (“USDA”) and has access to government-provided credit (including periods of acute economic hardship) through various agencies, including, but not limited to, the Farm Credit System, the USDA’s Rural Development Loan program, and the Federal Crop Insurance Corporation.<sup>3</sup>

On June 16, 2020, *Politico* reported that at least four Members of Congress had received loans through the SBA’s PPP program.<sup>4</sup> Rep. Roger Williams (R-TX), who owns businesses

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<sup>1</sup> Statement by Treasury Secretary Mnuchin and Administrator Carranza on the Paycheck Protection Program and Economic Injury Disaster Loan Program, April 15, 2020 <https://www.sba.gov/about-sba/sba-newsroom/press-releases-media-advisories/statement-secretary-mnuchin-and-administrator-carranza-paycheck-protection-program-and-economic>.

<sup>2</sup> SBA to Make Economic Injury Disaster Loans Available to U.S. Agricultural Businesses Impacted by COVID-19 Pandemic, Press Release, May 4, 2020 <https://www.sba.gov/about-sba/sba-newsroom/press-releases-media-advisories/sba-make-economic-injury-disaster-loans-available-us-agricultural-businesses-impacted-covid-19>.

<sup>3</sup> *Id.* *See also* USDA, Grants and Loans, <https://www.usda.gov/topics/farming/grants-and-loans>.

<sup>4</sup> Sarah Ferris, Melanie Zanona, and Zachary Warmbrodt, Members of Congress took small-business loans — and the full extent is unknown, *Politico*, Jun. 16, 2020 <https://www.politico.com/news/2020/06/16/congress-small-business-loan-320625>.

related to the automobile industry, Rep. Susie Lee's (D-NV) husband is an executive of a casino developer, and Rep. Debbie Mucarsel Powell (D-FL)'s husband is an executive at a restaurant chain, all received PPP loans.<sup>5</sup> Importantly, the fourth Member of Congress to receive a PPP program loan, Rep. Vicky Hartzler (R-MO), received funding for agribusiness interests across the Midwest, under the unprecedented extension of the SBA's lending authority.<sup>6</sup>

The requested records will shed light on the SBA's decision making in this critical period during which it was asked to do something completely unprecedented: supply loans to the agribusiness industry. These records will also uncover whether other Members of Congress, or employees of the federal government, were granted access to credit at a time when businesses in every industry were desperate for an inflow of liquidity. It is critical to know whether the SBA considered the potential conflicts of interests posed by allowing taxpayer funds intended to help small businesses struggling amid the economic fallout from the COVID-19 pandemic flow to members of the federal government or their families. Additionally, it is important to know whether, and to what extent, any additional taxpayer funded loans or grants were actually given to elected representatives or other employees of the federal government. Any such disbursement would raise serious concerns about potential conflicts of interest and preferential treatment regarding the distribution of critical federal aid. It is a matter of considerable public interest both whether any additional disbursements occurred and whether and to what extent the SBA considered the weighty issues presented by such extensions of taxpayer funds.

CREW is a non-profit corporation, organized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the public's right to be aware of the activities of government officials, to ensuring the integrity of those officials, and to highlighting and working to reduce the influence of money on politics. CREW uses a combination of research, litigation, and advocacy to advance its mission. CREW intends to analyze the information responsive to this request and to share its analysis with the public through reports, press releases, or other means. In addition, CREW will disseminate any documents it acquires from this request to the public through its website, [www.citizensforethics.org](http://www.citizensforethics.org). The release of information obtained through this request is not in CREW's financial interest.

CREW further requests that it not be charged search or review fees for this request pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) because CREW qualifies as a member of the news media. *See Nat'l Sec. Archive v. U.S. Dep't of Defense*, 880 F.2d 1381, 1386 (D.C. Cir. 1989) (holding non-profit a "representative of the news media" and broadly interpreting the term to include "any person or organization which regularly publishes or disseminates information to the public").

CREW routinely and systematically disseminates information to the public in several ways. CREW's website receives tens of thousands of page views every month. The website includes blogposts that report on and analyze newsworthy developments regarding government ethics, corruption, and money in politics, as well as numerous reports CREW has published to

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<sup>5</sup> *Id.* Rep. Mucarsel Powell's husband's company has since returned its PPP loan.

<sup>6</sup> *Id.*

educate the public about these issues. In addition, CREW posts the documents it receives under the FOIA on its website.

Under these circumstances, CREW satisfies fully the criteria for a fee waiver.

**Conclusion**

If you have any questions about this request or foresee any problems in fully releasing the requested records, please contact me at (917) 675-2509 or at [glezra@citizensforethics.org](mailto:glezra@citizensforethics.org). Also, if CREW's request for a fee waiver is not granted in full, please contact our office immediately upon making such a determination.

Where possible, please produce records in electronic format. Please send the requested records to me at either [glezra@citizensforethics.org](mailto:glezra@citizensforethics.org) or Gabriel W. Lezra, Citizens for Responsibility and Ethics in Washington, 1101 K St., N.W., Suite 201, Washington, D.C. 20005.

Sincerely,

A handwritten signature in blue ink, appearing to read 'GWL', is centered on a light gray rectangular background.

Gabriel W. Lezra  
Counsel