

United States Senate  
WASHINGTON, DC 20510

April 1, 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 Administrator Carranza and Secretary Mnuchin -

As we work to cushion the impact of the COVID-19 pandemic on our nation's economy, the well-being of our nation's small businesses and their workers are front and center for policymakers. Small businesses employ nearly 50% of the private workforce and the top three industries for small business employment – health care, accommodation and food services, and retail<sup>1</sup> – have been particularly devastated by disruptions caused by the pandemic.

Your agency is justifiably focused on prioritizing relief for independent small businesses. We write to request that you provide clarity, such as a bright-line test, so that certain small businesses with minority equity investors may also be eligible for the small business loan facility under the *Keeping Workers Paid and Employed Act* section of the recently-enacted *Coronavirus Aid, Relief, and Economic Security (CARES) Act*. The application of the current affiliation rules that the Small Business Administration (SBA) relies on for their current loan programs may work against congressional intent of the program to encourage retention of jobs at businesses most susceptible to widespread layoffs during economic crises.

The *Keeping Workers Paid and Employed Act* is a powerful program that creates a large business lending facility for small businesses designed to encourage retention of workers at many of the country's businesses that are most vulnerable to an economic downturn. Workers at startups and other small businesses with minority equity investors are clearly amongst the intended beneficiaries of this program. Many of these companies operate on thin margins or, in the case of startup ventures, on losses, in ordinary times. Because payroll often makes up such a significant portion of their expenses, preserving cash on hand through layoffs and furloughs can be the only recourse to protect the ability of these companies to survive the crisis. While first precedence in the processing of applications and disbursement of funds should continue to go to independently owned small businesses, we urge you to clarify, such as by issuing an unambiguous bright-line test, that startups with minority equity investors may also access some portion these important resources. We encourage you to provide this guidance as expeditiously as possible, as these companies are making consequential decisions regarding jobs and payroll now.

The SBA's current affiliation rules are facts-and-circumstances-dependent and create a rebuttable presumption that many small businesses with minority equity investors are controlled by those investors. If that presumption is not overcome, the company must aggregate all of the other jobs from unrelated companies in which their investors may also be affiliated when determining eligibility for the program. At a time when immediate deployment of capital is of paramount concern, the wholesale application of the affiliation rules to the small business lending facility created by the *Keeping Workers Paid and Employed Act* could generate confusion and uncertainty about eligibility, along with insurmountable administrative challenges for those start-ups that have been hard-hit by the economic downturn caused by the coronavirus pandemic. Startups are at the very heart of our nation's economic engine. American startups, particularly in more capital-intensive areas such as life sciences, are instrumental in navigating both our nation's health response as well as our efforts to support telework and online education. Clear guidelines from the SBA will ensure that innovative small businesses with minority equity investors – particularly those that can provide critical assistance in our nation's response to this pandemic – are eligible for the small business lending facility.

We thank you for taking this important consideration in account as you promulgate the rules under the *Keeping Workers Paid and Employed Act* section of the recently-enacted *Coronavirus Aid, Relief, and Economic Security (CARES) Act*.

Sincerely,



Mark R. Warner  
U.S. Senator



Susan M. Collins  
U.S. Senator



Christopher A. Coons  
U.S. Senator



KAMALA D. HARRIS  
U.S. Senator