

United States Senate

WASHINGTON, DC 20510

April 15, 2020

The Honorable Steven T. Mnuchin
Secretary of the Treasury
U.S. Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, D.C. 20220

The Honorable Jovita Carranza
Administrator
U.S. Small Business Administration
409 3rd Street SW
Washington, D.C. 20416

Dear Secretary Mnuchin and Administrator Carranza:

Thank you for your ongoing work to help stabilize the U.S. economy and provide assistance to businesses and workers during the unprecedented health emergency caused by the onset of the novel coronavirus (COVID-19). I applaud your continued work to implement the various economic support programs Congress enacted as part of the Coronavirus Aid, Relief, and Economic Security (CARES) Act. As you continue your work to effectuate the goals of the Paycheck Protection Program, as envisioned in Section 1102 of the CARES Act, I urge you to emphasize the program's requirements that current economic uncertainty makes access to these loans *necessary* to support the ongoing operations of the borrower. Businesses that remain in excellent financial health should not be taking advantage of these highly subsidized and forgivable loans at the expense of borrowers who are facing real financial hardship due to the onset of COVID-19.

As you know, Section 1102 of the CARES Act establishes the Paycheck Protection Program to help small businesses that are negatively impacted by COVID-19 get access to forgivable, low-interest loans to help stabilize their finances during these challenging economic times. Among other things, Section 1102 appropriately requires otherwise eligible borrowers to certify the following: that the "uncertainty of current economic conditions makes necessary the loan request to support the ongoing operations of the [borrower]." This provision is also included in the PPP Borrower Application Form, OMB Control No.: 3245-0407, signed by the borrower at the time of the loan application. In enacting the borrower certification requirements, Congress attempted to strike the right balance between making these critical loans readily available to eligible small businesses while also ensuring a threshold commitment from a borrower that the funds made available under the program were necessary to carry on daily operations in the face of economic conditions caused by COVID-19.

Anecdotal reports suggest that some subset of borrowers may be accessing PPP loans in contravention of the aforementioned certification requirements and the overall goal of the program to provide assistance to those most in need. These troubling reports underscore the importance of emphasizing these critical borrower certifications under the program and providing robust oversight and auditing of program participants.

As you continue your work to rollout the program in the coming days and weeks, I urge you to emphasize these critical borrower certifications in order to help ensure that those borrowers most in need get access to PPP funds. I also ask that you clarify the potential legal liability for any borrower who knowingly misrepresents the certifications embodied in the PPP Borrower Application Form. At a minimum, I would hope that any borrower who utilizes PPP loans without having suffered any measurable financial hardship should be at risk of federal prosecution under the False Claims Act. I appreciate any additional clarity you can provide on this important point. Finally, I believe that the oversight functions provided in the CARES Act should make any abuse of the PPP by otherwise healthy borrowers a focus of its auditing and investigation functions.

I appreciate your continued efforts to help sustain the American economy during these challenging times and look forward to working together to protect American workers and small businesses during the COVID-19 pandemic. Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink that reads "Mark R. Warner". The signature is fluid and cursive, with the first letters of each name being capitalized and prominent.

Mark R. Warner
United States Senator