March 27, 2020

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

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

Dear Secretary Mnuchin and Administrator Carranza:

On behalf of our nation's venture capital investors and the 2.27 million workers who are tirelessly building the next-generation of American venture-backed companies, I write with tremendous urgency to encourage you to provide clarity that small businesses with equity investors will not be excluded from the *Keeping Workers Paid and Employed Act* provision included in the *Coronavirus Aid, Relief, and Economic Security* (CARES) *Act*. The imminent fate of hundreds of thousands of jobs across America hinges on the implementation of these rules. In order to survive, these companies must make difficult decisions over the course of the next several days, so rapid clarity on how these rules will be interpreted for purposes of the program can provide confidence to these vital small businesses that resources will be available and will mitigate the layoffs beginning to sweep across the startup ecosystem.

The *Keeping Workers Paid and Employed Act* is one of the most powerful small business recovery programs ever passed by the United States Congress. This program will provide loans of up to $10 million dollars to small businesses up to 500 employees, as well as other small business concerns with higher employment thresholds based upon North American Industry Classification (NAICS) codes. The benefits are carefully crafted to encourage the retention of middle-class jobs through the economic crisis caused by the COVID-19 pandemic. If this is effective then millions of jobs across America will be preserved, potentially preventing the downward spiral in economic activity created by widespread layoffs.

The vast majority of American startups are below 500 employees and are not yet profitable. Like other small businesses, these companies survive on a month-to-month basis, meaning their workforces are also particularly vulnerable in an economic downturn. Startups commonly take equity financing, and in an economic crisis, that capital must be used to keep the entity in operation. Companies must make difficult decisions fast on whether to lay off some of their workforce or run the risk of exhausting their available capital and destroying the business. Every single one of these companies are currently looking through their books to better understand how far they can stretch their current available capital to preserve the entity through the economic crisis. This timeline is often colloquially referred to as “runway.” Because such a high percentage of the capital is spent on payroll, often the only way for startups to extend their runway is furloughs and layoffs.

Thankfully, Congress responded to the crisis with the *Keeping American Workers Paid and Employed* program that is designed to prevent mass layoffs at small businesses. But how the Department of Treasury and the Small Business Administration (SBA) will apply ‘affiliation rules’ in upcoming guidance to implement the program is a central question to program access for startups and other small businesses with equity investors. If the current SBA rules on affiliation are applied, they will create significant confusion about eligibility, delay the application process, render many small businesses ineligible, and cause many more to forego the process. Each of these challenges will exacerbate layoffs.

The SBA’s affiliation rules are a fact-specific set of rules based upon the individual circumstances of each company’s ownership structure, and include a rebuttable (and in the case of venture capital-backed companies, generally incorrect) presumption that many companies with minority investors are deemed to be controlled by those investors. If the presumption is not effectively rebutted, the company must include in their count of employees all of the other jobs created at other *wholly unrelated* businesses in which their investors are invested, thereby denying eligibility to many small businesses who will otherwise have to widen layoffs to survive. Furthermore, considering the unprecedented size of the program and the speed with which the capital must be deployed, there is no conceivable scenario where the current rules can be applied and the program remain effective.

In the last few days, NVCA performed a brief survey of a cross-section of members to gauge what the impact would be on their portfolio companies if they do not have access to the small business lending facility. Several shared statistics on the layoffs their portfolio companies have already had to make or are strongly considering. The responses were dramatic, with many companies considering layoffs between 25 and 50 percent of their workforce. Survey results demonstrate that this wave of layoffs will spread from large coastal startup ecosystems to the mountain west, Midwest, and beyond. An investor based in the mountain west responded that in the companies they were following, with no access to the lending facility up to a 35 percent reduction in full-time employee reductions will be necessary for the companies to survive. A Midwestern investor responded that half of full-time employees are currently under review for layoffs.

To provide a perspective of the impact of these layoffs on the workforce, about 34,000 companies in the United States have raised venture funding since 2015. Of the approximately 20,000 of these companies for which the employee count is captured, 97% have fewer than 500 employees.[1] As noted above, about 2.27 million Americans work at these companies, with many more people employed in support roles at other companies.

Failure to provide clarity that small businesses with equity investors are eligible for the loan facility will cost jobs not only at startups, but at many of the independently owned service-oriented small businesses in communities across America. These startup workers, who include engineers, customer service representatives, and human resources professionals, are the very customers that service-oriented small businesses such as restaurants and coffee shops rely on for sales making an economic comeback post crisis even more difficult.

Finally, if the affiliation rules are not applied appropriately, our country will experience incalculable cost to our science and technology leadership. Venture capital backs the world's most innovative companies, but without support from the government hundreds of research projects across the country are at risk of being shelved imminently. This is potential progress that will pause overnight, and just as important, will set back American competitiveness in an increasingly global race for innovation leadership back by years.

Startups need immediate clarity because the longer startups wait to impose layoffs, the worse the chances the company survives the economic crisis. Congress has created an incredibly powerful job retention program. On behalf of our members and America's startups, I urge swift action to make clear to these companies that they will be able to access this program, which will provide them confidence that the broad layoffs under consideration may not be necessary.

Thank you for your consideration.

Sincerely,

Bobby Franklin

Bobby Franklin
President and CEO

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[1] PitchBook Platform, data as of March 26, 2020. https://pitchbook.com