United States Senate
March 30, 2020

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

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

Dear Administrator Carranza and Secretary Mnuchin:

On March 27, 2020, Congress passed and the President signed into law the Coronavirus Aid, Relief, and Economic Security (CARES) Act to respond to the urgent needs of American citizens and businesses dealing with the catastrophic impacts of the COVID-19 pandemic. With businesses of all sectors and sizes harmed by the rapid spread of the pandemic, major components of the recently enacted law focus on providing regulatory relief and resources to small businesses so they can keep employees on the payroll and reopen their doors when the public health crisis relents. These provisions aimed to enhance existing capital access and disaster loan programs within the Small Business Administration (SBA) by increasing federal resources dedicated to these programs, temporarily expanding the flexibility of the existing requirements of the programs, and establishing new measures like the loan forgiveness focused on providing relief to small businesses prioritizing to keep their employees on the payroll during this economic crisis.

However, concerns have recently been raised with the CARES Act’s effects on the SBA’s affiliation rules (13 C.F.R. § 121.103) as it relates to certain small businesses’ eligibility for the SBA’s recently amended loan programs. More specifically, the law explicitly waives the agency’s existing affiliation rules temporarily with respect to borrowers from specific industries and business models to allow eligibility in the expanded capital access program. Unfortunately, this provision does not specifically preclude businesses with equity investors from the affiliation requirements like venture capital-backed startups, which will likely lead to unintended and uncertain circumstances in which a single portfolio company with equity stake held by a private equity firm with other portfolio companies is left to determine their eligibility based on the statutory 500 employee maximum threshold applied to the revised SBA program.

In a time of economic crisis such as this, the federal government should be promoting all forms of capital assistance to small businesses, including public and private. When forming policy restrictions for the availability of public funding assistance, the federal government should be wary of implementing rules that may unintentionally discourage small businesses from applying due to ambiguity around administration of a newly amended program. In addition to the possible unfair exclusion of small businesses with equity financing from participating, it is reasonable to believe that the application process could significantly slow down as a result of small businesses evaluating how many employees from unrelated businesses they would need to count towards their company size especially if additional clarification is needed by the SBA on a case-by-case basis.
As such, I urge the SBA to issue clear and inclusive guidance as soon as possible to direct that the temporary waiver applied to SBA’s affiliation rules include companies with equity investors. Clear rules of the road on these temporary, yet vital, federal lending programs will determine the sustainability of these types of businesses and their employees during the COVID-19 pandemic, but they will also dramatically affect the prospects of future innovation and job creation that startups in our nation have continued to provide.

Thank you for your prompt assistance to this urgent matter, and please contact my staff with any questions you may have.

Sincerely,

Jerry Moran
United States Senator