April 28, 2020

The Honorable Steven Mnuchin
Secretary
United States Department of Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

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

Dear Secretary Mnuchin and Administrator Carranza:

The vast majority of small business owners rely on their CPAs as trusted advisors. Of the 44,000 CPA firms in the United States, nearly all have some form of relationship with small business. In this time of unprecedented public health and economic crisis, our members continue to advise their business clients with the best information available within the parameters of the CARES Act (PL 116-36) and Paycheck Protection Program (PPP) guidance. Our members and their clients have correctly noted that one of the most pressing issues they face on PPP is the timing of the 8-week clock under CARES Act sec. 1106(a)(3). Flexibility for the 8-week clock is necessary to ensure the loans convert to grants as intended by Congress.

Congress designed PPP as a program to help small businesses with cash flow so they can keep their employees on the payroll. To work as intended, the program needed to be rapidly stood up. To the credit of the Department of Treasury (Treasury), Small Business Administration (SBA) and the many lenders working hand-in-hand within PPP, the program was established and all stakeholders have moved as quickly as possible to assist small businesses. However, when the CARES Act was signed into law, our economic outlook predicted a fully functioning economy by mid-May. We will not meet this target, resulting in very real timing and calculation implications for the forgiveness component of the loans.

Guidance from Treasury and SBA interprets the 8-week clock as beginning "on the date the lender makes the first disbursement of the PPP loan to the borrower. The lender must make the first disbursement of the loan no later than ten calendar days from the date of loan approval (PPP FAQs, April 28, 2020)." However, with many states still shut down, most small businesses are unable to bring their employees back to work by order of state government. No state has fully lifted its shelter-in-place orders, and it may be weeks if not months before we achieve near-to-full operations nationwide. Therefore, the PPP funds cannot be leveraged in a manner that ensures the business is able to be fully up and running once such orders are lifted. The requirement that 75% of PPP funds be spent on payroll within the 8-week period that begins with the date the lender makes the disbursement results in a small business either paying employees while it is unable to operate, or conversely, to forgo loan forgiveness (a crucial component of the PPP).

The CARES Act established broad language giving interpretive powers to Treasury to determine when origination takes place. Given that economic circumstances have changed since the CARES Act was first implemented, we urge Treasury to use their interpretive authority to **immediately take a very simple but critical step** and define the origination date as the **date on**

which a state’s shelter-in-place order is lifted and businesses are authorized by government to return to full operations. This will provide the necessary flexibility for the 8-week clock to start, businesses to bring back employees and to pay sufficient payroll to meet the 75% requirement, that triggers assured loan forgiveness.

This program means the difference between success and failure for many small businesses who, through no fault of their own, have been shut down. They are doing the right thing. They have closed their doors to protect the broader population from disease and death. Until the shelter-in-place orders are fully lifted they cannot meet the obligations of the PPP program as established in law and through guidance.

Across the country, small business owners are making crucial business decisions, obtaining bridge funding and managing cash flow so they can open the moment they are given the authority to do so by their state’s governors. Many are already 10 or more days into the 8-week clock. We urge Treasury to use its interpretive authority to provide flexibility for businesses to utilize the PPP funds as intended, to meet payroll obligations when the business is able to operate and, in turn, see these loans forgiven. This flexibility will position more small businesses to survive and contribute to an economic rebound while working within the parameters of the CARES Act and subsequent guidance.

The PPP continues to provide a lifeline to small business that thanks to the administration by the Treasury and SBA is keeping our economy afloat. We thank you for your leadership, and appreciate how Treasury and the SBA’s agility and rapid responses to questions and concerns enables many small businesses and their advisors to successfully navigate PPP.

Sincerely,

Barry C. Melancon, CPA, CGMA
CEO, American Institute of CPAs

Cc: The Honorable Marco Rubio, Chairman, Senate Small Business Committee
Cc: The Honorable Ben Cardin, Ranking Member, Small Business Committee
Cc: The Honorable Nydia Velázquez, Chairwoman, House Small Business Committee
Cc: The Honorable Steve Chabot, Ranking Member, House Small Business Committee