PANDEMIC RESPONSE
ACCOUNTABILITY COMMITTEE

Virtual Listening Forum: Stakeholder Perspectives on Oversight of the Federal Covid-19 Spending and Response

Background

The PRAC held a virtual public listening forum entitled, "Stakeholder Perspectives on Oversight of the Federal COVID-19 Spending and Response," on June 3, 2020 at 2 pm Eastern Time.

This forum was an opportunity for stakeholders to provide insights into specific areas where the PRAC should focus its oversight attention to enhance transparency and accountability over emergency pandemic funds. Speakers represented a cross-section of the pandemic response, including state and local government, businesses, financial institutions, the health care sector, non-profits, and government transparency organizations.

12 speakers presented 5 minutes of remarks about federal oversight of the $2.4 trillion in emergency pandemic spending.

Schedule (Witness Bios and Statements follow in order of appearance)

- **First Panel – State and Local Government**
  - Melinda Miguel, Chief Inspector General, Executive Office of the Governor, Florida
  - Kinney Poynter, Executive Director, National Association of Auditors, Comptrollers, and Treasurers
  - Robert Asaro-Angelo, Commissioner, New Jersey Department of Labor & Workforce Development

- **Second Panel – Business, Financial, Nonprofit Organizations**
  - Anthony "Tony" Wilkinson, President & CEO, National Association of Guaranteed Government Lenders
  - Tim Delaney, President, National Council of Nonprofits
  - Neil Bradley, Chief Policy Officer, U.S. Chamber of Commerce

- **Third Panel – Healthcare**
  - Dr. Ashish Jha, Director, Harvard Global Health Institute
  - Ernest Grant, President, American Nurses Association

- Ralph P. Bozella, Chairman, Veterans Affairs and Rehabilitation Commissions, American Legion

- **Fourth Panel – Government Spending Oversight and Transparency**
  - Sharon Parrott, Senior Vice President for Federal Policy, Center on Budget and Policy Priorities
  - Maya MacGuineas, President, Committee for a Responsible Federal Budget
  - Jason Grumet, President, Bipartisan Policy Center

Melinda M. Miguel, Chief Inspector General
Executive Office of the Governor
State of Florida

Melinda Miguel was appointed Chief Inspector General in the State of Florida by Governor Ron DeSantis effective January 8, 2019. She also served in this role for two former Florida Governors – Governor Scott and Governor Crist.

Ms. Miguel has over 28 years of public service experience and served as the Inspector General for the following state government agencies:

- State Board of Administration;
- Florida Attorney General's Office;
- Department of Education; and,
- Department of Elder Affairs.

Ms. Miguel also served as Deputy IG for the Architect of the Capitol in Washington, D.C., and IG for the U.S. Government Publishing Office, also in D.C.

Ms. Miguel received a Bachelor of Science Degree in Economics and a Graduate Certificate in Local Government Administration from Florida State University. Ms. Miguel holds several relevant professional certifications.

Ms. Miguel is the past national President of the Association of Inspectors General and is a committed member of the Inspector General Community in our nation.

Statement of Melinda M. Miguel, Chief Inspector General, State of Florida, Executive Office of the Governor

to the

Pandemic Response Accountability Committee

Listening Forum: Stakeholder Perspectives on Federal COVID-19 Spending and Response

June 3, 2020 [submitted June 1, 2020]

Thank you for your invitation to provide a state government perspective to the Committee regarding the federal COVID-19 spending and response. It is a privilege to offer our assistance to the Pandemic Response Accountability Committee (PRAC) and partner in our oversight to enhance transparency and accountability over emergency pandemic funds.

Thank you for your leadership on setting up this Listening Forum and we appreciate the hosts for arranging this important opportunity.

According to the CARES Act, state, local, and tribal governments will receive $150 billion. $30 billion is set aside for states, and educational institutions. $45 billion is for disaster relief, and $25 billion for transit programs.

Fast Facts on Florida

- Founded: 1845
- Population: estimated at 21.48 million
- Median Age: estimated at 42.2 years of age
- Third largest state in the nation and number 4 in terms of state economies.
- In 2019, state government employs approximately 113,000 FTE and has a budget size of $93 billion
- An estimated 37.6% of the state's budget passes through to local governments.
- Florida has 67 counties, 74 school districts, 7 water management districts, 12 public universities, 412 incorporated municipalities, and 1,752 special districts.

The Coronavirus Relief Fund means $8.328 billion in relief funding for our state. Of this amount, $2.472 billion goes to 13 eligible counties (due to population numbers greater than 500,000 and make up 66% of Florida's population) and $5.6 billion is allocated to the state level. While this is good news, we understand the tremendous responsibility to properly spend quickly to the right areas needing relief but with appropriate transparency and accountability.

From a fiscal perspective, there is limited comprehensive government data right now about the full extent of the COVID-19 pandemic is having on state, local, and tribal governments. There is a need for this impact analysis with continual update to allow for a data-driven and risk-based response and recovery.

Preliminary information is not promising, with lots of opinions on how long COVID-19's effects will last and how long recovery will take. Further, state, local, and tribal governments have experienced and will continue to experience for some time a dramatic loss in revenue and other negative financial impacts. During times of crisis such as Florida's hurricanes and now this pandemic, governments experience an increase in demand for many of their services causing corresponding expenses to rise as well.

I have heard from other government officials around the nation talking about staff layoffs, furloughs, and budget reductions. I have heard of some having to reduce critical programs or services.

Many states including Florida have experienced system problems with unemployment compensation due to unprecedented volume of the suddenly unemployed. Currently, Florida has a 12.9% unemployment rate and lost over a million jobs in March and April 2020. The demand for this public assistance was tremendous and the system failed to function as needed. Governor DeSantis has requested that we investigate what went wrong during this time of crisis, but also look back to the original project to see if the system was properly designed with the necessary capacity.

Most people recognize that state and local governments are dedicated to the public good, working to serve people, and solve community problems in ways that improve lives, strengthen communities and the economy, and lighten the burdens of government, taxpayers, and society as a whole. But few realize the enormous breadth and operational complexities of doing so. When states

GOALS

Minimize claw backs and audit findings

Minimize duplication and overlap

Maximize effective spending

Maximize recovery

are responsible for local governments' proper spending, but the cost of oversight and the funding to review indirect cost monitoring is limited, there are challenges to transparency of spending practices during the grant cycle and risk of claw backs at the end of the grant cycle.

Some thoughts for improving future recovery efforts include the following:

- Provide standard guidance at the front end of the grants cycle.
- Provide clear and comprehensive guidance to address existing funding and be clear which guidance applies to which funding streams, with published guidance provided in a transparent manner. Any waivers should be documented in writing so that the auditors can see the documentation to support differences.
- Ensure that guidance does not change mid-stream or add extra components after the grant agreements are signed.
- Allow the maximum flexibility so that state and local governments can decide how to spend the funding and document their rationale for doing so.
- Streamline and simplify application and reporting forms and procedures.
- Provide clear examples of performance metrics that are known to have a clean audit opinion.

What Florida is doing in response to the Coronavirus Relief Fund includes setting up a central command structure across government. Also, the state is leveraging disaster expertise through its network across the entire system within Florida. The CARES Coordinating Office (CCO) is using a risk based and data driven approach. The CCO is developing documentation requirements and using a centralized database to collect documentation (eligibility, application, reporting, performance metrics, monitoring). We are leveraging state agency expertise and the Inspector General Community is engaging on the front end to provide oversight to existing funding streams and adding working groups to assist with oversight on matters such as fraud prevention, complaint handling and response; internal

KEY INITIATIVES

Using Working Groups to facilitate collaboration and communication along priorities

Leveraging existing funding streams and state agency and disaster expertise

Exploring Best Practices from ARRA Response

Gathering all available guidance, FAQs, Memos, Toolkits from Federal Granting Agencies and OMB

Developing documentation requirements (eligibility, application, reporting, performance metrics, monitoring)

Risk Assessments and Audit Plans

Engaging all levels of government

controls and risk assessments; data, reporting, performance metrics; and, federal guidance. Finally, we are collaborating across all levels of government and government associations such as (NGA, NCSL, NASACT, AGA, NASCIO, NASBO, NGMA, AIG).

As you know, Congress created PRAC to “mitigate major risks that cut across program and agency boundaries” and to “prevent and detect fraud, waste, abuse, and mismanagement.” CARES Act §15010(b). It is important to note that Congress provided funding to the federal inspectors general and, while a big step in the right direction, Congress did not earmark funding for state and local inspectors general or auditors. Also, important to note is that state governments had not yet restored many of their administrative and oversight funding levels to pre-2008 funding. Therefore, many state inspectors general and state auditors continue to do more when even less and less. Also, it is important to note that we know that the people of this nation are counting on us to exercise appropriate transparency and oversight over these funds that are designed to help so many such as American workers and families, small businesses, communities, health care sector, and state and local governments to survive during and recover from the coronavirus pandemic.

Conclusion

Thank you for inviting me to provide a state government perspective today. Please let me know how we may be of further service to the PRAC.

Melinda M. Miguel, Chief Inspector General, State of Florida, Executive Office of the Governor

R. KINNEY POYNTER, CPA
Executive Director, NASACT

Kinney Poynter is the Executive Director for the National Association of State Auditors, Comptrollers, and Treasurers (NASACT). In this capacity, he is responsible for the overall operations of NASACT as well as the programs of the National Association of State Comptrollers and National State Auditors Association. NASACT is a professional organization whose mission is to assist state leaders to enhance and promote effective and efficient management of governmental resources. Kinney has been with NASACT since 1989, previously serving as the association's Deputy Director and various other positions.

In addition to his experience with NASACT, he has been a partner of a local public accounting firm in Lexington, Kentucky, and a principal auditor with the Kentucky Auditor of Public Accounts, where he conducted financial, performance, and investigative audits on state agencies and local governments. While in public practice, he performed single audits on various nonprofit organizations.

Kinney has BS and MS degrees in accounting from the University of Kentucky. He is a Certified Public Accountant (CPA) and a Chartered Global Management Accountant (CGMA). Kinney is a member of the American Institute of Certified Public Accountants (AICPA) and the Association of Government Accountants (AGA). He previously served on the AICPA Governing Council. He is also a member of the Kentucky Society of Certified Public Accountants, where he has served as chairman of the Governmental Accounting Committee. Kinney has served as an instructor domestically and internationally on a variety of governmental accounting and auditing issues.

Updated 2/27/18

Pandemic Response Accountability Committee

Listening Forum: “Stakeholder Perspectives on Oversight of the Federal COVID-19 Spending and Response”

June 3, 2020

Statement of R. Kinney Poynter, NASACT Executive Director

The National Association of State Auditors, Comptrollers and Treasurers (NASACT) would like to thank the Pandemic Response Accountability Committee (PRAC) for the opportunity to provide our views at today’s listening forum. NASACT worked closely with the Recovery Accountability and Transparency Board during the 2008 financial crisis, and we look forward a similar productive partnership with the PRAC throughout the lifecycle of the various COVID-19 relief funds provided by Congress.

While we recognize the importance of getting these funds out quickly to address the health emergency, we also believe that providing the highest level of accountability over these vast amounts of public funds is of great importance. In the past, NASACT has worked closely with the federal government and the governors of our states to ensure the proper use of relief funds while, at the same time, meeting the desire for expediency to address a crisis. We stand ready to do so again now.

NASACT represents the states’ top financial officials – the state auditor, the state comptroller and the state treasurer. The state auditors conduct independent audits of the states’ financial statements and single audits of federal assistance; state comptrollers prepare the states’ financial statements, establish internal controls and, in some cases, serve as the centralized grant management agency; and state treasurers serve as the states’ banker issuing payments. As such, we cover the full spectrum of government financial accountability. We have 183 member organizations comprised of over 21,000 professional staff. Seventy of our members are elected by the citizens on a statewide basis.

The need for communication and collaboration between federal, state and local governments has never been greater. If our experience with the American Recovery and Reinvestment Act (ARRA) taught us anything, it was that frequent and consistent communication was the key to success. State and local governments are partners in this effort, and we hope the PRAC, federal grantor agencies, and federal inspectors general will view NASACT and its members as such and take advantage of the collective expertise and experience our association represents. We know our state governments well, including those agencies and programs that have historically presented the highest levels of risk. The “boots on the ground” are at the state and local government level. Using our experience and expertise can minimize misuse of public funds, and we encourage PRAC to call on us to assist in this area.

While we know that is it still early in the process, we believe the following items are of immediate concern and should be addressed as quickly as possible:

1. A comprehensive listing of all federal funds provided to the states should be prepared and distributed. This listing should be detailed to show the total dollars received by each state and further broken down by the amount received from each federal program (by Catalog of Federal Domestic Assistance number).
2. Several key decisions need to be reached regarding the $150 billion of Coronavirus Relief Fund (CRF), including:
    a. Will these funds be subject to the Single Audit? If no, how will compliance requirements be independently tested?
    b. What are states' responsibilities over the funds that are passed to local governments or other subrecipients? Are states responsible for repayment of these funds in cases where a subrecipient did not spend the funds appropriately?
    c. How will CRF funds be reported to the public facing website and to the PRAC?

The PRAC faces many challenges to provide accountability and transparency over COVID-19 relief funds. However, ARRA provided a good roadmap on how all levels of government can collaborate in a crisis. Critical to success will be federal agencies providing consistent guidance, not only between agencies but also between programs within agencies. One of the key lessons learned from ARRA implementation was the need for the federal government to "speak with one voice." Different guidance from different federal agencies is not efficient and will decrease overall accountability over the funds.

I have no doubt that the PRAC and government accountability professionals around the country are up to the challenge again. Our citizens deserve nothing less.

Thank you again for the opportunity today.

Commissioner

Rob Asaro-Angelo, Commissioner

Robert Asaro-Angelo was nominated by Governor Phil Murphy to serve as the Commissioner of the NJ Department of Labor and Workforce Development in January 2018.

As Commissioner, Asaro-Angelo is proud to oversee the state's diverse services to New Jersey workers, including the state's workforce programs, wage and hour compliance, unemployment insurance program, workers' compensation, temporary disability insurance, and family leave insurance, among other duties.

From 2010 – 2017, Asaro-Angelo served as Eastern Regional Representative for the U.S. Department of Labor under the Obama Administration, managing the department's regional activities and coordinating federal initiatives on the regional, state, and local levels. Additionally, he served on many intergovernmental work groups including the White House Hurricane Sandy Task Force, the White House Task Force on Puerto Rico, Regional U.S. Interagency Councils on Homelessness, and FEMA's (Federal Emergency Management Agency) Recovery Support Function Leadership Group.

Prior to his government service, Commissioner Asaro-Angelo worked for the Laborers International Union, the American Federation of State, County and Municipal Employees and the Service Employees International Union Local 1115 organizing and educating public employees, construction workers and nursing home employees about government and politics.

Asaro-Angelo earned a Bachelor of Science degree in Communications from Boston University and a master's in Public Policy from the Eagleton Institute of Politics at Rutgers University.

A proud, life-long New Jerseyan, he lives in East Brunswick with his wife Sarah, son Joseph, and his daughter Leah.

Written Statement

Robert Asaro-Angelo

Commissioner, New Jersey Department of Labor & Workforce Development

The crush of layoffs and furloughs accompanying Covid-19 have clearly overwhelmed state unemployment agencies nationwide, and New Jersey is no exception.

We are seeing a volume of claims exponentially higher than any time in history. The first week of this crisis alone saw a 1,600 percent increase in volume.

Two weeks later we hit our all time high water mark of 214, 000 initial unemployment claims. To put this in perspective, the most new claims in a week after Superstorm Sandy was 45,000.

It was after Sandy, where I saw the confusion created by hundreds of government programs with thousands of eligibility requirements. . At the time I was serving as the Eastern Regional Representative for the U.S. Department of Labor, but was on detail to FEMA's Joint Field Office in New Jersey.

After the devastation of Sandy it took years of back and forth with multiple state and federal agencies, for SBA loans, FEMA buyouts, rental assistance or HUD rebuilding or mortgage assistance funding to help tens of thousands of New Jerseyans

Over the past 10 weeks alone, our agency has paid benefits to nearly 1 million New Jersey workers, and $4.3 billion has been issued as much-needed income replacement.

So, to call our current, but necessary, economic situation “an avalanche” would be an understatement.

While we’ve been working around the clock to find solutions to the problems weighing on our systems and processes, its clear action needs to be taken on a federal level..

I know you share my belief that coordinated efforts and constant communication between state and federal governmemts are key to the success of the important work we do together.

I am proud of the respectful, honest relationship we have with our regional and local USDOL Offices of the Inspector General. But communication and information sharing can only do so much when regulatory AND IT systems across state and federal governments don’t allow for effective service to our customers and efficient methods to combat fraud, especially when it comes to data sharing

In the labor realm there needs to be a singular federal solution when it comes to modernizing our unemployment systems.

There is an impracticality to every state having a different system for the same federally mandated process. A combined solution would not only make it easier for our practitioners and customers, but to coordinate and streamline anti-fraud measures.

Recently the Office of the Inspector General had to go state-by-state in search of IP addresses of those filing for unemployment online to help with anti-fraud efforts. Simultaneously, our state partners at the National Association of State Workforce Agencies were compiling the same information.

The CARES Act, and the immediate implementation of new multi-billion dollar programs it called for, brought into immediate and clear view the challenges of the current system.

One of the biggest was and is implementation of Section 2102, which created the Pandemic Unemployment Assistance program, or PUA, to support independent contractors, self-employed and others ineligible for standard unemployment.

Speaking for New Jersey -- and other states, I presume -- we're thrilled workers not traditionally eligible for benefits are getting support. But it's presented an entirely new set of challenges for systems that have been in place for a certain type of worker who have paid premiums into our unemployment insurance systems and shared their wage records, now serving **all** workers who haven’t been paying in premiums and whom we have no records for.

Imagine if every VA hospital was told they must immediately start accepting any patient who ever served in the Boy Scouts, Girls Scouts, or wore any uniform. Eventually, they would be able to assist this population, but in the short-term, when that care is most crucial, it’s obvious to see the challenges and delays it would pose to its typical, traditional patients.

We have spent the past three months working with other states to get answers, guidance, and solutions to these unprecedented issues, and exploring outside-the-box solutions to meet the unthinkable demand we were facing, and the **clear** mandate from Congress to support them and to do so quickly.

Meanwhile, USDOL was doubling down on strict guidance to states warning that many ideas to speed or streamline benefits payments—could not be enacted by states, without putting our entire unemployment system, including billions in CARES Act funding, at risk.

As recently as May 27th -- two months after the CARES Act passed -- a letter was sent from the USDOL OIG to the Assistant Secretary for Employment and Training Administration and Solicitor’s office outlining its disagreement about April guidance, which actually gave states flexibility to start paying PUA and its monetary benefits to workers based on self-certification.

I want to be VERY clear, this is in no way a critique of USDOL, ETA or OIG. We have ALL been put in an unreasonable circumstance. If the New Jersey state legislature passed and Governor signed a bill that had our state Department of Labor create and fund 5 new programs to serve close to a fifth of our residents, effective immediately, having clear processes and regulations as quick as residents needed them would be impossible.

One reason why New Jersey is in a strong position on income verification is because this past January the legislature passed a bill with overwhelming bipartisan majorities by the way, which the Governor signed, allowing our state Department of Treasury to share any information, including, but not limited to, tax information statements, reports, audit files, and returns, data with the State DOL. This has and will allow for more accuracy and reduce overpayments as we implement this new and complex federal program.

Access to IRS federal tax filing records would be a tremendous resource to properly assess eligibility and the correct Weekly Base Amount not just for PUA, but all benefit programs.

Providing limited access for federally funded programswould improve the efficiency and accuracy in the implementation of these new programs created to address the economic needs as a result of COVID-19.

Despite the high-level complexities of these new laws we have a responsibility to be informative and transparent with our customers, the workers of New Jersey. Our experience after SANDY has helped inform our efforts in the Garden State to increase transparency and clarify communications about benefits to NJ workers.

We have written and designed -- only to rewrite and redesign -- guides to help our customers through these processes This includes being transparent and honest about what unemployment payment certification questions mean and what effect each of their answers will have on their application, positive or negative. This transparency in no way reduces the questionnaire’s ability to ensure proper payments and it certainly doesn’t reduce the consequences or penalties for claimants attesting to false answers.

While I am proud of the work our teams -- and our counterparts all around our country -- have been doing for their workers at this unprecedented time, we know it can be done better.

I look forward to working with your offices further with this as a guiding principle. Thank you for your time and for bringing attention to these important issues.

NATIONAL ASSOCIATION
OF GOVERNMENT GUARANTEED LENDERS

Anthony (Tony) Wilkinson
President & CEO
National Association of Government Guaranteed Lenders (NAGGL)
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Tony Wilkinson has served as president and chief executive officer of the National Association of Government Guaranteed Lenders for 32 years, growing the organization from a handful of members in 1984 to 800 member-institutions today. He is responsible for overseeing the association's government relations and public policy strategy and efforts, as well as managing its overall budget, finances and accounting. He also serves as the spokesperson for the association in all media engagements.

Tony works closely with Small Business Administration executives and congressional Small Business Committees and other stakeholders to ensure the continued stability and availability of the 7(a) program. As a trusted expert and the leader of the only national trade association for participants in SBA's flagship 7(a) program, Tony is often asked to give testimony during congressional hearings. He has served on the SBA's National Advisory Council and its Investment Advisory Council. He also has served on the Senate Small Business Advisory Council. Tony currently serves on the US Chamber's Small Business Council.

Prior to joining NAGGL, Tony spent 13 years with Stillwater National Bank as senior vice president responsible for the bank's SBA lending activities. He is a past recipient of the SBA's National Financial Services Advocate of the Year Award.

Pandemic Response Accountability Committee Public Listening Forum:
Stakeholder Perspectives on Federal COVID-19 Spending and Response
Statement of Anthony R. Wilkinson
on Behalf of the National Association of Government Guaranteed Lenders
June 3, 2020

Thank you to the Pandemic Response Accountability Committee (the Committee) for inviting me to present a lending industry perspective at today's first Listening Forum titled *Stakeholder Perspectives on Federal COVID-19 Spending and Response*.

The National Association of Government Guaranteed Lenders (NAGGL) is a national trade association representing private-sector lenders that participate in the Small Business Administration (SBA) flagship 7(a) loan program. Our members range in size from the largest national institutions to the smallest community banks across the country. For the past two months, these lenders have been charged with being on the front lines of delivering the aid and programs authorized by the *CARES Act*, most notably the Paycheck Protection Program (PPP), to the country's millions of small business borrowers. These efforts have served as the cornerstone of the national response laid out by Congress to support the American economy in the wake of the outbreak of the COVID-19 pandemic.

The purpose of the *CARES Act* (the Act), signed into law on March 27, 2020, was to help the country's small businesses survive during the COVID-19 pandemic and allow them to retain employees while shelter-in-place orders and social distancing became a national health priority. The goal was to protect people's lives while, at the same time, allowing small businesses to continue to exist and maintain payroll status quo until a return to more normal business operations could be undertaken.

Section 1109 of the *CARES Act* gave the SBA Administrator authority to administer PPP "with guidance from the Secretary [of the Treasury]." However, while the statute provided for shared implementation of PPP, it is our understanding that, in practice, it is the Department of the Treasury (Treasury) that led the process, and that it is Treasury that was responsible for deciding the way that program guidance would be issued – that is, through a series of separate Interim Final Rules (IFRs) and Frequently Asked Questions (FAQs), as opposed to a comprehensive PPP implementation guide. Therefore, most of my comments will reference Treasury's handling of PPP implementation.

To date, over 5,500 participating lenders have received SBA approval for over 4.4 million PPP loans totaling over $510 billion. This is an enormous feat over the span of two months for a network of SBA lenders which typically make roughly $25 billion in 7(a) loans annually, especially considering that the ability to make a PPP loan did not exist until about 8 weeks ago. To put this accomplishment into a different perspective, Congress authorized $30 billion for loans made under SBA's flagship 7(a) loan program in Fiscal Year 2020 and, in the first two weeks in April alone, PPP loans totaling more than ten times that figure were approved for small businesses across the country.

The data is not the only impressive aspect of the PPP – there are countless stories of success and hope behind the millions of loans made. PPP loans have ensured that millions of borrowers have a chance at surviving what could be the most challenging and devastating economic crisis the country will face this century. This success could not have been achieved without the commitment of SBA, its lending partners, and those small businesses which took the steps necessary to protect their employees' livelihoods during these unprecedented times.

However, despite the heroic efforts made by PPP stakeholders, the program's implementation strategy, as spearheaded by Treasury, has, in many ways, been abysmal. The ability of lenders to help maintain program integrity requires clear policies and procedures which allow lenders, the involved Executive Branch agencies, and Congress to develop systems, controls, and oversight strategies that mitigate the risk of fraud and unnecessary losses to the government. Yet, to date, Treasury has failed to provide clear and comprehensive guidance. Instead of clear guidelines, Treasury mismanagement has resulted in confusion, rules inconsistent with the Act, and guidance so incomplete that no party understands how compliance may be realized. Regrettably, the recently issued forgiveness guidance remains incomplete and Treasury still needs to provide guidance on how PPP loans that have balances remaining after the loan forgiveness is applied will be handled. The risk to lenders who answered the call and performed their patriotic duty is incalculable. But perhaps more troubling is that the risk to the small business borrowers the program purports to assist is just as tangible and consequential. With this in mind, my comments attempt to provide the Committee a frank assessment of the state of PPP implementation, which will hopefully inform appropriate oversight efforts and policy adjustments.

The Committee has a critical role to play in the midst of these failures and, as such, the challenges which this Committee faces during our nation's national emergency are daunting. For two months the efforts of Treasury and SBA to implement PPP have been, at best, misguided. My decision to appear before this Committee to share my observations and opinions and those of NAGGL members regarding PPP implementation shortcomings was made because I have reluctantly concluded that oversight bodies such as this Committee may represent the best hope for getting the program on an appropriate track. America's small businesses and the lenders that are attempting to help them survive during these difficult times deserve nothing less. I believe that if the current path is not corrected and quickly, PPP could face a bruised legacy in the years to come, and more importantly, the small businesses that are depending on this program will not receive the assistance that it was created to provide. This Committee could prevent this from happening by detailing thorough and honest stakeholder accounts of PPP implementation to Congress, the Executive Branch, and the American public, and by making critically needed thoughtful and appropriate recommendations for program improvements. I am proud to be a part of that today.

I am also acutely aware that this forum will serve as a marker in history for the Inspector General community and Congress as an account of the challenges lenders and borrowers faced during the first two months of *CARES Act* implementation. Unfortunately, having been in my current position in the aftermath of 9/11 and the Great Recession when Congress asked SBA lenders to similarly serve small business needs during a time of national crisis, I learned first-hand that financial institutions that attempt to answer such a call to duty can wind up caught in the cross-hairs of the worst sort of hindsight criticism for years after the response efforts have ended. I wish I could say that hindsight when it comes to these special programs is 20/20. But the reality is that when hindsight is mixed with a heavy dose of politics and optics, it can be a lethal combination that makes for reflection often tinged with significant bias and misunderstandings. I hope my statement today helps to guide the record for years to come as *CARES Act*, and particularly the PPP, faces its own post-mortem review that will be forced to document stakeholders struggling to comply with Treasury missteps with serious repercussions. But I also hope that this statement also will preserve for the record the fact that PPP reached millions of small businesses through a network of SBA lenders that served their neighbors during one of the country's greatest times of need.

PART ONE: A Comparison between Paycheck Protection Program Intent & Implementation

Since implementation of PPP began, it has been dictated by a constant theme. Statute and legislative intent set out the initial course, while Treasury guidance set out another; the SBA Office of Inspector General (OIG) warned of the need for one path – the issuance of complete guidance before the first loan was made – while Treasury opted to take another; the first rounds of Treasury guidance stipulated one set of expectations, while subsequent rounds of FAQs and IFRs continually amended and sometimes contradicted those earlier requirements. This course has steered PPP implementation down a path riddled with confusion, leaving both borrowers and lenders questioning whether to participate in the program. What follows is an outline of many of these alarming inconsistencies.

Lack of Guidance:

On the very day that PPP loans were first made available, SBA's Office of Inspector General (OIG) issued a sobering white paper noting how essential it is that the government provide clear guidance and training before loan funds are disbursed under programs like PPP. Clearly Treasury and SBA did not heed that warning.

Since early April, there have been 15 Interim Final Rules which were first merely posted to the Treasury and SBA websites and then, days later, made "official" by publication in the Federal Register; 48 individual questions addressed in an often-updated Frequently Asked Questions document; and additional guidance provided in the form of several stray procedural notices, forms and other miscellaneous documents. The head-scratching decision by Treasury to dole out piecemeal and sometimes inconsistent requirements has chilled the willingness of many small businesses to even apply during the second round of PPP funding and has caused many businesses to withdraw their applications or to cancel or return their approved loans for fear of doing something in error because they do not understand the constantly evolving program requirements. I challenge anyone in the Inspector General community to agree with Treasury that piecemeal, fragmentary guidance that amends and contradicts itself, changing the rules on a weekly, and sometimes more frequent, basis while millions of loans are already approved or in the process of approval, is an appropriate way to implement a program under which hundreds of billions of dollars of loans have already been approved and are intended to be forgiven by the federal government.

Given this mismanagement, mistakes and errors are going to be common place. It will be a daunting, if not impossible, task for the Inspector General community to assess the safety and soundness parameters under which lenders operate given the lack of any clear guidance that has existed for lenders and borrowers for the life of every loan on the books in the PPP.

As the program exists today, there is no one place that a borrower or a lender can go to find complete program guidance. This is daunting to even the most experienced SBA lenders, and impossible for those lenders that are new to SBA lending. In addition, despite frequent requests from the lender community, Treasury never saw fit to issue even the most basic program templates which could have greatly simplified lenders' understanding of program parameters. By way of example, when PPP lending first began, lenders immediately called on Treasury and SBA to provide templates for a PPP-specific loan note (the contract between the lender and the borrower) and a PPP-specific loan authorization (the contract between the lender and SBA) – the contracts that would typically outline the terms and conditions of the loan for the borrower, lender, and SBA. Those template documents were deemed essential by lenders because the terms and conditions under which PPP loans are to be made are different from those that apply both to regular 7(a) loans and to conventional small business loans. Despite this, however, the requested templates were never provided. Instead, on April 13, 10 days after the program was implemented, Treasury finally issued FAQ #21 which basically said that lenders should be comfortable using their own notes and authorizations. While this might have been acceptable if the lenders understood all of the terms and conditions to include in the contracts, lenders did not, and still do not have all of the necessary guidance. While making millions of loans over the past 8 weeks, lenders never knew what the forgiveness process would even look like, yet were being told by Treasury to draw up contracts which should provide all of the terms and conditions, including the terms surrounding forgiveness, to which borrowers needed to agree and for which lenders would be held accountable. From the very beginning, Treasury asked lenders to fly blind and, by extension, asked borrowers to execute documents agreement to terms and conditions which were largely unknown even to the lenders. The very borrowers Treasury was purporting to help were signing contracts on a loan that centered on forgiveness without knowing how to obtain forgiveness.

Borrowers have also experienced serious whiplash when it comes to understanding continually changing deadlines. The Act and amended PPP borrower application contain similar language requiring applicants to certify that the uncertainty of current economic conditions makes necessary the loan request to support the ongoing operations of the applicant. When borrowers were asked to repay loans that were not deemed "necessary" (more on this later in my statement), IFR #4 required borrower to repay the loan in full by May 7th, IFR #9 extended that deadline to May 14th, and IFR #13 further extended the deadline to May 18th. In at least one instance, an extension announcement was not published until the night before the deadline, causing these extensions to be more frustrating than helpful. By the time the extension was announced, borrowers would already have had to make the decision to return the funds by the next morning. The result was that many borrowers repaid their loans out of fear, and then frantically asked their lenders for a reinstatement of that loan when new FAQ #46, issued on the same eleventh hour basis, appeared to change the guidance on how loans would be reviewed. To date, there has not been any guidance provided as to whether cancelled or repaid loans can be reinstated as a result of this guidance whiplash.

The two IFR's on forgiveness and SBA's loan review process and borrower and lender responsibilities were finally issued on May 22nd, 56 days after the *CARES Act* was signed into law, and 26 days after the 30-day timeframe specified in the statute for the publication of such regulations. This meant that borrowers that were uncertain about their eligibility could not make informed decisions about how the forgiveness process would work which could have impacted whether they kept their loans or decided to repay them when faced with strict Treasury guidance on use of proceeds and threats of federal government reviews of loans.

Despite the fact that this forgiveness guidance finally has been issued, there is still confusion regarding the level of diligence that lenders will be required to perform and what certifications they will need to make to SBA in order for SBA to grant forgiveness. Lenders are also unaware what the standards for advance purchase will be, as well as its related procedures. Advance purchase was a tool created by the statute meant to provide lenders, especially small community banks, necessary liquidity so that they could aid even more borrowers. This intent never has been met because Treasury still has not issued guidance establishing the Advance Purchase processes. Lenders have made over 4.4 million loans, with no personal guarantees and no collateral. With program guidance still incomplete, lenders are taking an enormous gamble that the government will continue to stand behind the loans that the lenders are making in good faith.

Think about this for a moment – a program designed on the premise of forgiving loans had no process by which to forgive loans until last week and, to date, no lender has the complete guidance that it needs to process a PPP loan transaction from start to finish.

Perhaps even more concerning when it comes to the guidance as promulgated by Treasury is that many of the ever-changing program requirements continue to be issued in the form of FAQs issued as a plain white paper document (no letterhead of either Treasury or SBA) posted on Treasury's website. While the document states that "Borrowers and lenders may rely on the guidance provided in this document as SBA's interpretation of the *CARES Act* and of the Paycheck Protection Program Interim Final Rules ("PPP Interim Final Rules")", it also includes a footnote that reads "This document does not carry the force and effect of law independent of the statute and regulations on which it is based." Between that footnote and the fact that FAQs continue to be issued, it is difficult to believe that any protections and assurances offered to lenders through FAQs can be relied upon. Yet, FAQs have been the means through which the parameters for hundreds of billions of dollars in 100% government backed loans are issued. In over thirty years of experience, I have never seen a scenario in which the government has put small business borrowers and lenders on more perilous and uncertain ground than in this instance.

Adding New Restrictions Beyond Statute that Assumes All Small Businesses Fit the Same Mold:

The *CARES Act* identified four eligible uses of proceeds that could qualify for forgiveness – payroll costs, payment of interest on mortgage obligations, payments or rent obligations and covered utility payments. However, Treasury guidance added another mandatory requirement – which 75% of eligible expenses of the total amount of a PPP loan and also of the forgiveness amount had to be related to payroll costs. This was not the direction provided in the *CARES Act*, and in fact, the statutory list of use of proceeds and eligible use of funds for obtaining forgiveness implies there is a recognition that borrowers should be able to utilize funds for both payroll and maintaining some overhead costs necessary to keep the business in operation.

While it should be obvious that all small businesses do not operate with one, universally uniform business model and set of costs, I acknowledge that there is now debate even on Capitol Hill over whether there should be as much flexibility as the statute would imply for use of PPP funds. Lenders on the frontlines of working with small business borrowers have quickly realized that we must acknowledge that some borrowers, depending on geography and industry, may have a differing breakdown in needs in order to maintain payroll <u>and</u> maintain minimal operations to remain open. Simply put, lenders understand that the purpose of the program is to keep small businesses at status quo when it comes to their payroll in an effort to keep the American public employed. But what good is that if these small businesses make payroll for 8 weeks, but then are forced to shutter the business entirely because they could not afford to remain open afterwards? Does that help keep Americans employed in a meaningful way? If we could help even a portion of small businesses in this country remain standing by injecting some common-sense flexibility into the Treasury-created 75%-25% restriction, and therefore more likely to be able to make payroll at all after an 8 week period, then that should be considered immediately.

Treasury guidance alone instituted the 75%-25% breakdown of funds. Treasury could eliminate it or introduce any flexibility to that breakdown whenever it pleases. Continuing to ignore the call of millions of small businesses for this kind of common-sense approach is concerning if our goal is to help these borrowers survive unprecedented times.

Targeting Larger Loans, Credit Elsewhere Contradictions & Publicly Threatening Borrowers:

When the architects of the program indicated that loan proceeds could be used to provide an amount generally equal to 2.5 times the applicant's monthly payroll costs, and then set the maximum PPP loan size at $10 million – double the standard 7(a) maximum, it appeared to be a clear signal that the intent of the program was to also assist businesses with higher payrolls, and thus more employees in need of the support intended to be provided. For a company to qualify for a $10 million loan under the statute, that company would have to boast a $4 million payroll per month on average—that is an incredibly successful small business by any standard. Yet, Congress and the statute could not be clearer – these were the parameters in black and white, inviting small businesses of potentially larger market valuations than typically seen in SBA loan programs or perhaps businesses successful enough to be publicly traded companies. This interpretation was further supported by the fact that, for PPP loan purposes, the statute allowed more businesses to be considered small than under SBA's traditional size standards.

But perhaps nowhere else in statute is it clearer that the PPP was meant for a different kind of small business borrower than is otherwise allowed for the SBA 7(a) loan program than in the statute's credit elsewhere waiver. The credit elsewhere requirement is a statutory cornerstone of SBA's traditional programs, prohibiting SBA from guaranteeing a loan for a borrower that can obtain credit elsewhere. By specifically eliminating the credit elsewhere requirement for PPP borrowers, the drafters of the statute let lenders and borrowers alike know that those small businesses that could obtain access to capital through conventional means were still eligible for PPP loans.

The only statutory test that borrowers had to meet was that the loan applicant had to certify that "the uncertainty of the current economic conditions makes [the loan] necessary…to support the ongoing operations"—but nowhere in statute or guidance has there ever been a definition of the word "necessary." In fact, there is specifically no revenue threshold or any other prioritization included in the statute as a way to specifically direct PPP loans to those small businesses that could demonstrate a greater need based on some metric defining the business' success, and therefore its ability to access other means of capital. The architects of the program wanted to not only emphasize speed to market, but also recognize that virtually <u>all</u> small businesses in this country would be negatively impacted by the events of the COVID-19 pandemic—and more importantly, that all small businesses' *employees* that the program intends to support would be negatively impacted by the pandemic. To pick and choose among the nation's small businesses based on any means-based threshold would have been to ignore the wide-sweeping effects the pandemic was threatening to create and which, unfortunately, we all have seen actually occur.

But how this has played out on the stage of public opinion is a different story. Based on the cited statutory provisions, loan applicants and lenders believed, in good faith, that they qualified for PPP loans – right up to the point where they became subject to criticism in the media. In part, this media focus on publicly traded companies was only exacerbated by Treasury's refusal to release any information or data on the program's recipients, leaving reporters to dig into any public filings they could possibly find to fill the information vacuum. In response to this very public criticism over recognizable companies receiving PPP loans, Treasury quickly issued FAQ #31 which imposed a new self-test requiring loan applicants to take into account their "current business activity and their ability to access other sources of liquidity sufficient to support their ongoing operations …" – a test that sounds a lot like the credit elsewhere test that was specifically excluded from PPP loan eligibility considerations.

When discussing this issue, it is important to note that, while the headlines focus on the larger loans, as of May 23, less than 0.7% of PPP approved loans were for amounts greater than $2 million. Evidently, it does not make for a splashy enough headline to note that 3.5 million of the 4.4 million loans approved were for amounts of less than $100,000 with the average size for that group being only $28,369. That means that 79% of the loans reached businesses with an average monthly payroll of only $11,347, so the smallest of America's small businesses.

If Congress or the Administration wants to fine tune the public policy purpose of the program, then that needs to be clearly defined for any future extensions of PPP. But, in the meantime, borrowers should not be shamed or threatened for doing what the law invited them to do – obtain PPP loan funds to help them continue to meet their payrolls during these difficult times.

Treasury has only further led the charge toward dangerous territory – announcing automatic reviews on all loans over $2 million. However, even these threats have been contradictory. In FAQ #39 issued on April 29, Treasury states that it will conduct reviews on all loans "in excess of $2 million, in addition to other loans as appropriate." Two weeks later, FAQ #46 is released stating that any borrower that receives a loan less than $2 million will be deemed to have made the required certification concerning its need for the loan request in good faith. That FAQ justifies this threshold by stating: "… borrowers with loans below this threshold are generally less likely to have had access to adequate sources of liquidity in the current economic environment than borrowers that obtained larger loans". The clear implication of that FAQ was that loans less than $2 million would not be subject to scrutiny regarding borrower need. But in the past week, IFR #15 was issued stating that SBA can review any loan of any size at any time. All of this can only be described as imposing a credit elsewhere test on a borrower, in direct contradiction to Congressional intent. And in what appears to be the most blatant threat, Treasury announced, and then extended deadlines requiring borrowers to repay loan funds by May 18 in order to be deemed by Treasury to be in good standing regarding the attestation of need. This ticking clock to repay funds instilled panic and fear in thousands of borrowers who were suddenly left to decide whether they met conflicting and undefined guidelines and in lenders who were unable to provide any assurances or insight.

Should we really be sending the message that if a small business borrower gets a larger loan that is still within the size maximum that the law provides that the borrower will find itself automatically questioned and audited by the federal government? I don't know any small business that could possibly be comfortable applying for a PPP loan after the sequence of Treasury's contradictory guidance and threats unfolded in recent weeks. Is it any surprise after these threats that PPP loan volume actually would decrease from previously higher levels? Unknown numbers of loans were hastily returned in the wake of the Treasury-led threats, which were unfortunately only further echoed by Members of Congress who were busy spearheading their own frenzy of optics-control campaigns in the wake of the negative media reports that companies with recognizable names had dared to find themselves eligible for a PPP loan to help their hourly wage employees. In my opinion, the voracious appetite in the first round of PPP funding was successfully tamped down by Treasury leading the charge to instill fear in small business borrowers. In fact, PPP volume is now down $27 billion from its peak volume, and there is no doubt in my mind that government fear-mongering contributed not only to the downturn, but also to the now-chilled atmosphere around new PPP loan applications.

Perhaps the saddest outcome of this credit elsewhere confusion turned public shaming is to learn that it was not just large loans that were returned; rather, lenders reported on an anecdotal basis that borrowers were returning loans as low as $15,000. FAQ #46 was released well into the evening on the day before the safe harbor deadline set for borrowers to repay their loans with no penalty (a deadline that was subsequently extended), stated that borrowers with loans less than $2 million would be deemed to have made their "needs" certifications in good faith. But that clarification came too late for the many borrowers with smaller loans that already had repaid their loans out of fear that they would be in trouble with the government for accepting their loans. Issuance of the eleventh-hour guidance change meant that lenders started the next morning fielding heart-breaking pleas from borrowers who now wanted the loan that they had repaid just the night before reinstated. When the federal government starts leading the charge in threatening small business borrowers for following what the law invited them to do and creates situations in which struggling borrowers frantically return small dollar loans out of fear, we have a broken system.

The Concerning Shifts Around Lenders' Hold Harmless Protections:

The *CARES Act* made clear that it would be the borrower which would certify to an attestation of need at the time of application, provide various required documentation during both origination and the forgiveness application, and certify that all of the documentation presented was "true and correct." The statutory hold harmless language intended to protect lenders from having to independently verify that borrower-presented documentation certified as true and correct, is, in fact, true and correct, and to allow lenders to wholly rely on the veracity of the documentation a borrower provides. Even preliminary Treasury guidance assured lenders that they could rely upon borrower certifications. The borrower application provided by Treasury includes a section in which borrowers must certify that they have presented true and accurate material in good faith. The lender application provided by Treasury repeatedly frames all areas regarding eligibility, affiliation, and loan size with language that states that the "Applicant has certified," "the Applicant has represented to the Lender," or the "Applicant must provide documentation to Lender supporting how the loan amount was calculated…" From the outset, Treasury seemed to allow the lender to rely on borrower documentation and certifications. Based on these understandings and premises, lenders financed an unprecedented number of loans.

FAQ #1 issued on April 3 immediately began to slightly muddy the situation by stating that "Lenders are expected to perform a good faith review, in a reasonable time, of the borrower's calculations and supporting documents concerning average monthly payroll cost", without defining what "good faith review" meant. Yet, FAQ #1 never *requires* the lender to independently verify a borrower's reported information. FAQ #31 issued 20 days later on April 23 then seemed to assuage lender fears regarding verification during the application process by stating that "Lenders may rely on a borrower's certification regarding the necessity of the loan request". However, it was not until the forgiveness guidance in IFR #15 which was released on May 22 that Treasury reversed this foundational premise for lenders and stated that lenders would also bear the risk of improper or inaccurate certifications from borrowers. Lenders were suddenly told that they must perform a review of the borrower's calculations and supporting documents relating to amounts eligible for loan forgiveness. The guidance goes on to explain that minimal review of calculations based on a payroll report by a recognized third-party payroll processor is considered reasonable, but if a borrower does not have that documentation, more extensive review by the lender of calculations and data is deemed "appropriate." Forgiveness applications could now not only be denied if not appropriately documented, causing PPP loans to remain on lenders' balance sheets, but the government was now also announcing that they could claw back any fees lenders earned in making such loan (more on this further in this statement).

Of course, as outlined above, given that IFRs can be used in a court of law, and that FAQs bear the disclaimer that they cannot and do not carry the force and effect of law, lenders are left confused as to which premise they should rely upon. **The recent IFR changing the rules of engagement on lender liability did not exist when well over 4 million loans were made, and so it is unconscionable that it could be expected to apply to loans that had already been made**, but Treasury is silent to that point. FAQs have made clear that lenders are only required to follow the guidelines that were available to them at the time. But does that mean that new rules apply to a loan from the moment those new rules are made known even if the loan was made before the new rules were even created, or does it mean that the new rules apply only to new loans made after issuance of the new requirements?

The duty of the lender in documentation verifications and the ability for a lender to rely on such documentation is at the heart of understanding the lender's role and liability if the lender chooses to participate in the program. Thousands of lenders chose to participate based upon one premise, only to find out last week that that cannot be relied upon. Because of the constantly changing guidance, many lenders are reporting that they feel that they have been duped by Treasury – plain and simple. As financial institutions across the country scramble to understand their duties and exposure as has only been revealed to them in recent days, it is not hard to imagine that many are wondering if this was a program they ever would have participated in had they known the full scope of the program's parameters from the outset. Meanwhile, the reality remains that over 4 million loans are on the books of thousands of lenders who are being asked to play a vastly different role in reviewing those loans than they were told when approving them. This is an inappropriate way to treat business partners delivering the government's (hopefully) to-be-forgiven grants.

Onerous Forgiveness Process:

IFR #1 posted on the Treasury website on April 2 provides general information regarding loan forgiveness. But, borrowers and lenders had to wait until the evening of May 15 to see the forgiveness application form and its instructions, and until nearly 11 pm on May 22 to get the IFRs (#s14 & 15) that attempt to provide more specific guidance regarding the forgiveness process. And, as noted in those IFRs, lenders still are waiting for promised guidance regarding borrower appeals of adverse decisions related to forgiveness applications and general loan eligibility, and for guidance regarding the process by which lenders can apply for the Advance Purchase of their PPP loans as specifically provided for in the Act. Also missing from the guidance issued to date, are any details regarding the mechanics of lenders' submission of forgiveness applications to SBA. IFR #14 states only that the lender has 60 days from receipt of a complete forgiveness application to review that application and that it must then "issue a decision to SBA". No information is provided regarding where within SBA the decision must be directed or how the submission must be made. So, once again, lenders are left not knowing how a critically important process will work. If there were only a few thousand PPP loans, lenders might be able to muddle through; but with more than 4 million loans already approved, lenders need to know ALL of the details of the loan forgiveness process now so that they can begin to set up the internal processes that will be required to handle the volume of PPP loan forgiveness applications that they will be receiving beginning very soon.

And, despite how long it took Treasury to issue forgiveness guidance, what has been provided lacks clarity and imposes an onerous burden on borrowers, particularly those with the smallest loans. The borrower "Loan Forgiveness Application" is 11 pages long and includes 6 pages of instructions and 4 forms filling another 5 pages. The required "Paperwork Reduction Act" statement on the form indicates that the estimated time for a borrower to complete the form, including "gathering data needed", is 180 minutes. I am an accountant by training, and I find it impossible to believe that most borrowers will be able to complete the form in that short period of time. In fact, I find the form and its instructions so daunting for most small businesses that I believe that many of them will have to engage and pay a business professional to complete the form for them. Given that correct completion of the forgiveness application and the provision of the required back-up documentation will mean the difference between having a loan forgiven or being left with a balance that will have to be repaid, and that providing incorrect information could subject a borrower to significant criminal and/or civil penalties, who could blame them? And, here it is important to note that lender liability issues will prohibit lenders from providing the kind of assistance that many borrowers will need to correctly complete their forgiveness applications.

While I understand that it is necessary to obtain appropriate documentation to support the government's extension of forgiveness, I find it inconceivable that a borrower with a very small loan is being required to use the same 11 page application as a borrower that received a multi-million dollar loan. Surely Treasury could have designed a system – could still design one – that could provide a more streamlined forgiveness application process for borrowers with very small loans. But, based on the guidance provided to date, Treasury appears to have given little, if any, consideration to the inequity inherent in imposing the same requirements on a borrower that received a $10,000 loan that it is imposing on a borrower that received a $10 million loan. And, here I would point out that there is precedent even in the current situation for lightening the burden on borrowers with smaller credit needs. For example, applicants for loans under SBA's Economic Injury Disaster Loan (EIDL) program are receiving virtually automatic grants of up to $10,000. Surely similar consideration should be given to PPP borrowers.

Delays in SBA's Payments to Lender of Statutorily Authorized Processing Fees:

The *CARES Act* required the government to reimburse lenders for their costs for processing PPP loans based on a fee schedule provided in the legislation. The statute further required that the processing fees be paid to lenders "not later than 5 days after the disbursement of the covered loan". The first specific guidance regarding lender reporting of PPP loans and the payment of the authorized processing fees was provided to lenders by SBA Procedural Notice 5000-20028 issued on May 21, nearly 50 days after the first PPP loans were made. That notice only <u>begins</u> the process for lenders to receive reimbursement.

Included in the instructions provided in the cited notice and in IFR # 15 are concepts not envisioned by the legislation – the right for the government to determine that even though a lender processed and disbursed a loan in good faith, it may not be entitled to the statutorily authorized processing fee, and, even more troublesome, that, for a period of one year after loan disbursement, the government has the right to claw back a fee paid to a lender. Per the processing fee guidance, lenders will not be paid processing fees if: the loan is canceled prior to disbursement, the loan is canceled or voluntarily terminated and repaid after disbursement based on the borrower's self-determination that it did not meet the after-the-fact determination of loan need requirement, or if any of those events occurred based on SBA's finding that the borrower was ineligible for the loan. As it relates to SBA's after-the-fact loan reviews, the guidance authorizes SBA an entire year to claw back any fees paid to the lender if the Agency subsequently determines that the borrower was ineligible for the PPP loan. While it may make sense that a processing fee not be paid on a loan that is never disbursed, it is unacceptable to withhold, or to claw back, from a lender the fee that it is otherwise entitled to by virtue of having undertaken all of the activities, and incurring all of the related costs, involved in processing the loan.

Basic Eligibility Confusion:

The *CARES Act* states that all small business borrowers that meet the statutory size criteria, as well as any of the specific exemptions related to affiliation and 501(c)(3)s are eligible. IFR #1 states that the business eligibility will be based on SBA's standard 7(a) eligibility criteria, except where specifically changed in statute. However, in reality, the way in which eligibility has unfolded has been incredibly convoluted such that not one lender today knows the full picture of eligibility for a PPP loan. This is a problem that needs to be solved immediately.

While the specific data required on the application as to eligibility is not specified in the overarching IFR #1 that addresses the bulk of eligibility issues, NAGGL notes that the original borrower application form which was posted on the Treasury and SBA websites on approximately March 31 and subsequently replaced on both websites on approximately April 2 provided more specific information regarding borrower eligibility. The additional information that was removed from the application would have been helpful to lenders to determine that a loan was appropriate for approval.

For example, one of the first issues that arose as to eligibility involved citizenship. One of the questions that was omitted when the application forms were revised relates to whether the business is at least 51 percent owned by a U.S. Citizen or Lawful Permanent Resident. Absent this question it appears that even though both the statute and this IFR state that business eligibility will be based on SBA's standard eligibility criteria, except where specifically changed, the standard 7(a) requirements related to lawful immigrant status do not apply. If that were the intention of the program, the policy should have been specifically stated, so that lenders and borrowers would not have to guess what requirements apply.

In addition, there have been a number of moving targets related to eligibility that appear to showcase Treasury's ever-evolving perspective in real time as to who is eligible and who is not. A case in point is Treasury's treatment of casinos. As previously noted, guidance in IFR #1 issued on April 3 stipulated that, unless specifically changed by PPP guidance, businesses were only eligible for PPP loans if they were eligible for regular 7(a) loans. Under this guidance, casinos would have been deemed to be ineligible for PPP. This interpretation was changed by IFR #3 issued on April 14 which said that a business that was otherwise eligible could qualify for a PPP loan if its legal gaming revenue did not exceed specified dollar and percentage thresholds. This created a carve-out for smaller casinos. Only 10 days later, on April 24, IFR #4 included a new provision stating that a business is not rendered ineligible due to its receipt of legal gaming revenues, thus making casinos of all sizes eligible. I do not lay out these facts to imply a position from NAGGL on allowing or not allowing casinos; rather, this pattern is indicative of the constant guessing game that Treasury has created for lenders and borrowers when it comes to PPP eligibility, a premise many would consider the most basic parameter of a loan program.

Similarly, the Act clearly states that only non-profits that are classified by the IRS as 501(c)(3)s are eligible for PPP loans. But, as announced in IFR #11, Treasury decided on its own that for purposes of PPP, 501(c)(12)s are deemed as for-profit entities making them eligible for PPP loans. How does a 501(c)(12) entity get deemed eligible, while other non-profits are not? How can a non-profit be designated as a for-profit entity by Treasury? Let me be clear on this point – in my opinion, all non-profits should be included in PPP eligibility. But to start making one-off announcements about special carve-outs has laid the groundwork for a program riddled with question marks instead of clarity.

To further complicate matters, a Michigan court decision in early May (DV Diamond Club of Flint LLC et al v U.S. Small Business Administration et al, U.S. District Court, Eastern District of Michigan, No. 20-10899) ruled that strip clubs cannot be blocked from obtaining PPP loans, despite SBA eligibility criteria referenced in the Act, regulations as amended for PPP and other guidance deeming it ineligible per standard 7(a) eligibility parameters. The U.S. District judge in Michigan issued a preliminary injunction which barred the SBA from excluding not only the types of businesses represented in the case, but also other businesses that SBA would typically exclude from its loan programs such as banks and political lobbying firms. In deciding he case, the Judge wrote: "Simply put, Congress did not pick winners and losers in the PPP." SBA has yet to apply applicable written guidance regarding the eligibility of businesses operating in industries that were a party to the lawsuit, although I understand that, on an individual basis, SBA has told the specific businesses that were parties to the lawsuit they were eligible for PPP loans. How this case and other lawsuits like it will play out is yet to be determined, but it showcases the vast interpretations over a component of the program that should be very clear for stakeholders. It also points out how the guidance vacuum may effect lenders and small business loan applicants because I would speculate that some lenders reading the court's decision may have interpreted it as opening the door to all businesses operating in the industries named in the suit, while other lenders would not have seen the decision in the same way.

I would also note that the final amended application form for borrowers deleted the requirement that each of the owners of the applicant concern execute the form. Therefore, it appears that the penalties for false statements may not be able to be imposed for assertions related to eligibility made on behalf of individuals that did not sign the application.

To avoid "gotcha" moments with small business borrowers, Treasury needs to clearly provide all of the eligibility criteria in one document and provide additional guidance on the concerns that continue to go unaddressed, such as the issue regarding citizenship and the Michigan court decision applicability to borrowers outside of that particular lawsuit. On April 13, as part of a detailed list of questions and recommendations that it sent to SBA, NAGGL requested information regarding the PPP eligibility of businesses operating in a variety of industries. To date, we have received no direct response to that request, although a few of our questions and comments have been addressed indirectly by subsequently issued program guidance. But except for the few specific exceptions to business industry eligibility set forth in the IFRs, no guidance on the issue of general business industry eligibility has been provided.

This issue becomes even more important because IFR #15 issued on May 22 indicates that SBA will review PPP loans for three purposes, one of which is borrower eligibility. The IFR says that eligibility will be tested against the Act; SBA regulations, as modified by the various IFRs; and other guidance. But, without a clear understanding of which eligibility criteria actually apply to PPP loans, both lenders and borrowers remain at a huge disadvantage. We know that this has led to disparity in the way that loan applications have been treated on a lender-by-lender basis, but we also fear how this lack of clarity may adversely impact borrowers subjected to an SBA lender review.

Opening the Door for Significant Confusion about Payments to Agents:

The *CARES Act* authorizes the Administrator to establish fees limits for agents that assist borrowers to prepare their PPP applications. The hastily drafted guidance in IFR #1 issued April 2, provides a fee schedule established by Treasury/SBA as required by the Act, but then adds new requirements making lenders responsible for paying the fees being charged by agents, and prohibiting the payment of these fees directly from the borrowers or from the loan proceeds. This provision is concerning because in most cases, the lender did not contract with the agent and, in many more cases, would not even have been aware of services being procured by the borrower.

Unless the lender was a party to the transaction, it has no way to know what, if any, services were performed, the qualifications of the agent to perform those services, or any other reasonable parameters for determining that a fee is appropriate. In fact, NAGGL understands that, in some cases, lenders specifically advised agents and/or borrowers that it would not pay fees to agents in connection with PPP loans. However, lenders have reported that agents are asking them to pay for services that they had no knowledge of being provided, or no contractual agreement to provide compensation for. IFR guidance should be swiftly amended to indicate that lenders will be responsible for paying fees for agent services only when they contracted to have the work performed. Absent such contract, the responsibility for payment of the fees, limited as provided by IFR #1, must be the responsibility of the borrowers that actually contracted for the services. Without this change, there will continue to be demands by agents unknown to the lenders to receive payments for services that the lenders knew nothing about. The result will be a wave of unsupported agent claims and frivolous litigation, a situation which already is being played out in the courts.

Terms Set In a Way That Are Difficult for the Borrower:

The *CARES Ac*t authorized an interest rate of no more than 4% and a maximum maturity of ten years after the date on which a borrower applies for forgiveness. The implementing guidance reduced the interest rate to 1% and set the loan maturity at two years. While setting these values was within the statutory scope, it does not appear that consideration was given to the fact that if the entire balance was not forgiven, it would be a significant burden on the borrower to make loan payments on the loan within 18 months after the required 6 month deferral period. To date, no guidance has been provided regarding SBA's expectations related to servicing loans with balances remaining after the forgiveness is applied. This guidance is critically needed because it is highly likely that a significant number of PPP loans will have remaining balances, and depending on the original loan amount, and the amount of any forgiveness received, it would be unreasonable to expect repayment of the loan in the short period remaining of the original 2-year maturity. In a recent discussion, one lender called this situation a "crushing blow" for small businesses that have already been hard hit by the Coronavirus emergency. I would call it a potential death blow. The government must provide guidance to address the loan maturity issue by, for example, authorizing lenders to extend the loan maturity up to the 10-year maximum provided by the Act. In addition, given the special nature of PPP loans, e.g., no collateral, no personal guaranties, maximum interest rate limited to 1%, 6-month limit on payment deferments, etc., SBA needs to provide additional guidance regarding how these loans will be serviced, and, if the borrower business ultimately fails, how they will be liquidated. Once again, lenders need this guidance as soon as possible so that they can begin planning for their handling of the huge number of loans that may have remain after forgivenesses are applied.

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Throughout this document, I have attempted to paint a picture of the challenging circumstances under which both small business borrowers and lenders have been operating and continue to operate. I would like to take a moment to further describe the situation in which lenders now find themselves.

From the outset, lenders have been forced to take significant risks if they chose to participate in PPP lending by having to guess what after-the-fact guidance might be issued to change the parameters under which they thought they were making PPP loans. Congress and the Administration counted on this country's lenders to fully participate in the PPP, and lenders knew how important their participation was, so they were forced to balance their financial risk against their political and reputational risks. When thousands of lenders answered the call to duty, they entered into the program expecting one thing, only to find out the rules of the road look very different with every passing week.
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Lenders have spent the past two months conducting themselves in a way that they believed to be right at the time, all while navigating landmines of changing rules and misguided optics. They have had to hope that any action they take in the moment will not later garner the cancelation of a loan because of guidance that continues to redefine what is okay and what is not even after millions of loans have already been made. Lenders hope they will not invite an audit, a subpoena to testify on Capitol Hill, or an embarrassing headline simply because they trusted one set of rules at one time that no longer seem to apply the next day. Lenders are told how they were expected to behave while already in the process of making the loan or even after the loan was approved. FAQs and IFRs are still being released after millions of loans now sit on lenders' books. Threats of subpoenas have been made to investigate loans that were originally encouraged by Congress, only to find out that Treasury and Congress do not seem to like loans of a certain size after all—loans they invited and permitted into the program. To make matters more difficult, much of the hindsight criticism is not based on written law or guidance in effect at the time the loan was approved; rather criticism of the program has been based on media attention and whether an issue has garnered public anger. This public opinion was only inflamed by high profile officials promising that any small business could walk into any bank and walk out with a loan the very first day PPP loans were made available, creating public frenzy, panic, and outrage when lenders could not live up to a promise that never could have been met given prudent lending standards and regulator requirements.

This landscape carries severe repercussions, concerns, and potential liabilities for the lenders, putting the country's financial institutions at risk for having millions of loans, without any personal guaranties or collateral, on their balance sheets should anything go wrong. I would be remiss if I failed to paint a picture of the precarious position into which the implementation of this program has placed lenders.

PART TWO: Industry Recommendations to Improve Administration of the Paycheck Protection Program

I do not lay out these concerns detailing PPP mismanagement on the part of Treasury just to add to a volume of criticism. Rather, I hope that in laying out the facts, it becomes more clear that this mismanagement has caused real and specific hardships to the small business borrowers and lenders and also that there are solutions available to Treasury/SBA and to the Congress to fix these issues.

First, NAGGL reiterates the plea that it has been making since the program was rolled out – that the government provide complete program guidance in a single guidance document as soon as possible. Contrary to Congress's clear intent, the willingness of Treasury to create requirements not contained in the *CARES Act* have been harmful to lenders and small businesses and are in violation of the Administrative Procedures Act. Treasury's failure to provide one all-encompassing set of rules has left lenders, SBA, and borrowers with jumbled, constantly changing, inconsistent, and chilling guidance. This gross mismanagement deprives SBA, the Inspector General community, this Committee, and the Congress of the ability to oversee the program in a responsible manner. The 15 IFRs and the 48 FAQs issued as of May 27 with more still to come, and the program forms, notices and other guidance documents do not square with the legislation's intent to help small businesses survive the pandemic and safeguard their employees' paychecks. Significantly, this mismanagement is at odds with the SBA's OIG's desire for a system which permits transparency and mitigates the risk of fraud, waste, and abuse. We do not believe that it is appropriate for either borrowers, or the lenders working with them, to be continually buffeted by shifting requirements as they desperately try to understand whether they qualify for the program, how the program will operate and what review they will be subject to as the program proceeds. What would have been appropriate would have been a single program guide like that which SBA has issued for other special programs. Therefore, in order to protect PPP integrity, we recommend that the Committee assist SBA, lenders, and small business borrowers by recommending that Treasury adopt one set of clear, all-encompassing guidelines, from origination through the guaranty purchase process, with reasonable time requirements. While it is too late to fix the process entirely, we urge the Administration to provide all of the guidance, including all eligibility guidance, in one cohesive document and to update that document going forward if there are any additional parameters to include.

Second, adapting PPP to the real-life circumstances under which millions of small businesses find themselves will be essential to both the short-term and long-term success of PPP. Some of the needed flexibilities can only be provided by Congress amending *CARES Act*, such as extending the 8 week period for a borrower to expend PPP funds to a longer period of time to allow for the countless borrowers who have prolifically expressed that they cannot use the money as intended within the 8 week time frame. This is a common-sense flexibility that NAGGL has discussed with Congress at length, and we hope to see the underlying statute amended in future legislation to address this concern. However, there are other components of Treasury-issued guidance that could provide enormous relief and flexibility to borrowers that are entirely within the government's ability to change. For example, the Treasury could easily issue guidance at any point and by its own volition to provide flexibility to the guidance stipulating 75% of the proceeds must be used on payroll expenses and only 25% of the proceeds may be used on non-payroll expenses. If this issue is not addressed, Treasury is stipulating that all small businesses across the country regardless of geography, business industry and operational model, or size are all universally identical in their expenditures and we know that this is not true. Without addressing the need for flexibility, small business borrowers that greatly need the support that a PPP loan can provide and who want to use that loan to support payroll, but simply cannot meet the 75%-25% breakdown of proceeds, will continue to stay on the sidelines. And those that did receive PPP loans and have not been able to abide by the 75%-25% breakdown will soon find themselves carrying debt that it does not appear the underlying statute intended them to shoulder. Most concerning is the repeated Treasury position that this is a flexibility that is not within its power to consider when it was only put in place by Treasury itself. NAGGL recommends that the Committee consider reminding Treasury of its role in administrative guidance and the regulatory process when implementing restrictions that go beyond statute.

Small business borrowers also need a simplified forgiveness process to reduce the burden that comes with having to complete an 11-page forgiveness application that fails to give consideration to the inequity inherent in imposing the same requirements on a borrower of any size. The current application would very likely take far more than the estimated three-hour timeframe to complete unless a professional is hired to assist with its completion. NAGGL would recommend the consideration of a de minimis threshold below which there would be a streamlined forgiveness process. This would alleviate burdensome paperwork for borrowers and onerous verification requirements for lenders. Simplifying the forgiveness process should also help to avoid stifling the appetite for prospective borrowers to participate in the program going forward.

In addition, NAGGL urges the Committee to recommend that Treasury clarify for lenders a number of concerning provisions in order to instill confidence back into the working relationship between the government and its PPP lending partners. This should include stipulating clearly and unequivocally in regulation that lenders may wholly rely upon any and all documentation and certifications to be true and correct that an applicant or recipient provides to the lender to satisfy any requirement of statute, regulation, or any program requirement and which that applicant certifies to be true and correct. This basic premise cannot be muddied with FAQs and IFRs that twist and turn when it is the foundational understanding for every lending partner of the role and responsibilities they carry. If the government wants to work with lenders, a respectful working relationship needs to be established and then preserved.

We also request that the Committee recommend to Treasury/SBA that they reconsider the onerous restrictions that it put on the payment of processing fees due to lenders, especially the provisions that relate to the one year period that they have allowed during which fees already paid can be clawed back.

Finally, and most importantly, NAGGL asks that the Committee issue decisive recommendations to protect small business borrowers against future threats and fear tactics relating to their receiving larger loans, being publicly traded, or any other premise that is either encouraged or invited by the statute. Treasury should immediately clarify FAQ #s 31, 39, 43, 46, and 47 to ensure that small business borrowers do not feel as if they are doing something wrong by asking for the size of the loan that they require and that is clearly authorized under the statutory formula. Of course, if there is any fraud at any time in the program, NAGGL applauds the government for swiftly addressing that abuse. But, if we are aiming to protect the vast majority of small business borrowers that are acting in good faith when seeking the government's help during these extraordinary times, we must do just that, help, not score or punish, them.

And while this may be outside the purview of the Committee, it would be to ignore a critical issue for borrowers if I did not remind you of the old adage we all heard growing up – **words matter**. The rhetoric employed by the officials in both the Administration and in the Congress matter a great deal when it comes to encouraging or discouraging small businesses from seeking assistance. I think we all can agree that we should be encouraging borrowers to trust that the laws Congress passes mean what they say. Unfortunately, the Treasury guidance issued in the last two months suggests otherwise.

These recommendations are not by any means comprehensive but are four top-line issues that would go a long way to improve PPP for both borrowers and lenders. Other issues that must also be addressed in the short-term are the creation of advance purchase guidelines, eligibility clarification, and guidance regarding servicing PPP loans post-forgiveness. If these, and other issues are not addressed soon, it will quickly become too late for the program to benefit from these much-needed repairs.

PART THREE: Section 1112—A Powerful Tool that Must Be Implemented Appropriately

I would be remiss if I did not also briefly discuss Section 1112 of the *CARES Act.* That section authorizes SBA to make six months of principal and interest payments on existing and new 7(a), 504, and microloans and, in some ways is both the most significant and the most simple injection of economic relief provided to small business borrowers that Congress has passed since the outbreak of the COVID-19 pandemic. Unlike PPP, authority for this initiative rests solely with SBA which means that the guidance has not been subject to the process of having Treasury and SBA negotiate program parameters acceptable to both parties. And, while Section 1112 has not received much public attention, SBA's implementation of the payment structure has been relatively straightforward.

There still are some issues that need to be resolved regarding loan payments made on individual loans, including how payments will be provided on loans that are not now, and still will not be fully disbursed by September 27. But, general feedback from lenders indicates that, so far, this initiative seems to be working as intended. And, best of all, the relief that this section of the statute was intended to provide – relieving existing and new small business borrowers of the burden of making loan payments during these unprecedented times – appears to be working in a meaningful way.

Concluding Remarks

In some ways, PPP as implemented by Treasury, has set up lenders to fail. But instead of failing, lenders have risen to the challenge. Thanks to their efforts, millions of small businesses all over the country are receiving the help so critical to their survival during this crisis. Have there been discouraging headlines? Yes. But they have been more than balanced out by the countless messages of hope and gratitude that borrowers have sent to their lenders. These messages describe how PPP loans saved their businesses in these dark and difficult times. That is why PPP matters and why lenders continue to strongly support the program.

As I mentioned above, the Committee has a substantial role to play in assuring the success of PPP. It is often the reviews and recommendations of the Inspector General community that spur on Congress and the Executive Branch agencies to respond to concerns that might otherwise continue unchecked. I look forward to seeing the Committee exercise that critical role – the country's financial institutions and small business borrowers are depending on it. I would welcome continuing this dialogue if I can be of further help.

Appendices:

Appendix A: Dates of Publication of Interim Final Rules as of June 1, 2020

Appendix B: NAGGL Comment Letter to IFR #1, Submitted May 15, 2020

Appendix C: NAGGL Submitted Questions to SBA on April 13, 2020

Appendix A: Dates of Publication of Interim Final Rules as of June 1, 2020

NAGGL

PAYCHECK PROTECTION PROGRAM – INTERIM FINAL RULES

	DESCRIPTION	ISSUED	FED REGISTER
1	***Business Loan Program Temporary Changes: Paycheck Protection Program***	04/02/20	04/15/20
2	***Applicable Affiliation Rules***	04/02/20	04/15/20
3	***Additional Eligibility Criteria and Requirements for Certain Pledges of Loans***	04/14/20	04/20/20
4	***Requirements for Promissory Notes, Authorizations, Affiliation and Eligibility***	04/24/20	04/28/20
5	***Additional Criterion for Seasonal Employers***	04/27/20	04/30/20
6	***Disbursements***	04/28/20	05/04/20
7	***Corporate Groups and Non-Bank and Non-Insured Depository Institution Lenders***	04/30/20	05/04/20
8	***Nondiscrimination and Additional Eligibility Criteria***	05/05/20	05/08/20
9	***Extension of Limited Safe Harbor with Respect to Certification Concerning Need for PPP Loan Request***	05/10/20	05/19/20
10	***Business Loan Program Temporary Changes; Paycheck Protection Program – Loan Increases***	05/13/20	05/19/20
11	***Eligibility of Certain Electric Cooperatives***	05/14/20	05/19/20
12	***Paycheck Protection Program – Treatment of Entities with Foreign Affiliates***	05/18/20	05/21/20
13	***Extension of Limited Safe Harbor with Respect to Certification Concerning Need for PPP Loan and Lender Reporting***	05/20/20	05/26/20
14	***Interim Final Rule on Forgiveness***	05/22/20	06/01/20
15	***Interim Final Rule on Loan Review Procedures and Related Borrower Responsibilities***	05/22/20	06/01/20

Appendix B: NAGGL Comment Letter to IFR #1, Submitted May 15, 2020

NATIONAL ASSOCIATION
OF GOVERNMENT GUARANTEED LENDERS

May 15, 2020

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

Re: Interim Final Rule:
1 – *Business Loan Program Temporary Changes: Paycheck Protection Program*
RIN: 3245-AH34 / Docket No. SBA-2020-0015

Dear Administrator Carranza:

The National Association of Government Guaranteed Lenders (NAGGL) appreciates the opportunity to provide comments relating to the above-referenced Interim Final Rule (IFR) which was the first formal guidance to implement the Paycheck Protection Program (PPP) authorized by the *CARES Act*, P.L. 116-136. NAGGL also appreciates the tremendous effort that the Small Business Administration (SBA) and the Department of the Treasury (Treasury) (together, *the Administration*) have expended to implement this critically important program.

In providing these comments, NAGGL notes that, as of the date of this letter, the Administration has posted to the separate SBA and Treasury websites 11 documents identified as Interim Final Rules, with 8 of those documents having been formally published in the Federal Register as IFRs and 3 still pending such publication. These IFRs were posted on a sporadic basis beginning on April 2, 2020 with the most recent IFR posted on May 15, 2020, and virtually all the documents have different dates on which their comment periods will close. In addition, the Administration has posted to the Treasury website a Frequently Asked Questions (FAQ) document with the first question in the document posted on April 3, 2020 and the most recent questions # 46 & 47, added on May 13, 2020.

The issuance of guidance in this piecemeal manner is unprecedented, at least as it relates to SBA's implementation of other legislatively-created programs. Ordinarily, lenders would have expected to see virtually complete program guidance, including loan authorization and loan note templates, prior to implementation of a loan program as complex as PPP. But, to date, no lender has the complete guidance that it needs to process a PPP loan transaction from start to finish. While this has made it very difficult for lenders and borrowers to fully understand PPP, it has not deterred lenders from fully supporting the program as evidenced by the fact that, to date, lenders have received SBA approval for approximately 4.4 million PPP loans valued at more than $537 billion.

But the problems created by this approach have made lenders' participation in the program and borrowers' access to critically needed loan funds much more difficult than necessary and have caused serious concerns about how program performance will be evaluated on a long-term basis. This situation was anticipated by SBA's Office of the Inspector General when, on the very day that PPP loans first were made available, it issued a sobering white paper noting how essential it is that the government provide clear guidance and training before loan funds are disbursed under programs like PPP. It appears that the implementers of this program failed to heed that warning.

The fact that program guidance has been issued on a rolling basis also makes it very difficult for interested parties to offer comments on the IFRs on an individual basis since many of the provisions in the individual documents have been superseded or supplemented by subsequent guidance provided in the form of either additional IFRs or FAQ. Despite these limitations, however, we are providing simultaneous comments on the first two IFRs.

But our most urgent comment is an overarching one, relating to all the IFRs and other program guidance that has been issued to date by the Administration. On behalf of NAGGL's members and the millions of small businesses that they have been attempting to assist with PPP loans, NAGGL urges the Administration to find a better, more cohesive way to communicate the PPP guidance that is so urgently needed – by both lenders and borrowers.

We do not believe that it is appropriate for either borrowers, or the lenders working with them, to be continually buffeted by shifting requirements as they desperately try to understand whether they qualify for the program, how the program will operate and what review they will be subject to as the program proceeds. What would have been appropriate would have been a single program guide like that which SBA has issued for other special programs. While it is too late for that now as it relates to the loan application processes, we urge the Administration to provide all of the additional pending guidance on the related topics of loan reporting, loan cancelations, loan forgiveness, advance purchase, etc., in one cohesive document. To do this, it may be necessary for the Administration to temporarily suspend activities related to these issues, and to extend previously established, and in some cases already extended, deadlines. [Loan processing could and should continue through this period.] But that would be a small price to pay if the result would be that lenders and borrowers could have a full picture of the program requirements allowing them to make better informed decisions regarding their actions. Obviously, even with a more unified approach to providing program guidance, occasional updates might be necessary, but those updates should be limited to those required to clarify the broader policy guidance.

We also should note that one area not yet addressed in Administration guidance is the post-forgiveness servicing requirements for PPP loans. Because we would not want to further extend any pause that might be necessary while the Administration compiles the other guidance that we are requesting, we believe that this issue can be addressed separately. But, again, we would request that it be addressed in a single policy guidance document.

NAGGL and the lender community that we represent continue to strongly support PPP. We fully understand that the program offers an essential lifeline to small businesses that have been devastated by the economic conditions caused by the COVID-19 emergency and we pledge our continuing support for this essential undertaking. We remain concerned, however, by the lack of overall guidance for the program, and we respectfully request that you consider our recommendation regarding how this critical issue can be addressed.

The attached analysis provides NAGGL's additional comments and recommendations specifically related to IFR # 1. A second similar letter is being submitted simultaneously with NAGGL's comments on IFR # 2

Again, thank you for providing this opportunity for us to provide comments on the Administration's implementation of PPP.   Thank you, too, for your continuing support of America's small businesses during these unprecedented times.

Sincerely,

Tony Wilkinson
President & Chief Executive Officer

cc: William Manger, Chief of Staff and Associate Administrator, Office of Capital Access

Interim Final Rules # 1 – *Paycheck Protection Program*
RIN: 3245-AH34 / Docket No. SBA-2020-0015

NAGGL Paragraph-by-Paragraph Comments and Recommendations

Normally these comments would be offered on a section-by-section basis conforming to the section of the regulations being amended. That methodology is not possible for this IFR because it has not been written in a way that amends the existing regulations. Therefore, these comments are being provided on a paragraph-by-paragraph basis referring to the paragraphs in the IFR. They include only those provisions where we have questions, comments or concerns.

Paragraph 2 – *What do borrowers need to know and do?*

a.: Specifies that a borrower is eligible for a PPP loan if it has "500 or fewer employees whose principal place of residence is in the United States …"

NAGGL recommends that this provision be amended to clarify that, for purposes of determining size, SBA considers all of the employees of the company, but for purposes of determining loan and forgiveness amounts, payroll amounts include only those employees whose principal places of residence are in the U.S. [This issue is addressed in FAQ # 44 posted on May 5.]

c.: States that business eligibility is the same for PPP as it is for standard 7(a) loans except that nonprofit organizations may be eligible as authorized by the *CARES Act*

NAGGL recommends that this provision be revised to reflect all of the subsequent changes that have been made to the standard eligibility requirements by subsequent IFRs and FAQ. We also believe that it would be helpful if the regulation, or other program guidance, provided, in one document, specific information regarding which of the eligibility criteria continue to apply to PPP loans. On April 13, NAGGL requested this information as part of a detailed list of questions and recommendations that it sent to SBA. To date, we have received no direct response to that request although a few of our questions and comments have been addressed indirectly by subsequently issued program guidance.

e.: As part of the instructions for calculating the loan amount for which a borrower is eligible, the IFR states that the borrower should add "the outstanding amount of an Economic Injury Disaster Loan (EIDL) made between January 31, 2020 and April 3, 2020, less the amount of any "advance" under the EIDL COVID-19 loan (because it does not have to be repaid)".

NAGGL notes that there continues to be confusion by both borrowers and lenders regarding the requirements that apply to PPP borrowers that received EIDLs both before and after April 3. This confusion extends to how the loan amount must be calculated, how PPP loan proceeds must be used to payoff existing EIDLs, and how forgiveness will be calculated when the borrower has an existing EIDL. NAGGL, therefore, requests that the Administration provide additional guidance on these points.

i.: Sets the interest rate for PPP loans at 1 percent

NAGGL notes that Section 1102 of the *CARES Act* authorized an interest rate of up to 4 percent, and while we believe that it is too late for this rate to be changed, we note our disagreement with the Administration's conclusion that the 1 percent rate is appropriate on a long-term basis. We are particularly concerned that this rate is insufficient to support the lender actions that could be required for PPP loans that have balances remaining after the application of any forgiveness.

In addition, NAGGL finds the fact that the Administration failed to specify how the interest rate is to be calculated to be a major concern. We believe that the Congress would have expected that interest would be charged on PPP loans in the same way that it is charged on standard 7(a) loans, that is, that only simple interest would be charged, as opposed to compounded interest. This interest rate provision in the IFR is further interpreted by FAQ # 21 (April 13) which permits lenders to "include in their promissory notes for PPP loans any terms and conditions, including relating to amortization and disclosure, that are not inconsistent with Sections 1102 and 1106 of the *CARES Act*, the PPP Interim Final Rules and guidance, and SBA Form 2484". This means that, depending on how a lender amortizes its conventional loans, a PPP borrower could wind up paying an annual percentage rate (APR) far in excess of the 1 percent rate specified in the IFR. To the extent that it is possible to amend program requirements at this date, NAGGL strongly recommends that lenders be required to calculate interest on a simple, rather than a compound, interest rate basis.

j.: Specifies that the maturity date for a PPP loan is two years

As noted in the IFR, the statute authorized a "maximum maturity of ten years from the date on which the borrower applies for loan forgiveness." For several reasons, NAGGL disagrees with the Administration's conclusion that a two year maturity is appropriate. First, now that we have more information regarding the impact that the pandemic is having on the economy, particularly the small business sector, there is a significant probability that the economic disruption caused by the coronavirus will not have fully abated "well before the two year maturity". In addition, because we still do not have clear guidance regarding the PPP loan forgiveness process, we have no way of estimating how many loans will have outstanding balances – or the size of those balances – after application of any forgiveness amounts. Therefore, especially for larger PPP loans, it seems unreasonable to expect that borrowers will have the ability to fully repay the full outstanding balances in the 18-months remaining after the authorized 6-month deferment periods. We therefore recommend that SBA amend this IFR to address how the unpaid loan balances are to be handled and to specifically authorize lenders to reamortize the loans and extend the loan maturities as deemed appropriate on a case-by-case basis taking into consideration the outstanding balance and the adequacy of the borrower's cash flow to meet its ongoing operations including repayment of the PPP loan. Some borrowers may need, at a minimum, the maximum 10-year maturity authorized by the statute.

k.: Specifies that a borrower can apply for only one PPP loan

The Administration's "safe harbor" provisions, and the changing guidance on that provision have caused many PPP borrowers to repay loans that they now believe they were eligible for. NAGGL recently requested clarification from SBA regarding how those borrowers may be able to have those loans reinstated but has not yet received the requested information. Absent that guidance, we would note that one way to handle this issue would be for the Administration to immediately issue new regulatory guidance that would allow a PPP borrower to apply for and receive a second PPP loan if the original loan had been repaid based on the borrower's uncertainty regarding the Administration's changed safe harbor guidance.

n.: States that borrowers will receive an automatic six-month deferment on all PPP loans and that during this period, interest will accrue on the loan

As indicated in the IFR, the *CARES Act* authorized deferments of up to one year. NAGGL recommends that the IFR be amended to specifically authorize lenders to provide an additional deferment beyond the initial six-month deferment if the borrower's financial and operational condition makes such deferment necessary and appropriate. With regard to the interest accrual stated in this provision, NAGGL again notes its serious concerns regarding how some lenders may be computing interest and the detrimental impact that this will have on borrowers.

o.: Provides information regarding forgiveness of PPP loans, including imposing a condition not specified in the statute that "not more than 25 percent of the loan forgiveness amount may be attributable to non-payroll costs"

Section 1106 of the *CARES Act* mandates that regulatory and other guidance regarding the implementation of the forgiveness provision be issued within 30 days of enactment of the statute, so by April 27. As of May 15 that guidance still has not been issued leaving lenders and borrowers uncertain about how the forgiveness process will work.

In addition, NAGGL is concerned because, to date, no practical guidance has been issued to implement the statutory mandate that SBA provide a mechanism for the "advance purchase" of PPP loans. It appears that the statutory provision was intended to provide liquidity to PPP lenders, and given the time that has elapsed, that purpose is not being met.

As indicated in our cover letter, NAGGL strongly recommends that the Administration issue a single document that will provide guidance on loan forgiveness, loan reporting, loan cancelations, advance purchases, etc., and that that guidance be issued as quickly as possible so that borrowers and lenders will be able to make more informed decisions regarding their PPP loans.

NAGGL also has concerns about the 75/25 payroll vs. other authorized expenses provision imposed by the Administration without specific statutory authority. We believe that businesses operating in some industries and in some geographical areas will not be appropriately supported by PPP loans made subject to this requirement. Therefore, we strongly recommend that the Administration amend the IFR to allow for exceptions to the 75/25 requirement based on the circumstances of individual PPP borrowers.

q.: Requires a PPP applicant to submit SBA Form 2483 (Paycheck Protection Program Application Form) and payroll documentation, as described elsewhere in the IFR; and requires that lenders submit SBA Form 2484 (Paycheck Protection Program Lender's Application for 7(a) Guaranty)

While the specific data required on the application is not specified in the IFR, NAGGL notes that the original borrower application form which was posted on the Treasury and SBA websites on approximately March 31 and subsequently replaced on both websites on approximately April 2 provided more specific information regarding borrower eligibility which would have been helpful to lenders to determine that a loan was appropriate for approval. For example, one of the questions that was omitted when the form was revised relates to whether the business is at least 51 percent owned by a U.S. Citizen or Lawful Permanent Resident (LPR). Absent this question it appears that even though both the statute and this IFR state that business eligibility will be based on SBA's standard eligibility criteria, except where specifically changed, requirements related to lawful immigrant status do not apply. If that was the intention of the Administration, that policy should have been specifically stated, so that lenders and borrowers would not have to guess what requirements apply. We also note that the current amended application form deleted the requirement that each of the owners of the applicant concern execute the form. Therefore, it appears that the penalties for false statements may not be able to be imposed for assertions related to eligibility made on behalf of individuals that did not sign the application.

With regard to the revised SBA Form 2484 (Paycheck Protection Program Lender's Application for 7(a) Loan Guaranty), we note that the form does not address the standard lender conflict of interest limitations imposed for 7(a) borrowers. This issue was subsequently addressed in FAQ # 21 which was not issued until April 13, again leaving borrowers and lenders uncertain about whether SBA's 7(a) eligibility limitations applied as indicated in both the statute and this IFR.

In addition, while not specifically covered in this IFR, FAQ # 21 also includes a footnote (6) which states that after a lender submits its loan through E-Tran "no transmission or retention of a physical copy of Form 2484 is required". NAGGL requests that the Administration clarify whether it intends that an electronic copy of the application form be retained by the lender.

r.: Specifies how the proceeds of a PPP loan are to be used, including the conditions relating to an SBA EIDL made between January 31 and April 3, and imposes a requirement that at least 75 percent of the loan proceeds be used for payroll

NAGGL again notes its concerns over the 75/25 requirement and the lack of clarity with regard to the EIDL requirements. (See "o", above.)

s.: Specifies the actions that the Administration can take if PPP loan funds are misused, including the recourse it will have against a shareholder, members or partners of a PPP borrower who uses PPP funds for unauthorized purposes

NAGGL requests that the Administration provide additional information regarding the possible imposition of these remedies especially given that, as previously noted, SBA Form 2484 only requires execution/certification by one authorized representative of the applicant firm.

t.: Specifies that "an authorized representative of the applicant must certify in good faith" to various specified conditions, including that "[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the applicant"

FAQ #s 31 (April 23), 39 (April 29), 43 (May 5) and 46 & 47 (May 13) expanded this provision by, among other things, requiring that, when making their eligibility certifications, applicants assess the "economic need for a PPP loan … taking into account their current business activity and their ability to access other sources of liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business" and specifically indicating the Administration's assumption that it would be "unlikely that a public company with substantial market value and access to capital markets will be able to make the required certification in good faith, and such a company should be prepared to demonstrate to SBA, upon request, the basis for its certification". NAGGL believes that this expansion of the borrower certification requirement is imposing a "credit elsewhere test" that both the statute and this IFR eliminated.

NAGGL is concerned regarding the lack of clarity about how this language must be interpreted particularly because the Administration has made clear that, for loans of $2 million and more, it intends to closely examine the borrower certification regarding its need for the loan. Since the Administration has never provided a definition for what is "necessary" to "support the ongoing operations" of a business, it is virtually impossible for borrowers to know whether their individual situations will meet the standard that they will be measured against. This concern is very real to many small loan borrowers, some of which have repaid their loans already because of their uncertainty regarding the requirements for certification and their fear of being audited by the government. Other borrowers remain on the fence about what to do regarding keeping or repaying their loans even though the "safe harbor" deadline for borrower repayment, now extended to May 18, is fast approaching.   And, on the other side of this issue, after reading the most recently issued FAQs, some of the borrowers that repaid their loans now have decided that they can make the required certification regarding need in good faith, so are begging their lenders to find ways to get their loans back. NAGGL made SBA aware of this phenomenon on May 14 and requested that the Agency provide guidance to lenders regarding whether and how the loans could be reinstated, whatever that process might be called.

Given the lack of clarity regarding the borrower certification of need, it appears that the review procedure established by the Administration could have the effect of punishing borrowers for utilizing a program specifically authorized by legislation to assist them through these difficult times. To avoid that outcome, NAGGL requests that the Administration extend the current deadlines for borrowers to decide whether to repay their loans and for lenders to fully disburse or cancel loans and report those actions to SBA. This will allow an appropriate time period during which the Administration can clarify its certification requirements in a way that will be easily understood by borrowers. This clarification should be part of the overall program guidance document requested in the NAGGL cover letter.

Paragraph 3 – *Who is eligible to make PPP loans?*

a.: Describes lender authority to make PPP loans and discusses the inclusion of new lenders specifically limited to PPP loan processing

NAGGL requests that the Administration provide additional information about the process by which SBA and Treasury each approved lenders for PPP participation, the number of new PPP lenders, by category that were approved by each, and the volume of loans in numbers and dollars approved by each category of new lenders.

b.: Describes lenders underwriting responsibilities

NAGGL notes that this provision was clarified in FAQ # 1 originally posted to the Treasury website on April 3.

c.: Indicates that lenders can rely on borrower documentation submitted in connection with a request for loan forgiveness without conducting any verification as long as the borrower "submits documentation supporting its request for loan forgiveness and attests that it has accurately verified the payments for eligible costs", and that it will be held harmless for such reliance

NAGGL again notes that, to date, the Administration has not provided definitive guidance regarding the forgiveness process. Until that guidance is issued, lenders cannot be sure how this provision will apply, and borrowers remain uncertain about what documentation and attestations they will be required to submit.

e.: Specifies that lenders "will not be required to apply the "credit elsewhere test" when evaluating PPP loan applications"

Please see previous comment related to Paragraph 2. t.

Paragraph 4 – *What do both borrowers and lenders need to know and do?*

c.: Provides guidance regarding the payment of agents that assisted PPP borrowers with their loan applications including specifying that agent fees "will be paid by the lender out of the fees the lender receives from SBA", and indicating the fees that the agents may collect

NAGGL notes that the only provision in the *CARES Act* that relates to agents reads as follows: "An agent that assists an eligible recipient to prepare an application for a covered loan may not collect a fee in excess of the limits established by the Administrator". NAGGL strongly objects to the Administration's expansion of this legislation provision to make the lender responsible for paying fees to agents unless the lender directly contracted with the agent to provide services in connection with the loan application. In this regard we note that, unless the lender was a party to the transaction, it has no way to know what, if any services were performed, the qualifications of the agent to perform those services, etc. In fact, we understand that in some cases, lenders specifically advised agents and/or borrowers that it would not pay fees to agents in connection with PPP loans, but now are receiving bills from agents with whom they have no relationships requesting payment related to loans approved by the lender. NAGGL therefore recommends that SBA revise this provision to include only the maximum amounts that an agent may charge (as already specified in the IFR), that the fees cannot be paid out of the loan proceeds (also as already specified in the IFR), and that lenders will be responsible for paying the fees for services only when they contracted to have the work performed.

d.: Indicates that, after full disbursement, PPP loans may be sold in the secondary market "at a premium or a discount to par value"

NAGGL notes that the low interest rate on the loans and the uncertainty of the loan balance that may remain after any forgiveness and the term of such loan make it unlikely that there will be a market for PPP loans.

e.: Specifies that a lender may request that the SBA purchase the expected forgiveness amount of a PPP loan or pool of PPP loans at the end of week seven of the covered period

NAGGL believes that this provision is inconsistent with the intent of the statute to provide upfront payments to lenders to improve their liquidity. We therefore recommend that SBA amend this IFR and provide detailed guidance to lenders to enable them to immediately request SBA's advance purchase of the expected forgiveness amounts on their individual loans, or on a pool of such loans, as specified in the *CARES Act*.

Appendix C: NAGGL Submitted Questions to SBA on April 13, 2020

NATIONAL ASSOCIATION
OF GOVERNMENT GUARANTEED LENDERS

PAYCHECK PROTECTION PROGRAM LOANS
LENDER QUESTIONS

[This initial list includes some of the overwhelming volume of most frequently asked questions posed to NAGGL. More to come.]

PROGRAM GUIDELINES:

- We now understand that the two Interim Final Rule (IFRs) providing guidance for PPP lending will be published in the Federal Register on 4/15, what status should those documents be accorded during the period between program inception and the date of publication?
- Each of the IFR documents will provide a 30 day comment period measured from the date of publication. Can we assume that those comment periods will not be considered to have started until the actual date of formal publication in the Federal Register?
- To date, other than the IFRs, the FAQs published on the Treasury website are the only written guidance provided to assist lenders to make loans under PPP. Those documents have been updated several times and each document bears the date on which it was posted to the website. Would it be possible to also include, for each question, the date that it was added to the list, and for any questions that have had answers amended, the date on which the answers were amended. Otherwise it is impossible for lenders to know the date that the guidance is regarded as having taken effect.
- FAQ 21 states that lenders do not "need a separate SBA Authorization for SBA to guarantee a PPP loan". We're not looking for individual authorizations for each PPP loan, but could SBA please provide an outline that spells out the rights and responsibilities of SBA and lenders? Of special concern is the requirements that apply to loan forgiveness since this is a unique provision that has never existed in regular 7(a) lending.
    - Until recently a Loan Authorization document was available (apparently in error) via the servicing function within E-Tran. Can we use that authorization for our loans? Will there be a problem on the loans for which we used that authorization?
- FAQ 21 also states that lenders may include in their PPP loan promissory notes "any terms and conditions, including relating to amortization and disclosure, that are not inconsistent with Sections 1102 and 1106 of the Cares Act, the PPP Interim Final Rule and guidance, and SBA Form 2484".
    - Since PPP loans include a provision for forgiveness that is not present in any other 7(a) or conventional loan, we're concerned about how that issue should be addressed in the loan note and are requesting sample suitable language from SBA.
    - We need guidance on how to describe repayment terms, including how interest should be charged, e.g., can we use compounding interest rather than the simple interest structure mandated for regular 7(a) loans?

- Without written guidance to the contrary, our LSP has been producing PPP loan notes as interest-only for 24 months with a balloon. Historically SBA has not allowed balloon payments in the past. Should these be re-amortized after the forgiveness and how should we document this in the Note?

ELIGIBILITY:

- Both statute and the IFRs indicate that where the statute and other guidance is silent as to eligibility, the regular 7(a) requirements apply. The IFRs rule does not address any of the following issues, so confirmation is needed as to the eligibility of:
    - Businesses that are not at least 51% owned and controlled by an individual(s) who is a U.S. citizen. [A question regarding citizenship/LPR status was included on the first borrower application that was issued with the indication that unless one or the other status was required for eligibility. But that question was removed from the current version of the form and no explanatory guidance has been provided.]
    - Foreign-owned businesses
    - Financial businesses, including banks and CDCs, primarily engaged in the business of lending, and other similar business, e.g., cash advance businesses (NAISC #522291)
    - Passive (landlord or investment) businesses
    - Life insurance companies (as opposed to life insurance agents)
    - Pyramid sale distribution plans
    - Businesses that derive more than 1/3 of gross annual revenue from legal gambling activities, including casinos
    - Private clubs and businesses which limit the number of memberships for reasons other than capacity
    - Businesses that engage in discriminatory hiring practices, e.g., Hooters, Tilted Kilt, etc.
    - Loan packagers deriving more than 1/3 of gross annual revenue from packaging SBA loans
    - Businesses which present live performance of a prurient sexual nature or derive more than de minimis gross revenue through the sale of products or services, or the presentation of any depictions or display of a prurient sexual nature
    - Businesses primarily engaged in political or lobbying activities
    - Speculative businesses [as further described in SOP 50 10 5(K)]
    - Businesses where, for regular 7(a), additional examination would be required to rule out possible conflicts of interest or issues of lender preference as primarily described in SOP 50 10 5(K), pp. 14-16, e.g., businesses where there is a financial stake held by a director of the lender institution (most commonly asked), an employee of the lender institution, a Member of Congress, a current or former SBA employee or other individual with a separate relationship with SBA, etc. [The 2nd lender application requires the lender representative completing the form to certify that he/she, his/her spouse and children have no ownership interest in the applicant, but that indirect guidance is all that is available to address this issue]
    - ESOPS [Issue is whether delegated processing is permitted for PPP loans]
    - Publicly traded companies

- Homeowner/condominium associations
- Cooperatives [issue is whether lenders have delegated authority to process]
- Production farmers (crops & livestock), ranches, etc.
- Franchises not on the Franchise Directory – lenders are aware to keep checking since new brands are being added
- Businesses with regular 7(a) loans in liquidation status
- Business that are not current on trust tax payments; businesses that are not current on income taxes; businesses with current IRS tax liens
- Businesses that were in business prior to 2/15/2020, but have changed ownership since that date
- Rural electric cooperatives

<u>SPECIAL CONCERNS RE PARTNERSHIPS, SOLE PROPRIETORS, INDEPENDENT CONTRACTORS, ETC.:</u>

- Are there any more detailed guidelines on how to process independent contractors or self-employed individuals?
- Exactly what documentation is required for sole proprietors and independent contractor to verify their PPP eligibility?
- How do you determine average monthly payroll for independent contractors/self-employed?
- Are partner distributions eligible?
- Am I correct that amounts paid to an independent contractor cannot count toward the payroll of an employer business since those amounts can be claimed by the independent contractor?
- I'm looking for some guidance on single member LLCs – and if they can be treated as Sole proprietors for the PPP loans. Does it make a difference if they have employees (and thus an EIN) or if it all rolls under the individual's SSN?
- Have we received any guidance yet on how to process these? We have not been proceeding on these since they do not have a "payroll" so to speak.
- Did I miss something or are we still waiting for sba guidance on what is needed for documentation and how to calculate sole proprietor or independent contractor income and how do we prove use of those proceeds? They just write a check to themselves?

<u>OTHER PROCESSING ISSUES:</u>

- Are we really allowed just to rely on the applicants' certifications, or do we have to do some verification of that information?
- What should we do if an applicant makes a certification that, based on other information that we have, e.g., from prior loan applications, we have reason to believe may be false?
- Are CAIVRS and SAM Checks required for PPP loans?
- Are we required to check for outstanding legal actions including judgments, bankruptcies, etc.
- Are there any requirements that lenders obtain information to assure business has proper business licenses and insurance (verify workers comp./standard fire/hazard coverage) based on the business type?
- Size –
    - How do we calculate number of employees for purposes of determining size?

- How should lenders count part-time employees?
- Do we follow the 13 CFR 121 standard (full-time, part-time and temporary each counting as an employee) or do we consider full time equivalents?

- Bankruptcy – What is the definition/scope of "involved in a bankruptcy" in Question 1 of the Borrower Application?
    - Is there a statutory or regulatory citation or authority for this requirement?
    - If not, will the Borrower application be amended to remove this apparent requirement?
    - Are creditors of a debtor that file claims in a bankruptcy or that are parties to adversary proceedings "involved in a bankruptcy" and thus ineligible?
    - Are debtors that have already reorganized and are operating under a confirmed plan or that have already received a discharge "involved in a bankruptcy" and thus ineligible?
    - Or, is "involved in a bankruptcy" limited to current debtors in bankruptcy that have not received a discharge or are not operating under a confirmed plan?
    - If a business obtains a PPP loan and subsequently files a bankruptcy case, will the commencement of such bankruptcy case impact its ability to obtain forgiveness of such loan (assuming the other requirements for forgiveness are satisfied)?
- Maximum loan size –
    - Does the $10 million PPP loan limit apply to the applicant and all affiliates or is that limit on an applicant-by-applicant basis?
    - Will the PPP loan be counted when determining the maximum SBA guaranteed amount outstanding for purposes of determining whether a borrower has reached its maximum lending limit for regular 7(a) purposes (currently $3.75 million)?
    - Is it correct that 1099 payments cannot be claimed as "payroll" expenses for the employer applicant since those amounts can be claimed directly by the independent contractor that received the payments?
    - Treasury FAQ #1 (which has been amended) makes it appear that for purposes of determining the eligible loan amount, the lender has to review the borrower's calculations for errors or a lack of substantiation? What does that mean? How much review is required?
- Limit of one PPP per TIN –
    - What happens when the same individual owns more than 1 business since E-Tran will not allow more than 1 PPP per identification number [This is confusing since the application is by business entity, not owner and some people own several businesses with more than just one person.]
- Can the same borrower get a PPP loan now and a regular 7(a) loan later?
- Limitations regarding EIDLs and PPP loans –
    - Can we get a better definition of same purpose?
    - Will it be possible for a small business to get a PPP loan now and an EIDL loan later if the EIDL proceeds will be used for purposes not covered by PPP? If so, what will lenders need to do to monitor how loan proceeds are used?
    - If a borrower has applied for an EIDL but not received funds is the PPP loan amount still 2.5 times average monthly payroll? If they have received an EIDL $10,000 advance, what do we enter?

NOTE TERMS:

- Can bank set up the PPP note on a 2 year interest only basis with a 6 month deferral of interest payments? We would like to do this to reduce maintenance of system amortization changes when forgiveness is issued on residual balances. The posted SBA Form 147 has a blank box on the SBA website for terms.
- Can you confirm that the 100% guaranty is that for full life of loan even if the lender winds up needing to extend the maturity beyond the original maximum 2-year term?
- I've never dealt with a loan where part of the balance may be forgiven: how do I describe the forgiveness entitlement in the loan note?
- How is interest handled for PPP loan note purposes – simple or compounding?
- Since I will not know the amount of the loan that will not have to be paid back, can I write my loan note so that it has a balloon payment at the end of the 2-year maturity?
- Should I include a feature in the PPP loan note that reminds the borrower that penalties can apply if it misuses the loan proceeds?
- For my PPP loan note, do I have to include the provisions regarding enforceability under Federal law that are generally required for regular 7(a) loans?

LOAN DISBURSEMENT:

- The IFRs posted on 4/2 did not specify a disbursement period for PPP loans. FAQ #20 contained in the document posted on the Treasury website after the close of business on 4/8 states that 1st disbursement is required within 10 days of loan approval. In some cases, borrowers are requesting delayed deferment, in other cases lenders are finding that they are unable to disburse by the specified deadline.
  - For loans approved between 4/3 and 4/8, since the disbursement deadline wasn't known to borrowers and lenders, can they assume that there is no disbursement deadline on their loans?
  - For loans approved after the FAQ was issued –
    - What penalty will be imposed on lenders that fail to meet the deadline?
    - Will the loan approval be canceled?
    - Will borrowers face the possibility of being denied their right to loan forgiveness?
    - Will the lender be subject to adverse finding during reviews by OIG, OCRM, etc.?
- Is SBA Form 1050, Settlement Sheet, required at time of 1st disbursement on loans over $350,000?
- What documentation does lender need to have in file to show how funds were disbursed?
- Is controlled disbursement required? What about for very large loans, e.g., over some dollar threshold ($1 million)?
- We understand that if the applicant received an EIDL between 1/31/2020 and 4/3/2020 that was used for payroll purposes, the EIDL must be repaid from the PPP loan proceeds. Since there has been no guidance on how this is to be done, and since the goal is to get these loans disbursed as quickly as possible, we are making paying of the SBA EIDL the responsibility of the borrower. Is that okay?

E-TRAN:

- Traditional 7(a) lenders are concerned about the possibility that new lenders are been made subject to different program requirements, including loan processing mechanics and loan eligibility requirements, etc. Is that a legitimate concern? How are the newly approved PPP-only lenders being approved and how are their loans being processed? Can you make traditional lenders comfortable that there is no disparity between the treatment of regular and new lenders?
- Since the date SBA started accepting PPP loan applications, numerous changes have been made to E-Tran data requirements, including which fields are mandatory. Can you provide an E-Tran template that shows exactly what data needs to be input, including which fields are not mandatory so will not cause the application submission to be blocked? Are the same requirements being used for applications submitted via E-Tran and the new processing gateway?
- How is ownership information/percentages entered for organizations like non-profits and coops?
- Is it acceptable to hire temps for assisting with input of applications into E-Tran?
- I'm getting internal pressure to allow "technology bots" to use my eTran log-in credentials, but I'm concerned that this would be in violation of SBA's eTran guidelines. Can I used bots to input my loans?
- What should lenders do when a tax ID is pre-populated with a name and address that the borrower does not recognize?
- What should a lender do when the borrower does recognize the pre-populated business name but that is no longer the legal name of the entity?
- If foreign-owned businesses with employees permanently residing in the U.S. are eligible, how do I enter the application in E-Tran?
- Under legal organization type on the borrower information screen there is no option in the drop down menu to select Tribal Organization. What should we select when a tribal organization applies?

FORGIVENESS: [Lenders are very nervous that they are approving loan that contain a never before seen forgiveness feature and do not feel that the minimal guidance provided to date is enough for them to understand the parameters of forgiveness requirements and processes. So, they are requesting soup-to-nuts guidance on the entire forgiveness process. A few of the MANY questions we have received follow…]

- Can you provide additional information about the advance purchase process for PPP loans mandated by CARES?
  - The interim final rule states that lenders may not request advance purchase until week seven of the covered period. Since the covered period began on 2/15/2020, can we assume that period already has run, or is the calculation based on a different date, e.g., loan approval or first disbursement?

  - If SBA purchases my PPP loans in advance, what will I need to do after the forgiveness amount(s) is known to settle any under- or over-estimation of the expected forgiveness amount, accrued interest, etc.?
- Is SBA going to provide guidance regarding the process for PPP borrowers to request loan forgiveness? – A sample form for calculating forgiveness would be helpful. Maybe this could be made part of E-Tran?
- Can the lender rely on the information and documentation provided by the borrower to justify the forgiveness request?
- Treasury FAQ #1 (which has been amended) makes it appear that for purposes of determining the eligible loan amount, the lender has to review the borrower's calculations for errors or a lack of substantiation? What does that mean? Does that requirement apply to applications for forgiveness?

AGENTS: [Lenders are aware the IFR makes lenders responsible for paying agents that assist borrowers with their PPP applications, but are not sure how this will work]

- Is an SBA Form 159 required?
- How will lenders know that an agent assisted with the application?
- How can lenders be held responsible for paying agents when they were not a party to the contract for services, and most of the time, didn't even know that an agent had been involved?
- How can SBA prevent borrowers from paying agents that they pay directly without disclosing the payment?
- CPAs seem to be "preying" on borrowers, i.e., charging a substantial fee and then saying the lender MUST pay it no matter what. What can be done about that?

POST-DISBURSEMENT SERVICING/LIQUIDATION:

- What does a lender have to do to report to SBA that a loan has been disbursed? Will the usual 1052 reporting process be used for that purpose?
- What is the process for lenders to be paid the origination fee provided for in the statute?
- How soon can lenders expect payments to be made to lenders?
- After the 6 month deferment period, are we required to go to monthly interest payments or could we collect the interest at maturity or at forgiveness of the principal?
- Will all lenders be required to report the status of PPP loans each month via the 1502 process used for regular 7(a) loans?
- Do lenders report PPP loans to the credit bureau in the same way that they are required to report regular 7(a) loans
- When will SBA provide guidance regarding its loan servicing requirements for loans with balances that are not forgiven?
- Since PPP loans have no collateral and there are no personal guaranties, will SBA expect lenders to attempt any collection from PPP loan borrowers that default on the unforgiven balances of their loans?
- Will PPP loans be included in Lender OCRM review/Will they impact PARRIS ratings?

- Thinking ahead, will lenders be able to refinance any balances remaining on PPP loans as part of a regular 7(a) loan made for other purposes, or will these loans always be made to stand-alone?
- Does SBA expect that lenders will re-amortize loan balances remaining after the application of any forgiveness to extend the maturity of the note beyond the initial two year maturity?
- Will new lenders authorized only to make PPP loans be required to follow the same servicing requirements as regular 7(A) lenders?
- See “Forgiveness” section for questions regarding advance purchase from lenders.

Tim Delaney is President & CEO of the National Council of Nonprofits, the trusted resource and leading advocate for America's charitable nonprofits that also connects the nation's largest network of nonprofits. He's a seasoned attorney and policy advocate who successfully has argued in the U.S. Supreme Court, testified before Congress, negotiated in the White House, and helped prosecute the impeachment and removal of a governor. Since 2008, Tim has applied his diverse leadership experiences in all three sectors to help nonprofits across the country identify emerging trends, exchange proven practices, engage in critical policy issues, and achieve greater impact in local communities.

Statement of

Tim Delaney
President & CEO
National Council of Nonprofits

to the

Pandemic Response Accountability Committee

Listening Forum:
Stakeholder Perspectives on Federal COVID-19 Spending and Response

June 3, 2020
[*submitted May 28, 2020*]

Thank you for your invitation to provide insights and suggestions on behalf of the nonprofit sector regarding the federal COVID-19 spending and response, especially specific areas where the Pandemic Response Accountability Committee (PRAC) should focus its oversight attention to enhance transparency and accountability over emergency pandemic funds.

Before beginning, I pause to thank you for your public service. Inspectors General play a vital, yet oft-hidden, role for our country. Now, on top of your more than full-time duties, the CARES Act tasks you with serving on the PRAC to provide oversight of more than $2 trillion in emergency federal spending to address the economic impacts of the coronavirus pandemic. On behalf of the organization I lead, the nonprofit community, and people across the nation, I thank you, your staffs, and the PRAC staff.

Overview

Recognizing how busy you are, here is a quick summary of the more significant issues, arranged by the responsible entity. Each issue is explained in greater detail below.

Contextual Background

- Charitable nonprofits employ more than 10 percent of the private workforce in America – more than the finance, construction, and manufacturing industries.
- With more than 40 million Americans newly unemployed (as of May 28), an overwhelming number of people are turning to and relying on nonprofits for assistance. Yet while this skyrocketing demand for assistance keeps increasing, nonprofit resources keep plummeting, jeopardizing nonprofit jobs and the ability to continue providing services to those in need.

All Federal Departments and Agencies – Government Grants & Contracts

- Governments at all levels hire nonprofits to deliver services to the public, and that certainly will continue through the CARES Act and other "Coronavirus response" legislation as Congress provides relief and stimulus funds to federal departments and out to state and local governments.

- Suggestion – Mitigate Major Risks: Proactively streamline and eliminate complexification of application and reporting forms and procedures; ban unilateral, mid-stream changing of written agreements; and ensure that nonprofits – which already are not being paid any profit – are at least paid their full costs. For research documenting these common problems experienced during and after the Great Recession, see Toward Common Sense Contracting: What Taxpayers Deserve, which also provides straightforward solutions.
- Suggestion – Mitigate Major Risks: Ensure timely payments to nonprofits. During our country's last economic crisis, almost half of nonprofits hired by governments to provide services to the public were paid late – sometimes more than a year – essentially forcing nonprofits to subsidize governments. Inspectors General need to take affirmative steps – up front, now – to ensure that all governments using federal funds are paying nonprofits promptly. Otherwise, simply waiting until the end of audit processes to see whether payments were made timely almost guarantees that nonprofits on which communities rely will go under.

Department of Labor – Unemployment Insurance

- Suggestion – Oversight: Many nonprofits across the country are about to be put out of business, unable to provide services the public desperately needs, because the Department of Labor issued a strange interpretation of a provision of the CARES Act. It is forcing self-insured nonprofits to pay 100 percent of unemployment expenses to their states and then wait until overwhelmed state unemployment offices pay back 50 percent. It makes no sense and must be corrected.

Small Business Administration – PPP Loans

- Suggestion – Accountability: Nonprofits, like for-profits, are in a precarious position because the rules keep changing. Since Congress passed the CARES Act in March, the Small Business Administration (SBA) has issued 14 sets of Interim Final Rules, 48 Frequently Asked Questions, and two sets of applications (for loans and for loan forgiveness) – some of which are inconsistent, some of which conflict with the CARES Act, and most of which were issued after many organizations had applied for and received loans.
- Suggestion – Transparency: Despite repeated requests by nonprofits and others, the SBA still has not released basic information about how many nonprofits – total and by state – have applied for, received, or been denied PPP loans.

Insights and Suggestions

Contextual Background

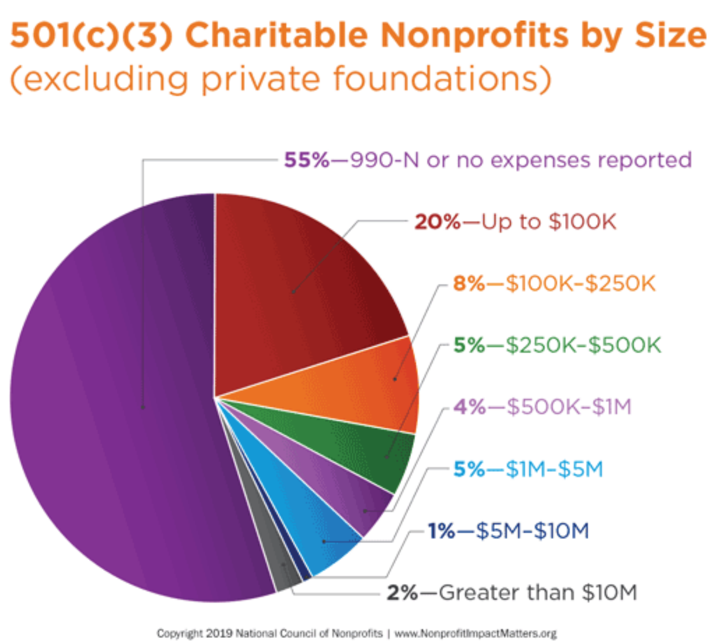
The National Council of Nonprofits is a trusted resource that advocates for America's nonprofits nationwide. Through our network of state associations of nonprofits and 25,000-plus member charitable nonprofits, faith-based groups, and foundations – the nation's largest network of nonprofits – we serve as a central coordinator and mobilizer to help nonprofits achieve greater collective impact in local communities across the country. We identify emerging trends, share proven practices, and promote solutions that benefit charitable nonprofits and the communities they serve.

Most people recognize that nonprofits are dedicated to the public good, working to serve people and solve community problems in ways that improve lives, strengthen communities and the economy, and lighten the burdens of government, taxpayers, and society as a whole. But few realize the enormous breadth and operational complexities of the 501(c)(3) nonprofit community: charitable nonprofits, houses of worship, and private foundations. Based on our decades of experience working with governments at the local, state, and federal levels, we offer the following to help you become more familiar with nonprofits.

The large number and broad scope of America's charitable nonprofits surprise many people.[1] More than 1.3 million charitable nonprofits feed, heal, shelter, educate, inspire, enlighten, and nurture people of every age, gender, race, and socioeconomic status, from coast to coast, border to border, and beyond. Before the pandemic, nonprofits employed 12.5 million people, which was 10.2 percent of the private workforce, making the sector the third largest private employer in the country – larger than manufacturing, construction, finance and insurance, transportation, and real estate. The 2019 Nonprofit Employment Report, Lester M. Salamon and Chelsea L. Newhouse, Johns Hopkins Center for Civil Society Studies (Jan. 2019) (based on 2016 data from the U.S. Bureau of Labor Statistics).

Nonprofits operate in every community in our country, whether educating children, caring for returning soldiers, rebuilding cities, nursing the sick, providing safety for domestic violence survivors, training the workforce, supporting our elders, elevating the arts, mentoring our youth, protecting natural resources, nurturing our faith and spirituality, promoting diversity, equity, and inclusion, and much more. In virtually every city and town in America, charitable nonprofits are the front-line providers of services; as organizations grounded in their communities, charitable nonprofits have a stake in the strength and wellbeing of the economy and governments at all levels. Likewise, given the vital role nonprofits play in both the economic and social well-being of our nation, society has an equally strong stake in ensuring that charitable nonprofits are healthy and able to fulfill their missions in support of the public good.

Despite the collective size of the sector, most charitable nonprofits are relatively small: 97 percent have budgets of less than $5 million annually, 92 percent operate with less than $1 million per year, and 88 percent spend less than $500,000 annually for their work. See *Nonprofit Impact Matters*, National Council of Nonprofits (Fall 2019) (based on data from 2016 IRS Form 990 filings). The "typical" charitable nonprofit is community-based, serving local needs. As mission-focused entities with limited resources, they put their money towards mission, not paying attorneys hundreds of dollars an hour to analyze scads of Interim Final Rules or the like. Also, it should be



[1] Congress has created almost three dozen categories of tax-exempt organizations in different sections of the tax code. These include Section 501(c)(4) (social welfare organizations), Section 501(c)(5) (includes labor unions), Section 501(c)(6) (includes associations and chambers of commerce), and Section 501(k) (childcare organizations). The data in this Statement focuses on 501(c)(3) charitable nonprofits unless noted otherwise.

no surprise that relatively few charitable nonprofits have an endowment upon which to rely when revenue shortfalls occur. Indeed, most charitable nonprofits have limited reserves – about 50 percent have less than one month of cash reserves, according to one analysis of nonprofit financial records. See The Financial Health of the United States Nonprofit Sector, Oliver Wyman and SeaChange Capital Partners (Jan. 2018) (based on data from 2010-2014 IRS Form 990 filings).

There is limited government data right now about the full extent to which the COVID-19 pandemic is ravaging the nonprofit organizations on which so many people rely. But survey data paint a bleak picture. In this national survey, 90 percent of nonprofits reported revenue losses. Several state associations of nonprofits in our network found similar startling numbers in surveys they have taken, including:

- New Hampshire Center for Nonprofits – 92 percent of responding nonprofits had experienced a loss in revenue,45 percent had instituted layoffs, and 44 percent had increased their operations to meet the surge in demand.
- Florida Nonprofit Alliance – almost 80 percent of respondents indicated they had experienced a negative financial impact, 53 percent report staff layoff, cuts, or reductions, and 39 percent reported increased demand for their services.
- Kentucky Nonprofit Network – 92 percent reported experiencing disruptions in their programs and services, 51 percent had been forced to reduce programs/services – which has negatively impacted 489,161 Kentuckians (as of April 22), 26 percent of responding nonprofits were laying off or furloughing staff members, and 28 percent were reducing staff pay and/or hours.
- Alliance of Arizona Nonprofits – 86 percent of nonprofits reported decreased revenues, with the anticipated loss through the end of the organizations' respective fiscal years to be nearly $433 million.
- Minnesota Council of Nonprofits, in partnership with the partnership with the Federal Reserve Bank, found that nonprofits in the state may have collectively lost more than $1 billion in revenues in April alone. Moreover, as of "early April, most nonprofits had experienced decreased ability to provide services (50%), decreased staffing levels (31%), reduced revenue from service fees (25%), decreased or anticipated decreased revenue from philanthropic funds (51%), and increased expenses (22%)."

These surveys reveal charitable nonprofits of all types and missions are struggling with rapidly declining revenues as they have had to cancel fundraising events and their usual fees, ticket sales, membership dues have vanished, and the capacity of donors to give has plunged.

The bottom-line: The federal government and the American people cannot afford to ignore the third largest private-sector employer upon which almost everyone in the country relies in one way or another. It is a tragedy for the owner and employees when a small business goes under. It is a double tragedy when a nonprofit goes under, because then people – often in dire need – no longer have access to that nonprofit to address these needs.

All Federal Departments and Agencies – Government Grants & Contracts

Since at least the 1960s, and accelerated in the 1980s, all levels of government have been hiring charitable nonprofits to deliver a broad array of services to the public. Governments have largely found nonprofits to be good partners: mission-driven rather than profit-focused, and often more efficient and effective than government. Indeed, the federal government has long recognized that "Federal, state and local governments rely on nonprofit organizations as key partners in implementing programs and providing services to the public, such as health care, human services and housing-related services." Nonprofit Sector: Treatment and Reimbursement of Indirect Costs Vary among Grants, and Depend Significantly on Federal, State, and Local Government Practices, U.S. Government Accountability Office Report 10-477 (May 2010).

As this graph illustrates, the charitable nonprofit community earns almost a third (31.8 percent) of its collective total revenues by performing services pursuant to government grants and contracts. See generally Nonprofit Impact Matters, National Council of Nonprofits (Fall 2019). (NOTE: There is no standard source of revenue for charitable nonprofits; the mix of revenue streams for a given nonprofit varies widely between organizations based on a variety of factors.)

So when there are problems with governments' administration of nonprofit grants and contracts, it has a tremendously negative ripple effect throughout the nonprofit community and out to the public.

A. Proactively Avoid and Fix Systemic Problems in Government Grantmaking

Congress created PRAC to "mitigate major risks that cut across program and agency boundaries" and to "prevent and detect fraud, waste, abuse, and mismanagement." CARES Act §15010(b). Both purposes come into play regarding processes and management practices governments use when hiring, paying, and overseeing nonprofits to deliver services to the public.

Research consistently finds that governments are not always good partners with nonprofits, with many governments routinely failing to pay the full costs of the contracted services, imposing unnecessary and wasteful burdens, and not honoring their legal obligations of the written contracts they signed — all of which add unnecessary costs to governments and nonprofits alike. The consistent underfunding is a significant contributor to what is known as the "nonprofit starvation cycle" and results in a myriad of challenges for nonprofits, all of which ultimately limit a nonprofit's ability to achieve outcomes and erode the availability of quality services in communities throughout the country. For more information, go to Common Problems in Government-Nonprofit Grantmaking and Contracting.

Because of the significance and multitude of problems nonprofits experienced with government-nonprofit grants during the Great Recession, the National Council of Nonprofits worked with the Urban Institute, which gathered and analyzed the quantitative data, and our network's state associations of nonprofits, which focused on the qualitative data, to document the repeated major problems nonprofits were encountering. The research project uncovered five major common problems, the first two of which occur before contracts/grants were entered, and the last three afterwards:

- Governments not paying nonprofits the full costs of services
- Complexification of grant application processes, creating waste and costs for all
- Governments changing terms of written agreements mid-stream
- Governments paying nonprofits late
- Complexification of reporting requirements, again adding costs and waste for all

We embrace and fully support efforts to prevent and detect fraud. That shared goal is achievable without unduly burdensome and needless problems like those listed above. That is why we commit to work with you to reform antiquated and broken government-nonprofit grants processes to avoid waste and duplication, develop standardized definitions for contracting and grant language, and ensure that payments to nonprofit organizations for direct and indirect costs from the federal government through state and local governments are applied consistently, fairly, and in a timely manner. In particular, we stand ready to work to eliminate from federal statutes and regulations arbitrary caps on reimbursement of nonprofit indirect, administrative, or overhead costs that are needed for any enterprise – for-profit, government, and nonprofit – to be effective and efficient.

Government grantmaking and contracting systems must be fixed so people receive services when they need them, taxpayers receive full value for the programs they fund, and communities are strengthened through effective programs. Without responsible solutions, our communities will suffer even more.

B. Ensure That Any Government Using Federal Funds Pays Nonprofits Promptly

Congress created this Committee to, among other things, "mitigate major risks that cut across program and agency boundaries." CARES Act §15010(b)(2). As explained above, there is a major risk factor to the public when a looming problem that cuts across federal departments and agencies – oversight of government grants, those directly from the federal government and those indirectly through state and local governments – is ignored.

Following our country's last economic crisis, almost half of nonprofits hired by governments to provide services to the public reported governments had been paying them late under the terms of the legally binding contracts/grants. Late payments by governments is a problem that was both frequent (45 percent of nonprofits responding) and debilitating, given the significant dollar amounts reported by nonprofits that said they were paid late: on average state governments owed each nonprofit the past due amount of $200,458, the federal government owed $108,500, and local governments owed $84,899. The substantial sizes of those late payments present serious challenges for nonprofits struggling to deliver reliable services. And the length of delays – sometimes more than a year – essentially forced nonprofits to subsidize governments. See generally Toward Common Sense Contracting: What Taxpayers Deserve, National Council of Nonprofits (May 2014) at pages 22-28.

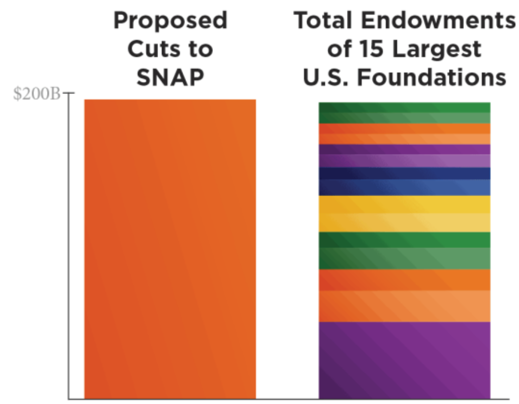
Communities suffer severe consequences when governments do not pay their bills when due. Among nonprofits reporting late payments as problematic, 31 percent indicated that they had to reduce the number of paid employees, 25 percent had to increase their lines of credit, and 15 percent were forced to reduce the number of their programs or services. The Urban Institute found that nonprofits reporting problematic late payments took those survival actions at a significantly higher rate than nonprofits without payment problems from government. *Id.*

Charitable nonprofits with government grants and contracts to deliver programs like anti-poverty, education, emergency food assistance, health care, affordable housing, public improvements, social services, and much more cannot possibly fill gaps if governments do not pay the full costs or pay on a timely basis. The common refrain nonprofits often hear is "just go out and hold a fundraiser." That is patently unrealistic in normal times, and beyond impossible in these abnormal times with donations vanishing.

Nor can foundations fill the gap. Consider the scale differences between governments and the largest foundations in the country:

Foundations Can't Replace Government Cuts (even if they wanted to)

Consider: The White House proposed cutting $193 billion from the Supplemental Nutrition Assistance Program (SNAP). It didn't happen, but if it had, the amount of money needed to replace such a large funding gap would have required the equivalent of the 15 largest foundations in the country (such as the Gates Foundation and Ford Foundation) to cash out all their assets and permanently close their doors.



Delays in payments could prove devastating to the work and sustainability of tens of thousands of nonprofit organizations across the country – as well as to governments that hire them to deliver services and to the tens of millions of people who depend on nonprofits to provide those services.

Inspectors General need to take affirmative steps – up front, now – to ensure that all governments using federal funds to hire nonprofits are paying nonprofits promptly. Otherwise, simply waiting until the end of audit processes to see whether payments were made timely will be far too late, almost guaranteeing that nonprofits on which communities rely will go under.

Department of Labor – Unemployment Insurance

Last week, 31 national nonprofits sent a joint letter to the Secretary of Labor expressing great concern regarding guidance the Department had issued interpreting an aspect of the CARES Act in a way contrary to what Congress indicated. That interpretation would force:

> self-insured nonprofits [to] pay hundreds of thousands of dollars upfront at a time when financial resources are constrained due to declines in charitable giving, delays in contract payments, cancelations of fundraising events, closures of businesses, and decreases in other sources of revenue. This guidance denies the flexibility that states and nonprofits need and imposes an undue burden and hardship on self-insured nonprofits.
>
> For nonprofits already suffering financial distress due to this economic crisis, the cost caused by this guidance may be too much to bear and could even contribute to bankruptcies. During an unprecedented time when more people are relying on nonprofits for basic needs and services, nonprofits themselves are facing a skyrocketing number of unforeseen unemployment claims. Essentially, the DOL guidance asks self-insured entities to choose

between funding current operations or covering one hundred percent of UI payments for every employee furloughed or laid off due to COVID-19.

This is not what Congress intended. Indeed, in CARES Act Section 2103(a), Congress instructed the Labor Department to "issue clarifying guidance to allow States to interpret their State unemployment compensation laws in a manner that ***would provide maximum flexibility*** to reimbursing employers as it relates to timely payment and assessment of penalties and interest pursuant to such State laws." (emphasis added) The guidance is the opposite of congressionally instructed flexibility.

The interpretation is forcing self-insured nonprofits to pay 100 percent of unemployment expenses into their states up front, and then wait until beleaguered state unemployment offices pay back 50 percent. At a time when Congress is providing loans to help organizations stay open, and charitable donations are plummeting, the Labor Department is pressing nonprofits to pay out money they do not have, which will only add to unemployment and less services to the public.

This issue concerns oversight of the federal government's "Coronavirus response." However, if the Committee believes the issue is beyond its purview, then we ask that you refer the matter to the Department of Labor's Inspector General.

Department of Treasury & Small Business Administration – PPP & EIDL

A. Suggestions – Accountability

- Paycheck Protection Program

Nonprofits that have applied for or are thinking about applying for a Paycheck Protection Program (PPP) loan are not only dizzy and unsettled from the roiling barrage of changing and too often inconsistent 16 sets of Interim Final Rules (14 from SBA) and 48 answers to the SBA's Frequently Asked Questions (as of May 27), but also nervous about what the changes mean to them.

We appreciate, deeply, the heroic efforts by Congress and the Administration to stand up a massive new program almost instantaneously. But that speed does not mitigate the legitimate concerns that people have that the official guidance they are receiving is often after the fact, inconsistent, and still a moving target – creating anxiety that actions taken earlier will be judged three months or three years from now, applying new official rules retroactively and exposing innocent people to unfair liability. Among the many concerns is that someone applying a truly last Final Rule will fail to look at what set of standards were in place in the Interim Final Rule in place when the loan documents were signed in April or May.

Faith-based and charitable organizations are working on the front lines in every community across America to fight the coronavirus, provide support and relief to its many victims, and help prepare for the reopening of our economy. They are providing childcare services so health care workers and first responders can do their jobs, feeding the millions of newly unemployed persons and their families, and delivering other critical physical, spiritual, and mental health services and support. *Many more nonprofits would be rehiring or even expanding their workforces to address mounting needs if they had the resources to do so.* **Nonprofits that have taken out loans or might need to do so deserve to know that they are safe from all of the moving parts, especially when those parts have been inconsistent internally and are inconsistent with the CARES Act.**

One example fully explains the challenge of arbitrary rulemaking in this difficult environment. The first Interim Final Rule on the PPP issued by SBA and the Treasury Department tried to impose via regulation a 75%/25% rule for loan forgiveness. The CARES Act expressly lists allowable uses of covered loans, identifying payroll, salaries, and benefits costs, as well as four types of other costs: interest on mortgage obligations, rent, utilities, and interest on other pre-existing debt obligations. The statute makes no value or business judgment as to which costs are to be given priority. This makes perfect sense because of the very wide range of services and businesses eligible to apply for the PPP. Despite these statutory and economic realities, SBA and Treasury announced that borrowers spending more than 25 percent of loan proceeds on rent, mortgage, utilities, and interest payments on pre-existing debt will be penalized by not receiving the loan forgiveness guaranteed by Congress.

The 75%/25% rule has been controversial since its announcement. In its recent Flash Report on Implementation of the Paycheck Protection Program Requirements, the SBA's Inspector General urged recognition that many small businesses have more operational expenses than employee costs. The IG found, "Our review of data from round one [of PPP loans] found that tens of thousands of borrowers would not meet the 75-percent payroll cost threshold and would therefore have to repay the amount of nonpayroll costs in excess of 25 percent in less than 2 years." Congress agrees. Today (May 28), by a vote of 417 to 1, the House of Representatives passed H.R. 7010, the Paycheck Protection Program Flexibility Act, that rejected the arbitrary formula criticized by the SBA IG and borrowers, and replaced it with a more manageable standard.

- <u>Economic Injury Disaster Loans</u>

Many organizations applying for Economic Injury Disaster Loans discovered that SBA was awarding much smaller loans than promised ($25,000 instead of loans up to $2 million) and that the EIDL emergency advance was changed from a flat $10,000 to only $1,000 per employee with a maximum of $10,000. These alterations to the program were made without advance notice from SBA. Now that the EIDL funds have been replenished by the interim funding bill signed by the President on April 24, we ask that SBA take affirmative steps to restore EIDL payouts to the levels authorized by the CARES Act.

B. Suggestions – Transparency

The nonprofit community has made repeated requests for data from the SBA that should be within its easy grasp about the experience of charitable nonprofits in seeking loans under the Paycheck Protection Program. See our Comments in Response to SBA Notice of Interim Final Rules "Business Loan Program Temporary Changes; Paycheck Protection Program." We understand that Members of Congress also have asked for this data. But the SBA has released nothing on point.

The SBA regularly provides updates on lender size, approved loans, and approved dollars. It has released state specific data and information based on generic industries for Round One and Round Two (through May 28) under the program. To date, SBA has steadfastly refused to release any information on efforts of nonprofits to secure PPP loans. As a matter of transparency, SBA should release data showing, on both a state-specific and national basis, the number of charitable organizations that have sought PPP loans, the dollar amounts sought, the rates that loans have been issued and declined, the duration of the application and approval process, along with comparisons of this data to the experience of similarly sized for-profit businesses.

The data should be readily available and accessible because the very first item on SBA's PPP Borrower Application Form is a series of boxes for the borrower to check, including a box designated "501(c)(3) nonprofit." The SBA has released information using North American Industry Classification System (NAICS) subsectors, such as construction, retail trade, and "other services," but not about nonprofits.

The data are imperative to inform policymakers about the efficacy of the program, evaluate the equitable treatment of nonprofits in the administration of the program, ensure the well-being of the organizations the program is intended to help, and promote transparency at all levels and in all branches of government. The lack of transparency and refusal to disclose this readily available information is troubling, raising significant concerns that the data show systemic failings that adversely affect charitable nonprofits and the people they serve.

Conclusion

Thank you again for inviting me to provide insights and suggestions on behalf of the nonprofit sector. Please let me know if the National Council of Nonprofits or I can be of further service.

Tim Delaney
President & CEO
National Council of Nonprofits

Submitted May 28, 2020,
as requested

Neil Bradley

Executive Vice President and Chief Policy Officer
U.S. Chamber of Commerce

Neil Bradley, executive vice president and chief policy officer at the U.S. Chamber of Commerce, has spent two decades working directly with congressional committee chairpersons and other high-ranking policymakers to achieve solutions. At the Chamber, Bradley is responsible for aligning the organization's overall policy priorities and advocacy efforts. He oversees several major policy divisions within the Chamber: Economic Policy; Employment Policy; Small Business Policy; and Cyber, Intelligence and Security Policy. Health Policy, Transportation Infrastructure Policy and Environmental Affairs and Sustainability Policy are also under his leadership.

Before joining the Chamber, Bradley was president of Chartwell Policy Solutions, LLC, a research, analysis, and advisory firm focused on public policy issues. In addition to his work at Chartwell, he served as chief strategy officer for the nonprofit Conservative Reform Network (CRN), the leading organization supporting the Conservative Reform Movement. There he produced, incubated, and promoted ideas, policies, and efforts to grow the American economy, expand the middle class, and create opportunities for all Americans.

Prior to founding Chartwell and joining CRN in 2015, Bradley spent nearly 20 years working in the House of Representatives, including 11 years working for the House Republican leadership. He served as deputy chief of staff for Majority Leader Kevin McCarthy (CA) where he developed the legislative agenda for House Republicans, oversaw policy formulation in the leader's office, and coordinated committee activity in the House. Bradley held the same position for Eric Cantor (VA) during his tenure as majority leader. Previously, he was policy director for House Republican Whip Roy Blunt (MO).

Earlier in his career, Bradley served for four-and-a-half years as executive director of the Republican Study Committee. He also held numerous positions in the office of then-Rep. Tom Coburn (R-OK).

While working on Capitol Hill, Bradley was regularly named to *Roll Call's* list of 50 top congressional staffers.

Bradley, a graduate of Georgetown University, resides in Washington, D.C., with his wife, Kiki, and their son, Peter. He is a native of Sapulpa, Oklahoma.

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The U.S. Chamber of Commerce is the world's largest business federation representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations.

Statement of Neil Bradley, Executive Vice President and Chief Policy Officer of the U.S. Chamber of Commerce[1] to the Pandemic Response Accountability Committee Forum on Stakeholder Perspectives on Federal COVID-19 Spending and Response

June 3, 2020

The United States has faced many challenges in recent years, but perhaps none were as sudden, as wide-spread, and as deep in impact as the COVID-19 pandemic and the necessary measures that have been taken to arrest its spread. Our government has had to simultaneously respond to an immense public health challenge and the fallout from an extraordinary shutdown in commerce and economic activity. America has had to operate in an environment in which there are more unknowns than knowns and our knowledge regarding the appropriate responses to both the health and economic challenges evolves on an almost daily basis.

Congress responded to this unprecedented situation with unprecedented speed, enacting four measurers to date that are also unprecedented in both scope and the level of fiscal response. And now, Congress is considering another bill that will provide hundreds of billions if not trillions of dollars more in assistance. The U.S. Chamber has supported these efforts and we appreciate the bipartisan cooperation that led to enactment of each of the four bills.

The Chamber has also consistently supported oversight mechanisms in times of crisis when taxpayer dollars are used as a lifeline for the economy. For example, in 2009 the Chamber support the Troubled Asset Relief Program (TARP) Accountability Act which provided a mechanism for government and the public to easily track and monitor disbursement of TARP funds in the wake of the 2008 financial crisis.[2]

[1] The U.S. Chamber of Commerce is the world's largest business federation representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations.
[2] See testimony of U.S. Chamber to House Financial Services Committee, September 17th, 2009. http://archives-financialservices.house.gov/media/file/hearings/111/quaadman_testimony.pdf

We believe the work that this committee will do is essential not just to protect the interest of taxpayers, but to support public confidence and better policymaking in the future.

The work you do will also set an important tone and serve as a model for others. There is no shortage of individuals and organizations willing to engage in "Monday morning quarterbacking," suggesting with the advantage of hindsight what should have been done. Too often, such analysis fails to take into consideration the chaotic nature of responding to an evolving crisis and the lack of perfect, actionable information.

Perhaps Congress's own experience is illustrative here. On March 6, 2020, the Coronavirus Preparedness and Response Supplemental Appropriations Act was signed into law. Less than a week later, the House of Representatives began moving forward with the Families First Coronavirus Response Act, that among other things, provided additional funding left out of the first bill. Seven days after the enactment of the second bill, the Senate was passing the CARES Act. The situation evolved that quickly. It is not just that Congress has had to keep acting, but they are frequently amending what was done in prior bills, even though they are but a few days old.

I point this out not because it is a bug, but rather, a feature. In a volatile environment with uncertainty, complexity, and ambiguity, it is important that policymakers be nimble and willing to evolve their thinking even to the point of changing directions.

It would be easy now, but patently unfair to say to Congress, "why didn't you get this right the first time?" The same level of understanding should be extended to others in government and the private sector who had to make decisions in the same volatile, uncertain, complex, and ambiguous environment.

With that in mind, the Chamber offers five suggestions for your consideration.

First, businesses, individuals, and state and local governments should be held to account for complying with the rules and guidance as they existed at the time of their action, not as subsequently modified and appropriate forbearance should be provided for compliance when the rules were ambiguous or issued with virtually no time to achieve compliance. Take the Paycheck Protection Program. In less than two months there have been 15 interim final rules issued.[3] The "Frequently Asked Questions" guidance has been updated 16 times growing from one

[3] See "Program Rules" at https://home.treasury.gov/policy-issues/cares/assistance-for-small-businesses.

question to 48 as of May 27, 2020.[4] Sole proprietors and independent contractors were eligible to apply for PPP loans on April 10th, but the regulations detailing the limitations on their loans did not come out until April 14th.

The Families First Coronavirus Response Act included an unprecedented requirement that businesses with fewer than 500 employees provide paid sick and family leave under certain circumstances to be reimbursed by the Federal government. The mandate was effective April 1, 2020, the same day that interim final regulations were posted.[5] While the Department of Labor wisely issued a suspension of enforcement through April 17, 2020[6], it is worth recalling that this was at the very same time millions of small businesses were simultaneously working to comply with state "stay-at-home" orders.

Similar timelines can be created for other programs initiated under the various Coronavirus responses packages.

The Chamber encourages the Committee to remember the chaotic nature of the situation as it conducts its oversight. It may also be worth considering documenting the evolving nature of these programs to create a baseline to guide others in their oversight.

Second, recognizing that economic circumstances have and continue to unfold in unanticipated ways, deference should be given to good faith certifications of program eligibility and compliance. Congress, the Administration, and the Federal Reserve have wisely utilized good faith certifications when it comes to PPP eligibility and employee retention under the Main Street lending programs.[7]

Some small businesses applied for and received PPP funding with the expectation that they would experience a significant drop in revenue only to find that they were able to modify their business operations in a manner that mitigated revenue loss. These small businesses should be applauded for their ingenuity, not have their certifications made as part of the PPP process second-guessed months or years later.

Similarly, we expect many mid-size and large employers to apply for and receive Main Street loans only to later discover that economic conditions over the course of the

[4] See "Frequently Asked Questions" at https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf
[5] See Department of Labor announcement at https://www.dol.gov/agencies/whd/pandemic
[6] See Wage and Hour Division Bulletin at: https://www.dol.gov/agencies/whd/field-assistance-bulletins/2020-1
[7] See PPP application certification regarding economic uncertainty at: https://home.treasury.gov/system/files/136/PPP-Borrower-Application-Form-Fillable.pdf and Main Street Lending Facility term sheets at: https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200430a1.pdf

four year loans do not permit them to continue operations and employment levels as they intended at the time of application. The Federal Reserve has stated that a borrower "should make commercially reasonable efforts to maintain its payroll and retain its employees during the time the Eligible Loan is outstanding."[8] Some lawmakers are already indicating that they expect employers who receive loans to do more.[9] To the extent that employers feel like they will have every decision they make subject to government scrutiny if they take a loan, they will be less likely to apply for assistance, which would only deepen the economic crisis and prolong the recovery. This Committee can help reassure employers by making clear the bounds of future reviews will focus on corrupt activity, not differences of opinion regarding what constitutes "commercially reasonable."

Third, in conducting any audits, the Committee should recognize that many businesses were asked to take urgent action to implement government policies. The American business community is proud of its role in stepping forward to provide everything from personal protective equipment (PPE) to testing sites to the infrastructure necessary to carryout the PPP program. In emergencies, speed is of the essence. Acting quickly has been essential to both medical and economic recovery. But speed requires that many normal operational processes must be set aside. It is important to remember, for example, that within days companies that had never made PPE before were helping meet urgent government demand, and financial institutions were implementing a lending program that had never before existed to provide a lifeline to millions of small businesses. While we should absolutely learn from what worked well and what didn't, we should not necessarily find fault with every action that in hindsight we wish had occurred differently.

Fourth, oversight must be guided by facts and not used as a tool for recrimination against politically disfavored industries or entities. There is already growing concern that Congressional oversight will in part focus on companies or sectors that various elected officials view as unworthy of assistance irrespective of whether or not they qualify under the terms of the programs in question.[10] Politically

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[8] See "Term Sheet" at: https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200430a1.pdf

[9] See for example: https://www.washingtonpost.com/business/on-small-business/fed-rebuked-over-loan-terms-that-dont-explicitly-bar-layoffs/2020/05/01/c856a46c-8bf3-11ea-80df-d24b35a568ae_story.html

[10] For examples see: https://www.salon.com/2020/05/11/coronavirus-bailout-loans-72-million-went-to-oil-and-gas-corporations/; https://www.theadvertiser.com/story/news/2020/05/09/congressional-democrats-demand-company-louisiana-oil-workers-return-federal-stimulus-loan-small-busi/3102438001/; and https://www.hollandsentinel.com/news/20200529/huizenga-calls-for-investigation-into-planned-parenthood-over-ppp-funds

motivated oversight not only erodes public confidence, it disincentivizes businesses from taking advantage of the programs created by Congress, ultimately making recovery more difficult.

There will likely be numerous requests for this Committee to investigate entities not based on evidence of wrongdoing, but because of a belief that an industry or entity should never be allowed to receive assistance in the first place. As Inspectors Generals you have a long history of ensuring that oversight is free from partisan considerations. The business community is grateful that you will no doubt ensure that the work of this committee is fair and that its efforts are not influenced by efforts to stigmatize certain sectors or entities.

Fifth, the Committee should attempt to ascertain the extent to which recovery efforts have been hampered by antiquated technology systems. From businesses seeking to coordinate the supply of PPE, access Small Business Administration loan programs, or file tax forms with the Internal Revenue Service, to individuals applying for unemployment compensation, the Chamber has heard repeated complaints about technological breakdowns at government agencies. It is understandable that the unprecedented scope of the crisis would strain even the best systems, but it is worth understanding the extent to which the problems are rooted in a failure to modernize state and federal IT systems.

Conclusion

Thank you for the opportunity to provide this input. The U.S. Chamber of Commerce stands ready to work with you in support of meaningful oversight that bolsters public confidence, protects taxpayers, and improves our nation's ability to respond to future challenges.

Ashish K. Jha, MD, MPH

Pronunciation: "*Aah-sheesh Jah*"
Preferred Title: Director, Harvard Global Health Institute

Bio:
Ashish K. Jha, MD, MPH, is the K.T. Li Professor of Global Health at the Harvard TH Chan School of Public Health and Director of the Harvard Global Health Institute (HGHI). He is a practicing General Internist and is also Professor of Medicine at Harvard Medical School. Dr. Jha received his MD from Harvard Medical School and trained in Internal Medicine at the University of California in San Francisco. He completed his General Medicine fellowship at Brigham & Women's Hospital and received his MPH from the Harvard TH Chan School of Public Health. Dr. Jha is a member of the Institute of Medicine at the National Academies of Sciences, Engineering, and Medicine. In September, Dr. Jha will begin work as the Dean of the Brown University School of Public Health.

Dr. Jha's research focuses on improving the quality and costs of healthcare systems with a specialized focus on the impact of policies. He has published over two hundred papers in prestigious journals such as the New England Journal of Medicine, and the BMJ, and heads a personal blog on using statistical data research to improve health quality. He has led groundbreaking research around Ebola and is now on the frontlines of the COVID-19 response. Dr. Jha leads national analysis of key issues around the COVID-19 pandemic, advising policy makers and elected officials at the state and federal level and appearing frequently on national television news outlets such as CNN, MSNBC, and Fox, and in written coverage from national newspapers including the New York Times and the Washington Post. HGHI is providing critical analysis and data on national and state by state testing with Dr. Jha, a vocal advocate for increased testing and contact tracing who has written extensively on the subject. His work has appeared in the New England Journal of Medicine, Health Affairs, the Atlantic, the Wall Street Journal, and Stat News among others.

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Updated on 5.15.2020

Statement of Ashish Jha, MD, MPH
Director, Harvard Global Health Institute
Pandemic Response Accountability Committee
June 3, 2020

My name is Dr. Ashish Jha and I am director of the Harvard Global Health Institute and the K.T. Li Professor at the Harvard T.H. Chan School of Public Health. I am grateful for the opportunity to provide testimony on the federal COVID-19 response and to highlight areas on which the PRAC can direct its oversight to ensure emergency funds are used effectively.

Ubiquitous testing is essential to our nation's ability to successfully combat the Coronavirus, reopen our economy and remain open while keeping Americans safe.

With a virus as infectious as SARS-CoV-2, each infected individual spreads the virus to, on average, 3 others. This leads over time to the explosive, exponential growth that forced us to shut our country down in March and April.

The first cases of Coronavirus arrived in the US at approximately the same time as it did in South Korea. The response of the two nations could not have been more different – and the results could not be more different. South Korea quickly developed a test, ramped up the testing, and then, using testing tied to tracing and isolation, brought the disease under control. The U.S. did not. Instead, our nation's failure to develop a testing infrastructure left us blind to the spread of the disease for much of January, all of February, and well into March – leaving us with an outbreak so large that we had to shut the entire nation down. And even now, two months later, while the testing infrastructure is better, it is far from adequate.

On a per capita basis, the US has 20 times more cases and 60 times more death than South Korea. In fact, as we know, the US has more cases and more deaths than any other country in the world. More than 100,000 Americans have died. And the synthesis of the best models suggest that we should expect another nearly 100,000 deaths by September 1 – with number of cases and deaths then likely accelerating in the fall and winter. We have already had a catastrophe and we are still in the early days of this pandemic with no end to suffering in sight.

So, what do we do to prevent so much death and suffering? While being locked down can be a temporizing measure, it is no solution. And in fact, there is broad agreement among health policy experts that there is only one path that allows us to keep our economy open and prevent hundreds of thousands of additional deaths: a robust testing, tracing, and isolation strategy. Of course, such a strategy needs to be paired with ongoing modest social distancing and universal mask wearing, which are critical to keeping the virus under control.

The Paycheck Protection Program and Health Care Enhancement Act allocated 25 billion dollars to be used in scaling up our testing infrastructure nationwide. Our institute has estimates that at minimum the United States should be testing one million individuals a day and others suggest that we need between 3 and 30 million tests a day to truly take control of the pandemic and prevent a second major wave of cases. As of now the United States is only testing four hundred thousand individuals per day. Though the first weeks following the allocation of these billions of dollars saw our daily testing double, growth has now leveled out and the past two weeks have shown minimal growth. Given that we are still well short of the level of testing that nearly every public health expert believes is necessary, we need to ensure that these funds are being actively deployed to scale up testing in communities across our country.

Though testing is a great resource in seeking to identify individuals infected with COVID-19, it is most useful when paired with effective contact tracing. The high proportion of COVID-19 cases that display no symptoms makes identification of spreaders especially challenging. This tracing allows us to identify individuals with a high likelihood of having been infected so that they can be tested. However, cities and states across the country have many fewer contact tracers than they need. The 25 billion dollars allocated for testing are also earmarked to assist with contact tracing, but it is unclear whether the money is being adequately directed to testing and tracing at the state level.

Both the CARES Act and the Paycheck Protection Program and Health Care Enhancement Act stipulate that the majority of testing resources be provided to states rather than be used at the federal level. While the characteristics of different states may demand different strategies, there are common challenges faced across this country that can best be overcome through strong federal leadership. As stipulated alongside the allocation of funding to expand testing, the Department of Health and Human Services has released a strategic plan for COVID-19 testing. Unfortunately, this plan is wholly inadequate – it actually suggests that our current testing rates are sufficient (I'm unaware of any expert who agrees with this) and leaves the responsibility of the testing to the states. With the billions of dollars allocated to expand our testing infrastructure, it is crucial that HHS, the CDC, and the entire federal government take a strong lead in helping states ensure that these valuable funds are being used effectively to scale our testing capacity.

While testing is our best on-the-ground tool to combat the spread of COVID-19, one of our greatest tools in understanding and containing this pandemic is data. Thus far the most accessible and reliable national data on COVID-19 cases and testing have been cobbled together by journalists rather than by our federal agencies. It is imperative that the CDC increases its efforts to track and report data relating to the pandemic. The CDC must also ensure that this data is accurate and transparent. Recent reports revealed that the CDC had lumped together testing for active cases and for antibodies. In so doing they artificially inflated testing numbers and obscured the true deficit we must surmount. The Paycheck Protection Program and Health Care Enhancement Act allocated a minimum of one billion dollars to the CDC to support a number of testing goals. The CDC should be using some of these funds to ensure that policymakers, researchers, and everyday citizens have access to reliable and up to date information and data characterizing outbreaks and testing across our country.

In conclusion, testing, tied to tracing and supportive isolation, as well as data are our two greatest weapons in combatting COVID-19 on a national scale and so far, we have fallen short. The Paycheck Protection Program and Health Care Enhancement Act provided substantial funding to improve our testing and data collection at the local, state, and federal level and I urge you to ensure that these funds are effectively and efficiently used to improve our COVID response in the coming weeks and months.

Ernest J. Grant, PhD, RN, FAAN
President, American Nurses Association

Dr. Ernest J. Grant is the 36th president of the American Nurses Association (ANA), the nation's largest nurses organization representing the interests of the nation's 4 million registered nurses.

A distinguished leader, Dr. Grant has more than 30 years of nursing experience and is an internationally recognized burn-care and fire-safety expert. He previously served as the burn outreach coordinator for the North Carolina Jaycee Burn Center at University of North Carolina (UNC) Hospitals in Chapel Hill. In this role, Grant oversaw burn education for physicians, nurses, and other allied health care personnel and ran the center's nationally acclaimed burn prevention program, which promotes safety and works to reduce burn-related injuries through public education and the legislative process. Grant also serves as adjunct faculty for the UNC-Chapel Hill School of Nursing, where he works with undergraduate and graduate nursing students in the classroom and clinical settings.

Grant is frequently sought out for his expertise as a clinician and educator. In addition to being a prolific speaker, he has conducted numerous burn-education courses with various branches of the U.S. military in preparation for troops' deployment to Iraq and Afghanistan. In 2002, President George W. Bush presented Grant with a Nurse of the Year Award for his work treating burn victims from the World Trade Center site. In 2013, Grant received the B.T. Fowler Lifetime Achievement Award from the North Carolina Fire and Life Safety Education Council for making a difference in preventing the devastating effects of fire and burn injuries and deaths within the state.

An active participant in professional organizations, Grant is a past chair of the National Fire Protection Association board of directors and served as second vice president of the American Burn Association board of trustees. He also holds membership in Sigma Theta Tau and Chi Eta Phi. Grant served as president of the North Carolina Nurses Association from 2009-11. In 2002, ANA honored Grant with the Honorary Nursing Practice Award for his contributions to the advancement of nursing practice through strength of character, commitment, and competence.

Grant holds a BSN degree from North Carolina Central University and MSN and PhD degrees from the University of North Carolina at Greensboro. He was inducted as a fellow into the American Academy of Nursing in 2014. He is the first man to be elected to the office of president of the American Nurses Association.

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Testimony for the Record
Ernest Grant, PhD, RN, FAAN
President, American Nurses Association
House of Representatives, Pandemic Response Accountability Committee
June 3, 2020

My name is Dr. Ernest Grant, and I am the President of the American Nurses Association. I want to thank you for the opportunity to submit testimony for the record, and for convening this hearing on oversight and transparency related to the Coronavirus Aid, Relief, and Economic Security (CARES) Act and other emergency COVID-related legislation. My colleagues in communities across the country have been on the frontlines of the coronavirus pandemic. I salute them during National Nurses Month and in what has become this extraordinary Year of the Nurse. I am especially proud of the many nurses who have given their time and skills to care for people in underserved, rural, and appointment shortage areas. As the President of the American Nurses Association (ANA), I am pleased to share with you my perspective on behalf of my organization and its members on the current state of Health Care with respect to the CARES Act and other legislation, as well as the work that still needs to be done.

ANA supported the inclusion of $100 billion for health care providers and hospitals in the CARES Act as well as the distribution of $76 billion to health care providers through the Paycheck Protection Program (PPP) & Health Care Enhancement Act. The COVID-19 pandemic has impacted providers in all settings in myriad ways. This includes physical and mental hardship incurred from caring for COVID-19 patients on the frontlines, as well as protecting themselves and their loved ones when going home at night. It also includes the financial and employment losses to facilities and providers associated with patients forgoing care and elective procedures. While ANA agrees with the administration's methodology used to distribute CARES Act funds, I urge the Committee to ensure that this methodology was carried out accurately to ensure that funds were distributed in an equitable manner. Furthermore, I urge the Committee to ensure that the funds distributed to hospitals through both the PPP & Health Care Enhancement Act and the CARES Act have been spent to ensure a safe and adequate workforce. This includes an adequate number of registered nurses (RNs) to ensure safe, high quality care, and the personal protective equipment necessary to provide that care.

Personal protective equipment is still scarce in many health care settings. In a recent ANA survey of more than 13,000 nurses, 43 percent said their facility is decontaminating N95 respirators for reuse. More than half of these respondents said they feel unsafe using decontaminated respirators. ANA does not support the use of decontamination methods as a standard practice; however, we have acknowledged this is a crisis capacity strategy. We recommend that this oversight body engage with the FDA about the need to expeditiously research the effectiveness of various decontamination methods for the reuse of PPE by nurses and other health care professionals. We also urge additional oversight to ensure a return to best practices as soon as possible.

I would also like to emphasize the need for spending on mental health services for frontline providers. The COVID-19 pandemic has placed an enormous strain on the providers – including RNs – who provide care to individuals with COVID. Rates of anxiety, depression, and even suicide among frontline providers have been covered extensively. The stress of inadequate supplies of personal protective equipment and caring for patients, family members, and self, with a novel disease have created an enormous mental

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health burden on these providers which will likely take months, if not years, to rectify. We recommend oversight activity to ensure that agencies like the Substance Abuse and Mental Health Administration have the capacity to develop and target effective resources and interventions to groups affected by the pandemic, particularly frontline workers.

I would also like to reiterate the ever-increasing value that Advanced Practice Registered Nurses (APRNs) play in all communities. APRNs across the country are trusted clinicians and ensure that millions of Americans have access to primary care services and critical care services needed during this national emergency. APRNs are ready and willing to continue to lead care teams, now and in the future, to ensure clinicians are available to provide the quality care that is expected in every community. APRNs must have the support of payers and their employers to work to the full extent of their training and education.

I encourage you to review the impact of Medicare's emergency flexibilities supporting APRN care and identify instances in which burdensome supervision requirements can be removed permanently. As we are concerned about the capacity of all providers, the need for a physician to provide unnecessary and often time-consuming supervision of APRNs continues to be a costly use of valuable time, causing avoidable delays in care, without showing a difference in patient outcomes. As human resources shift in times of surge and clinician burnout, we must reduce the burden on these trusted clinicians and ensure that they are able to practice at the top of their education and training.

In conclusion, ANA stands ready to partner with this Committee to ensure that the funds appropriated through the CARES Act and other pieces of COVID-related emergency legislation are implemented equitably and for the express purposes in the legislation and that RNs and APRNs are able to practice to the full extent of their education and training.

<u>Ralph P. Bozella</u>
Chairman
Veterans Affairs and Rehabilitation Commission
The American Legion

Ralph Bozella currently serves as Chairman for The American Legion National Veterans Affairs and Rehabilitation Commission. The Commission formulates and recommends policies on direct assistance, outreach and support for veterans and their families with the Department of Veterans Affairs benefits, healthcare, memorial affairs and women veterans programs to ensure that they receive the highest quality of care from the VA for their injuries and illnesses incurred from their military service; coordinates the activities of the National Organization in veterans affairs; and oversees the effectiveness of The American Legion's programs of service to these veterans and their dependents in claims for benefits administered by federal and state programs.

Ralph was drafted and served with in the U.S. Army from 1970-1972. He served in South Vietnam as a combat infantryman with the 23rd (Americal) Infantry Division, and as an education specialist with the 1st Calvary Division.

Ralph earned his Bachelor of Science in Health, Physical Education and Recreation from Slippery Rocky University in Pennsylvania. After his honorable discharge from service, he used the GI Bill to earn his Masters of Education Degree from Colorado State University.

Ralph retired as professional educator and now dedicates his time to advocate for veterans and their families. He has served as President for the United Veterans Committee of Colorado, Chairman for the Colorado Board of Veterans Affairs, Chairman for the Colorado Veterans Nursing Home Commission, and State Commander for The American Legion Department of Colorado. He has received numerous recognitions and awards for his service to veterans advocacy.

Ralph is a lifetime member of The American Legion, Veterans of Foreign Wars and Disabled American Veterans. He and his wife currently reside in Longmont, Colorado. They have four children and four grandchildren.

Written Statement from: Ralph P. Bozella
Chairman, National Veterans Affairs & Rehabilitation Commission
The American Legion

To: Pandemic Response Accountability Committee
Listening Forum: Stakeholder Perspectives on Federal COVID19 Spending and Response

Thank you for the opportunity for The American Legion Veterans Affairs & Rehabilitation (VA&R) Commission to offer public comment and suggestions to enhance transparency and accountability over emergency pandemic funds.

On April 2, 2020, The American Legion reported in an article, "The Department of Veterans Affairs (VA) will receive $19.6 billion in additional funding to fight the pandemic. The majority of the money allocated to VA will go directly to the Veterans Health Administration (VHA). This funding was appropriated to provide essential medical services, including vital medical and protective equipment, testing kits, personal protective equipment (PPE), and medical supplies to support growing demand for health-care services at VA facilities and through telehealth services. Provisions in the bill require VA to provide PPE to all home health-care workers serving veterans at home and in the community. To support VA staff working overtime during the COVID-19 pandemic, the CARES Act waives pay caps for VA staff so they can be fully compensated for hours served. The funding provided by the CARES Act will ensure VA is able to provide additional care and support for the most vulnerable veterans, including through programs assisting those who are homeless or at-risk of homelessness, as well as within VA-run nursing homes and community living centers."
(https://www.legion.org/veteranshealthcare/248698/covid-19-stimulus-bill-provides-nearly-20b-va)

Within the funding provided, VA Secretary Robert Wilkie and VHA Executive in Charge Dr. Richard Stone set policy and operational procedures for VHA and its 152 medical centers during the Corona Virus pandemic. They called for reducing face to face care when clinically appropriate and reiterated the standard pandemic mitigation practices of social distancing, hand washing, mask wearing, surface disinfecting, obeying stay-at-home orders, and went further by severely limiting healthcare services in its hospitals and closing the doors in many of its 1400 Community Based Outpatient Clinics (CBOC). Yet veterans were affected by the COVID-19 illness and continue to have other non-COVID related healthcare needs, and mental health services continue to be a need as the virus mitigation practices can have adverse effects on mental health. On-site screening practices, COVID testing, emergency-COVID hospital facility additions and changes, new procedures for staff and patient safety were established for patients still needing hospital and clinic services and for staff working in VA medical facilities. Patients and medical staff are learning that distancing from person to person, wearing masks and PPE and washing hands does make a difference in one's ability to mitigate a communicable disease.

Telehealth services have become the most used VA clinical treatment option so that healthcare providers could conduct appointments, verbally and virtually examine, and communicate with their patients when appropriate. In addition to providers speaking to patients on the phone, telehealth can be visual with the proper devices, and VA has telehealth equipment i.e. blood pressure cuffs, weight scales, stethoscopes and other medical devices equipped with wireless capabilities to send data to an on-line nurse charged with keeping telehealth records.

VA has worked to train clinical staff and mental health staff, even in its Vet Centers, to bolster telehealth techniques and has enhanced technical capabilities, devices, and equipment to meet telehealth technical requirements. VA is also using telehealth for its contractors to examine veterans who have filed claims for service-connected disabilities.

Not all medical examinations and appointments can be conducted through telehealth and for certain appointments patients must be seen and physical examination must be conducted. VA hospitals are becoming more open to in person patient appointments provided they follow strict COVID guidelines to enter the facilities.

VA is also required by law to follow the authority of the Mission Act. Veterans who need face to face care and cannot be seen within 20 days of a VA provider order for mental health, primary care or for specialty care within 28 days should be offered Community Care. However, the private sector is also affected by COVID-19 and private care in the community is not always available, especially in rural areas. We are finding that VA is not always able to meet the mandates of the Mission Act, and veterans, especially in rural areas, and especially older veterans are finding and paying for their own private care appointments. This is unacceptable and VA needs to find a way to complete its mission to care for all veterans, including those living in rural areas. A suggestion for future pandemic response funding is to ensure that community care options and payments are available for patients who are not properly serviced by the Mission Act.

Another important development taking place is that VA hospital directors are finding better and more frequent ways to communicate with its veteran community, veteran service organizations, and veteran patients. Whereas it was common for a VA medical director to host a few town halls a year, many are now holding weekly, bi-weekly, or monthly conference calls, with email notes. This is a practice that needs to continue as many VA healthcare issues are brought to the surface and can be resolved in a short period of time.

As VA continues to deal with veteran healthcare in a COVID-19 environment everyday changes have become the norm. A new normal is emerging as medical personnel, research scientists, politicians, and all of us continue to learn more about Corona Virus and the COVID-19 disease. As the new normal emerges, VA needs to continue working to protect its healthcare staff and its veteran patients, using electronic consults as appropriate, and keeping face to face visits as the standard mode of treatment as appropriate. Special attention needs to be given to rural veterans and their healthcare access and needs. As VA works to develop a new veterans healthcare reality, they must always include The American Legion and veteran service organizations and veteran patients in their planning, implementation, and evaluation processes. Pandemic response funding can help make this happen.

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Sharon Parrott

Senior Vice President for Federal Policy and Program Development

Sharon Parrott is the Senior Vice President for Federal Policy and Program Development at the Center on Budget and Policy Priorities. Parrott brings to the Center's leadership team deep expertise in poverty and economic opportunity as well as the federal budget and low-income programs and works to advance the Center's priorities across a range of policy areas and bolster the Center's organizational strength and sustainability.

Parrott rejoined the Center in 2017 after serving for two years as Associate Director for the Education, Income Maintenance, and Labor Division at the Office of Management and Budget (OMB).

At OMB she had budget and oversight responsibilities for the Departments of Labor and Education, the Social Security Administration, the human services programs at the Department of Health and Human Services, and the nutrition programs at the Department of Agriculture. As Associate Director, Parrott helped design budget and policy proposals, craft regulations, implement programs, and address management and budget challenges in these agencies.

Parrott previously worked at Center from 2012 to 2014 as Vice President for Budget Policy and Economic Opportunity, focusing on the impact of budget and tax policy on the nation's efforts to reduce poverty and hardship and promote economic opportunity.

Before then, she served as Secretary Sebelius' Counselor for Human Services Policy at the U.S. Department of Health and Human Services (HHS) from August 2009 until November 2012. At HHS, Parrott was a lead advisor on human services issues, including programs for low-income families and children, children who have been maltreated or are at risk of abuse, seniors and people with disabilities. Her work included a broad range of efforts, including early education, Temporary Assistance for Needy Families (TANF), child support enforcement, child welfare, teen pregnancy prevention, community supports for seniors and people with disabilities, and the intersection of health reform and human services issues.

Parrott previously worked at the Center from 1993 through August 2009. Parrott was the Director of the Welfare Reform and Income Support Division and routinely provided technical assistance to federal policymakers, state agency officials, and state-level policy organizations on a range of issues related to income assistance programs and the interaction and integration of benefit program rules in Medicaid, SNAP, TANF, child care, and the Children's Health Insurance Program.

Parrott also played a key role in the Center’s work on the federal budget, the impact of federal budget decisions on low-income populations, low-income tax policy, and policies that ensure that solutions to climate change do not adversely impact the economic well-being of low-income households.

In 1999 and 2000, Parrott was detailed to the District of Columbia's Department of Human Services where she served as a Senior Policy Advisor on TANF, Food Stamps, and Medicaid issues.

She received both her B.A. in Economics and master’s degree in Social Work from the University of Michigan.

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Statement of Sharon Parrott

Senior Vice President for Federal Policy and Program Development

Center on Budget and Policy Priorities

Prepared May 28, 2020

Thank you for the opportunity to provide this statement and present before the Pandemic Response Accountability Committee (PRAC). I am the Senior Vice President for Federal Policy and Program Development at the Center on Budget and Policy Priorities (CBPP). CBPP is a non-partisan research and policy institute. We analyze and develop federal and state policies and programs to reduce poverty, inequality, and racial inequities; to expand opportunity; and to strengthen fiscal responsibility. Importantly, we work not only on policy development, but also are deeply engaged in work on the implementation of federal policies and programs that target resources to low- and moderate-income individuals, families, and households, including programs such as Medicaid, SNAP (formerly known as food stamps), school meal programs, rental assistance programs, income support and social insurance programs, and refundable tax credits.

I have worked on low-income federal policies for 27 years. In addition to various roles at the Center on Budget and Policy Priorities, I served as the Counselor for Human Services Policy to Secretary Sebelius at the U.S. Department of Health and Human Services (HHS) from 2009 to 2012 and as the Program Associate Director for Education, Income Maintenance, and Labor at the United States Office of Management and Budget from December 2014 to January 2017. In both roles I had policy, budget, and implementation responsibilities for critical human service and social insurance programs. During my time at HHS, I was involved in implementation of measures enacted in the American Recovery and Reinvestment Act and I also assisted in the Department's response to the devastating earthquake in Haiti in 2010. And both during my time at HHS, during a detail to HHS in 2014, and during my time at OMB, I was engaged in the federal government's response to various periods when the number of unaccompanied children crossing the U.S. southern border rose sharply, requiring engagement from multiple agencies. My experience also includes two years in a policy and implementation role at the District of Columbia's Department of Human Services as well as federal service.

These experiences have helped provide me with insight into the importance and the challenges that arise when the federal government must respond to a crisis.

Today's crisis is of unprecedented scope in the post-World War II era. To be sure, this is not the first pandemic of the post-war era nor is it the first recession — but the combination of a dangerous pandemic and a recession that arrives with alarming speed and depth is unparalleled. It calls for an unprecedented marshalling of the unique capacities of the federal government to mount an aggressive response to protect public health and reduce disease and death; to protect individuals and households from economic hardship; to protect states and localities from devastating revenue losses that in turn would require layoffs and deep cuts in public services, cuts that would increase hardship of families and communities and stymie the health response; and to buttress the economy and help usher in an equitable recovery.

To date, the Congress has enacted large and important relief measures that are providing tangible and critical help for tens of millions of individuals and households as well as for businesses, non-profit institutions, and state governments. Oversight of these undertakings is critical for several reasons. First, oversight is an important accountability measure helping to prevent, and if necessary, uncover mis-expenditure of funds or malfeasance of other kinds. But the importance of oversight goes well beyond preventing and unmasking wrongdoing. Oversight is a critical way that we all —policymakers, federal agencies that implement policies, and the public — can learn how to improve relief and recovery efforts in the future.

Another important role of oversight is identifying who is harmed when implementation problems arise. Often the people most affected by the crisis are most affected by delays or other implementation problems. In today's crisis, both the health crisis and the economic fallout are heavily affecting people of color, immigrants, and low-paid workers. If efforts to provide relief falter, those most impacted by the crisis itself may also be particularly hard hit by implementation problems.

I also want to highlight one other important role that oversight, thought of a bit more broadly, can play. The public, policymakers and agencies also need to understand what goes right because there are powerful lessons for the future in understanding what served the country well during a time of deep need. It is natural and useful that the media and others seek to highlight where things have gone awry —indeed, that is how real-time improvements and course-corrections happen. But, if we don't also understand what goes right, we can fail to learn what we should repeat or build on in the next round of relief measures during this crisis and in future crises.

We are fortunate to have learned lessons on how to help a sharply deteriorating economy and people in need from our response to the Great Recession. This includes lessons of what worked well and what needed improvement. For example, we have significant evidence that the policy of increasing food assistance through SNAP during the Great Recession not only helped hold down increases in poverty as measured by the Supplemental Poverty Measure, but it also reduced food insecurity. We also know that fiscal relief provided to states during the Great Recession helped reduce the budget cuts and layoffs states (and the entities states fund) had to make, but that the relief was both too small and ended too early, forcing states to cut services and staff, actions that hurt state residents and slowed the nation's recovery.

My point is simply that there is tremendously important lessons to be learned by the federal government's successes and failures in response to today's crisis, and I urge this committee to be diligent in uncovering when things go wrong while also ensuring that the public gets an accurate picture of where efforts are successful.

My areas of expertise are in low-income policies and programs and I will focus on several areas where large-scale policies or programs have been put into place by various relief packages where I think important lessons can be learned, or mid-course corrections made, based on challenges that have arisen and the successes achieved. Specifically, I will comment on nutrition assistance efforts, the stimulus payments (also known as the Economic Impact Payments), and unemployment benefit expansions. I will then discuss the unique challenges facing immigrants and their families and communities and how both the policy environment and messaging failures are exacerbating hardship.

I am not a public health expert, and so will leave commenting on the public health response to others.

Nutrition Assistance Efforts

The Families First Coronavirus Response Act ("Families First" hereafter) included two important provisions for expanding nutrition assistance to struggling individuals and households during this crisis:

- A provision that allows states to augment SNAP benefits for households during the public health emergency.

- A provision, known as Pandemic EBT or P-EBT, that allows states, with USDA's approval, to provide meal replacement benefits through SNAP's electronic benefit transfer cards for households with children who attend a school that's closed and who would otherwise have received free or reduced-price meals.

The speed with which large-scale help is reaching households through the SNAP provision provides important lessons for policymakers and the federal government. All states were able to quickly secure approval to implement this benefit-augmentation option and many states were able to start providing additional benefits within two weeks of the legislation passing. As was the case in the Great Recession, SNAP proved to be one of the fastest, most efficient way to deliver help to struggling households. Prior to the crisis, some 18.8 million households, including 36.8 million people, were receiving SNAP. Caseloads have risen sharply in many places. By augmenting benefits in an already large-scale program that expands automatically as need rises, this policy was able to deliver billions in relief in an extremely short timeframe. Still some implementation decisions the U.S. Department of Agriculture (USDA) has made with regard to this provision raise concerns — specifically an interpretation that has meant that while most SNAP households have gotten increased benefits, the poorest households already receiving the maximum allotment (40 percent of all SNAP households) are getting no additional help.

The P-EBT program is also starting to provide important help to families with children facing increased food insecurity, as a result of children missing out on free school meals. This program is critical, as the regular school meal delivery system — free meals onsite in schools — is misaligned to the crisis. But because a new delivery mechanism is needed, implementing the P-EBT program is more challenging than implementing the SNAP augmentation policy.

Under the P-EBT program, families can receive $5.70 per child per day under the program. For children whose families receive SNAP benefits, the additional benefits can be added to their SNAP benefits; but for children whose families do not receive SNAP, states must locate the families and get them electronic benefit transfer cards so they can access the assistance. Unfortunately, this program will end at the end of the school year without further congressional action.

As a result of implementation challenges, P-EBT benefits are getting to children who need them far too slowly

- As of today, 36 states, with about 80 percent of eligible children have received USDA approval to implement the program, and at least 6 states have pending plans, but benefits in many of these states have not yet been issued. According to the New York Times, as of mid-May only 15 percent of eligible children had received P-EBT benefits.

- There are important after-action questions about what could have been done to get this program up and running more quickly — including examining whether USDA have done more to provide technical assistance to states on different models that could be used to facilitate the program, particularly as different approaches began to emerge.

- Based on anecdotal evidence, delays occurred for multiple reasons –

    - Many states' education departments did not have reliable centralized lists of students with all the needed information to mail the benefit cards. Setting up a new application or data collection effort and a process for multiple data matches was complicated.
    - USDA did not make its requirements transparent and the back and forth to finalize plans in some cases took more than a month.
    - Even after plans were approved states needed to execute the plan, which required launching new applications for families to use and/or collecting data from hundreds of school districts.
    - USDA required states to pay half the administrative costs, which presented a barrier for some states that were anticipating significant budget shortfalls.
    - The companies that process EBT cards reportedly added to delays, either because of concerns about limited card stock or the number of cards they can issue daily.
    - Developing a plan required coordination across multiple state agencies and USDA. Staff from each of these agencies had many other important COVID-related priorities in late March and early April, often under new telework conditions, that complicated coordination efforts.

- But the most pressing question is what comes next — what needs to happen at the agency and in legislation so that:
    - Families can get help over the summer when many children won't be able to participate in congregate summer feeding programs and food assistance needs will remain high;
    - Families can get help if schools can't open in September in some communities;
    - Families can get help if schools open but students do not attend everyday as a strategy for reducing the number of students in school and promoting social distancing.

- More broadly, the idea that if schools shut down the school meals program should have a mechanism for delivering replacement benefits for families has been discussed for about a decade, since the 2009 H1N1 pandemic. But, in the absence of a crisis or a congressional directive, detailed plans for how to implement such a program were not made. To ensure that in a future crisis that shuts down schools — either on a widespread or more limited basis — replacement food aid can get to families quickly and efficiently, we should have permanent legislation authorizing a replacement benefit program during certain crises and then mandate that detailed plans are in place in each state for how to implement such a program, so that this mechanism can be turned on quickly when needed.

Stimulus Payments

We commend Treasury and the IRS for using the authority the CARES Act gave them to automatically issue stimulus payments (or Economic Impact Payments) to recipients of Social Security, Railroad Retirement benefits, Supplemental Security Income (SSI), and certain veterans benefits who do not otherwise file a tax return. (Those who file a tax return receive the stimulus payments automatically based on being a tax filer.) Overall, particularly given its depleted resources, the IRS has done a good job in getting more than 150 million payments totaling $258 billion as of Friday, May 22nd. Not surprisingly, there have been a few missteps along the way, and I will focus on one as an example because it can still be mitigated.

Federal benefit recipients who did not file a tax return in 2018 or 2019 and who received automatic payments for themselves based on being a benefit recipient could only receive the $500 due for each of their dependent children if they submitted an online IRS form. The deadline the IRS set was unnecessarily tight. For example, the April 22 deadline in the case of Social Security recipients and railroad retirees was put into place with just 48 hours' notice. For older people and people with disabilities, some of whom do not have internet access and would need help with the form, this tight deadline coming amidst a pandemic with stay-at-home orders in place (making it hard for even savvy family members to help with the form), was particularly unreasonable. If these individuals couldn't meet these deadlines, even if they fill out the online form later this year, the IRS's current position is that they must wait to file a 2020 tax return (in early 2021) to receive the remaining $500 per dependent child they are owed under the law. There is considerable risk that households that are not otherwise required to file a tax return will not file; and even if they do file, they will have been forced to wait a considerable period of time to receive the benefits. One of the primary goals of the stimulus payments was to inject cash quickly into the economy and to help households address urgent needs. Any delay in benefit receipt runs counter to the purpose of this program.

We estimate that roughly 1 million children are at risk of missing out on the $500 payment their parents or guardians are supposed to receive because of the very short deadline for filling out the online form.[1]

In our view, the IRS has the legal authority to make stimulus payments in multiple installments in 2020 as it learns more about a household – for example, if households submit information via the online form about dependents. The IRS should permit federal program beneficiaries to complete the online form at any point in 2020. It can then compare this information against the list of individuals who received automatic payments earlier in the year (either because they were tax filers or because they were federal benefit recipients) to ensure it does not make duplicate payments, and then provide supplemental benefits based on the presence of dependents. Failing to take this step will mean large numbers of families will miss payments they are owed.

Finally, the IRS has said that it will conduct outreach efforts to help people who have not filed a tax return in recent years and who do not receive federal benefits that resulted in automatic payments submit the "non-filer" form that allows them to receive the stimulus payment. However, the IRS has not provided supplemental funding to free tax preparation sites, known as VITA sites, that would allow them

[1] This is the estimate of the total number of children living with parents or guardians who receive these benefits and who likely did not file a tax return. We do not yet know how many of these individuals completed the form to claim their $500 payments, but we expect it to be a small minority of those eligible.

to remain open during the extended tax filing season and help non-filers understand their eligibility for the stimulus payments and submit the online form. The IRS was provided additional resources in the CARES Act and a modest portion of those resources could be directed to VITA, though the legislation did not require them to do so. It is important to understand why the IRS has not chosen to utilize VITA sites, operated by trusted community partners, in its outreach efforts.

Unemployment Benefit Expansions

The CARES Act expanded unemployment benefits in three ways: it expanded eligibility for benefits to workers who do not qualify for regular unemployment insurance benefits by establishing the Pandemic Unemployment Assistance (PUA) program; it increased benefit levels by $600 per week in both the regular unemployment insurance program and PUA; and it increased the number of weeks of benefits a worker can receive through the Pandemic Emergency Unemployment Compensation (PEUC) program.

These expansions are providing critical relief to tens of millions of people. Data from the Department of Labor show that in the week ending May 9, nearly 31 million workers were receiving jobless benefits through the regular unemployment insurance program (including extended benefits), through PUA, or through PEUC. Fully 7.8 million workers were receiving benefits through PUA, which means that in the absence of the creation of that program, they would have received no jobless benefits at all.

All 31 million jobless benefit recipients received the federally funded $600 per week in additional benefits. This benefit provided $18.6 billion in income support — money that households can use to pay the bills — in one week alone. These resources are not only helping families avert eviction and hunger, they are helping to boost consumer spending, shoring up businesses and the economy overall.

These expansions go well beyond what was done in the Great Recession. While the Recovery Act provided states with incentives to expand eligibility through improvements in their base unemployment insurance systems, those changes did not have the reach of PUA. And the Recovery Act boosted benefits by a much smaller amount.

A significant *policy* question going forward is whether the CARES Act expansions — or modified versions of them — will continue as long as unemployment remains high, or will they expire while need remains high, leaving both workers and the economy without the help they need.

There have been a host of implementation issues, which I will discuss briefly below. But this is a good example of a set of policies that is providing enormous, tangible relief that is helping families avert financial catastrophe and boosting the economy and those successes should not be overlooked.

The implementation challenges state unemployment programs faced have been widely reported.

- States received an avalanche of applications, and there were delays in processing them.

- It took states time to program their systems to add the $600 per week in federally funded benefits. (And, the fact that states would not be able to quickly program their systems to provide a federally funded benefit boost that was based on each worker's prior earnings was a key reason that policymakers decided to provide a flat benefit increase to everyone.)

- Setting up the PUA program — with new eligibility rules — presented particular challenges. All states are now taking PUA applications, but as of the week ending May 9, only 33 states were providing PUA benefits to workers, with the other states still working to implement the program and begin paying benefits.

The delay in setting up the PUA program is both the most understandable implementation delay and the most problematic, as this has meant that some workers that lost their jobs at the beginning of the crisis in March have been without work and unemployment benefits for a long period of time, when multiple rent, car, and utility payments have come due. For many of those who had low-paid jobs and few assets, the delay likely caused significant difficulties.

There are really two underlying causes of the challenges.

- First, state unemployment systems are outdated and underfunded. Understanding the resources needed to upgrade the IT systems and ensure that they have appropriate surge capacity is critical.

- Second, the underlying policies of our regular unemployment program are outdated. Too many workers are ineligible for benefits under the standard program — in the decade before the current crisis, only about three in 10 jobless workers qualified for unemployment benefits and the eligibility rates are far lower in some states. Benefit levels are low and the number of weeks available to jobless workers when unemployment is rising and periods of joblessness longer are inadequate. These underlying policy deficiencies mean that when unemployment starts to rise — or in the case of the current crisis, surge — policymakers recognize that they need to make programmatic changes to ensure that the program is more responsive to workers' needs during the downturn. This leaves states scrambling to make policy changes — that require IT systems changes — at precisely the time when they are struggling to process a large increase in applications.

These lessons should translate into action to modernize state unemployment insurance systems and to modernize the program so that it meets the needs of workers who lose their jobs, during downturns and during more normal times, with eligibility rules that cover more workers, adequate benefit levels, and increased weeks of benefits with unemployment is high.

Immigrants and their Families are Hard Hit by Crisis

Immigrants have been hard hit by both the health and economic crisis. Immigrant workers are over-represented in jobs seeing the largest layoffs and in jobs that are deemed essential and put them at heightened risk for contracting COVID-19. [2]

Unfortunately, immigrants and their family members also face special challenges to receiving help. In some cases, immigrants (both those with an undocumented status but also many immigrants in the country lawfully) are ineligible for certain forms of assistance. But in other cases, immigrants and their family members (often U.S. citizens) are eligible for help through programs like SNAP and Medicaid, but forgo assistance because they are afraid that receiving help will hurt them in future immigration proceedings.

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[2] See "Immigrant Workers: Vital to the U.S. COVID-19 Response, Disproportionately Vulnerable," by Julia Gelatt, Migration Policy Institute, March 2020, https://www.migrationpolicy.org/research/immigrant-workers-us-covid-19-response.

This fear is longstanding but has grown worse in recent years. The Administration's new public charge regulation makes receipt of a broad set of benefit programs a negative factor for many people applying for an immigration status. And while a relatively small number of immigrants eligible for benefits will face a future public charge determination, the rule has engendered fear well beyond those likely to be directly affected. That is understandable. Immigration rules are complicated, and they also can change. Immigrants and their family members, fearing that a misstep could mean that their family is split apart, and someone will be forced to leave the country, are understandably very cautious.

Moreover, the Trump Administration has undertaken a number of efforts designed to make it harder for immigrants to remain in the United States such as trying to eliminate the Deferred Action for Childhood Arrivals (DACA) and threatening the end of temporary protected status for tens of thousands of individuals. Moreover, the Administration has taken steps to further restrict benefit access to immigrants by pursuing several regulations and executive orders including, but not limited to, public charge.

While the precise policies are confusing the message sent to immigrants is not — the Administration has made it clear that it takes a negative view of immigrants receiving benefits *for which they and/or their family members are eligible.*

The Urban Institute recently issued a report on the extent to which immigrants and their family members avoided benefit receipt in 2019 (prior to the crisis). For example, the report found that:

- "More than one in seven adults in immigrant families (15.6 percent) reported that they or a family member avoided a noncash government benefit program, such as Medicaid, the Children's Health Insurance Program (CHIP), the Supplemental Nutrition Assistance Program (SNAP), or housing subsidies, in 2019 for fear of risking future green card status. More than one in four adults in *low-income* immigrant families (26.2 percent) reported chilling effects during that period." (emphasis added)

- "Among adults reportedly avoiding noncash government benefit programs because of green card concerns, nearly half said their families avoided Medicaid/CHIP or SNAP and one-third avoided housing subsidies. Smaller but substantial shares of adults also reported spillover effects to public programs excluded from the public charge rule, including free or low-cost medical care programs for the uninsured (20.8 percent); the Special Supplemental Nutrition Program for Women, Infants, and Children (16.3 percent); Marketplace health insurance coverage (14.1 percent); and free or reduced-price school lunches (13.0 percent)."[3]

Note that many of those forgoing benefits are U.S. citizen family members, often children.

The implications of forgoing health and nutrition assistance during the current crisis are even larger than during strong economic times. Given today's high unemployment rates, many people out of work or who have seen significant drops in their earnings will not find new jobs or see their full earnings return for many months, and potentially years. Benefits play a particularly critical role in helping families put

[3] Hamutal Bernstein, Dulce Gonzales, Michael Karpman, and Stephen Zuckerman, "Amid Confusion over the Public Charge Rule, Immigrant Families Continued Avoiding Public Benefits in 2019," the Urban Institute, May 18, 2020, https://www.urban.org/research/publication/amid-confusion-over-public-charge-rule-immigrant-families-continued-avoiding-public-benefits-2019.

food on the table and keep a roof over their heads during more prolonged periods of hardship. Moreover, the implications of forgoing health coverage during this public health crisis are severe. Many local officials have raised concerns that immigrants may not be seeking testing or treatment for COVID-19 symptoms.

DHS clarified on its website that receiving health services related to COVID-19 would not count against people later going through a public charge determination. But this narrow exemption doesn't go nearly far enough. All non-emergency medical care unrelated to COVID-19 and paid for by Medicaid would still count against immigration applicants, and any food assistance provided through SNAP and other crucial benefits could still stand in the way of a person seeking to remain in the United States with their family.

There are steps federal agencies can take to help ensure that immigrants and their family members access critical supports during the pandemic and economic crisis. The Administration could change its public charge policy, issue guidance about disregarding benefit receipt during the public health emergency and economic crisis in the "totality of circumstances" determination that is designed to weigh and in some case disregard situations that are atypical, or choose to delay its implementation during the current crisis.

Absent policy change, the Administration could engage with stakeholders, states, localities and community partners to mount an aggressive outreach campaign to better explain all of the groups of immigrants who have nothing to fear from the public charge rule and why they should seek out the help they need; the importance of getting health care and testing during the public health emergency; and the current public charge exception for COVID-19 testing and treatment.

To be candid, the fear that this Administration has created in immigrant communities through the totality of their actions make it unlikely that they will be a trusted messenger. And therein lies an important point: the Administration's rhetoric and policies related to immigrants over the last several years now hinders the relief and recovery goals of the nation and threatens the health and well-being of millions of people.

Committee *for a* Responsible Federal Budget

Staff

Maya MacGuineas

President

Maya MacGuineas is the president of the bipartisan Committee for a Responsible Federal Budget. Her areas of expertise include budget, tax, and economic policy. As a leading budget expert for the past twenty years and a political independent, she has worked closely with members of both parties and serves as a trusted resource on Capitol Hill. MacGuineas testifies regularly before Congress and has published broadly, including regularly in *The Washington Post*, *The Wall Street Journal, The New York Times, The Financial Times*, *The Atlantic*, and numerous other outlets. She also appears regularly as a commentator on television.

MacGuineas oversees a number of the Committee's projects including the grassroots coalition Fix the Debt; the Committee's Fiscal Institute; and FixUS, a project seeking to better understand the root causes of our nation's growing divisions and deteriorating political system, and to work with others to bring attention to these issues and the need to fix them. Her most recent area of focus is on the future of the economy, technology, and capitalism.

Previously, MacGuineas worked at the Brookings Institution and on Wall Street, and in the spring of 2009 she did a stint on The Washington Post editorial board, covering economic and fiscal policy. MacGuineas serves on a number of boards and is a native Washingtonian. Contact her at MacGuineas@crfb.org (mailto:macguineas@crfb.org) and find her on Twitter @MayaMacGuineas (https://twitter.com/MayaMacGuineas).

Committee for a Responsible Federal Budget

Testimony of Maya MacGuineas

Hearing Before the Pandemic Response Accountability Committee: *"Stakeholder Perspectives on Federal COVID-19 Spending and Response"* June 3, 2020

Chairman Horowitz, Vice-Chair Martin, and members of the Committee, thank you so much for inviting me here today to discuss the challenges of responding to this daunting crisis. The federal government will be disbursing a record amount of money in the coming months through grants, contracts, loans, tax cuts, subsidies, and other measures. An unprecedented outlay should be paired with an unprecedented amount of oversight and transparency. This is essential to maintain the trust of the American people that tax dollars are well spent.

I am Maya MacGuineas, president of the Committee for a Responsible Federal Budget. The Committee for a Responsible Federal Budget is a nonpartisan organization dedicated to educating the public and working with policymakers on fiscal issues. Our co-chairs are Purdue University President and former OMB Director Mitch Daniels, former Secretary of Defense and former OMB Director Leon Panetta, and former Congressman Tim Penny. Our board includes past directors and chairs of the Office of Management and Budget, the Congressional Budget Office, the Federal Reserve System, the Treasury Department, and the Budget Committees.

We have launched CovidMoneyTracker.org to monitor every significant financial action taken to address the current crisis, whether by legislation, administrative action, or the Federal Reserve. We follow the dollars over time to provide valuable information on how much has been disbursed, who is receiving it, and how much is paid back.

I will touch on several main points today:

1. The pandemic and economic downturn is a crisis never before seen in the history of the country, and the Coronavirus Aid, Relief, and Economic Security (CARES) Act was a rapid response.

2. The speed of the response makes tracking the dollars that much more important; tracking the actions in the Great Recession of 2008-09 offers a helpful template.

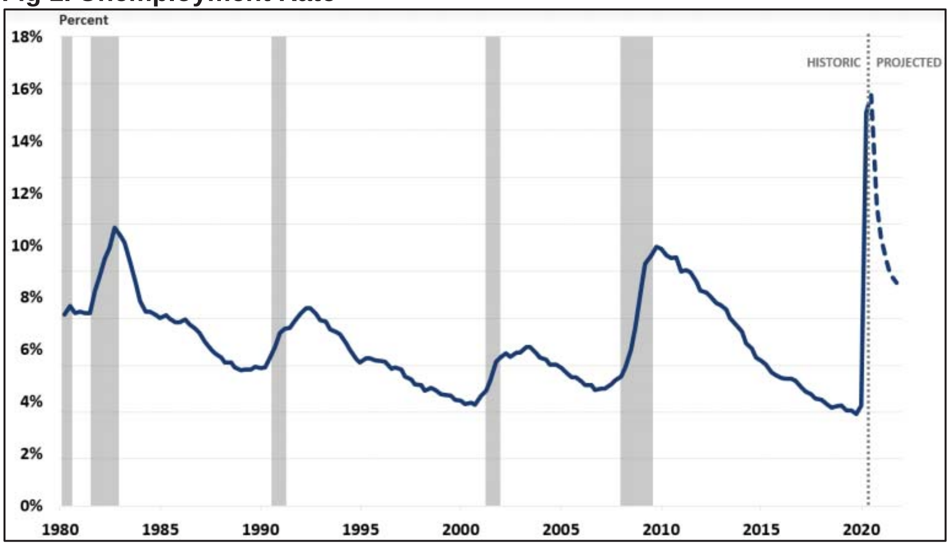
3. The Pandemic Response Accountability Committee can provide additional measures to give the public a complete picture of the response, as well as combatting waste, fraud, and abuse.

The money we have borrowed so far to combat this health and economic crisis was a rational response to this unprecedented situation. Dollars had to be injected into the economy quickly. That said, failing to spend them as efficiently and effectively as possible will abuse the public's trust.

This Downturn is Sharper than Any Previous Recession, and the Response Rapid

The United States is currently facing an unprecedented economic and public health crisis. Unemployment is expected to remain at 15 percent for at least the next four months – higher than any time since the Great Depression. Real Gross Domestic Product (GDP) has likely fallen more than 12 percent since the crisis began, according to the Congressional Budget Office, and may not recover for several years.

Fig 1. Unemployment Rate



Source: Congressional Budget Office

Lawmakers responded quickly, enacting roughly $3.6 trillion of gross spending, loans, grants, subsidies, tax cuts, and other measures to support the economy, with a projected net cost of $2.4 trillion – $1.6 trillion of which has been committed or disbursed so far. Meanwhile, the Federal Reserve has reduced short-term interest rates to the zero lower bound and announced nearly $6 trillion in loans, equity purchases, and other activities, with $2.4 trillion of support provided thus far. The administration has also taken action, such as delaying tax filing deadlines and student loan repayments, which could offer as much as $400 billion in support to the economy.

Because of our mission to advocate for sound fiscal policy, we've been monitoring closely the government's fiscal response to the COVID-19 pandemic, issuing numerous analyses and summaries on proposals from Congress and the Trump Administration. Through our COVID Money Tracker initiative, we have discovered that nearly half of what's been authorized by

Congress and made available by the Federal Reserve has been committed or disbursed thus far, though the disbursal rates have varied by program.

Some of the funds have been allocated relatively quickly, such as the Paycheck Protection Program (PPP) – which exhausted its initial funding within 10 business days – or the economic impact payments, which are approximately 90 percent disbursed. Other programs, such as the $500 billion lending program operated by the Treasury and Federal Reserve, are just beginning operations. Other economic support, such as increased unemployment benefits or payroll tax delays, will provide support over time.

Table 1: Summary of Federal Response to COVID, as of May 28.

Response	Allowed	Disbursed/ Committed	Deficit Impact
Legislative Actions	**$3.6 trillion**	**$1.6 trillion**	**$2.4 trillion**
Coronavirus Preparedness & Response Supplemental Appropriations Act	$8 billion	>$2 billion	$8 billion
Families First Coronavirus Response Act	$192 billion	~$48 billion	$192 billion
CARES Act	$2.7 trillion	$1.4 trillion	$1.7 trillion
Paycheck Protection Program and Health Care Enhancement Act	$733 billion	$203 billion	$483 billion
Administrative Actions	**~$380 billion**	**~$307 billion**	**~$80 billion**
Declare national emergency	~$50 billion	Unknown	~$50 billion
Delay tax filing deadline to July 15	~$300 billion	~$300 billion	$0
Other executive actions	~$30 billion	$7 billion	~$30 billion
Federal Reserve Actions	**>$5.8 trillion**	**$2.4 trillion**	**N/A**
Interest rate changes	N/A	N/A	N/A
Asset purchases	$1.8 trillion**	$1.9 trillion	N/A
Liquidity measures	>$1.9 trillion	$473 billion	N/A
Emergency lending programs and facilities	>$2.1 trillion	$130 billion	N/A

Source: CRFB estimates, compiled from many different agencies' public disclosures.
Deficit impact is from 2020-2030.
**Represents amount disbursed plus the amount scheduled to be purchased through the following week.

Some examples of our analyses so far:

- Because of the virus, airlines have experienced a sharp decline in passenger activity. To help assist airline employees, the CARES Act included the $32 billion Air Carrier Worker Support program, which provides grants and loans to help passenger and cargo airlines – as well as ground service providers – retain and pay their workers. Public records have made it possible to monitor the grants and loans airlines have received.
- Treasury data has allowed us to analyze the role the Federal Reserve is playing in supporting federal government borrowing demand. Since fiscal and monetary emergency measures were first undertaken, we've been able to see how the Federal Reserve's purchasing of U.S. Treasuries has absorbed the sharp increase in Treasury debt issuances to fund the CARES Act and other relief measures. We've also observed that the Federal Reserve recently exceeded its one-week record of mortgage-backed securities purchases

set during the Great Recession. This level of detail will prove useful in understanding how fiscal and monetary responses to the COVID-19 crisis complement each other and how the market is responding.
- One of the more heavily publicized efforts to support the economy is the PPP, administered through the Small Business Administration (SBA). Although SBA has issued regular updates on funds disbursed, their reporting has been inconsistent. Despite this, we published a breakdown of the first tranche of PPP loans authorized by the CARES Act, including how quickly the funding ran out and the distribution by state and by industry.

Policymakers Acted Quickly, Making Oversight More Important

Given the severity of the economic downturn, a staggering amount of aid was necessary, and lawmakers acted appropriately in approving this economic support as fast as possible. However, approving such a large amount of aid in a matter of weeks makes the oversight process that much more important. Having entered this national emergency already facing $1 trillion annual deficits, it's crucial that we use the fiscal space we have as prudently as possible. Extraordinary efforts by policymakers to respond to the pandemic will be all for naught if these new programs aren't administered as intended and the aid doesn't get where it needs to go in a timely manner.

The last time we faced anything of this magnitude was during the Great Recession of 2008-09. Recognizing the enormity of the fiscal and monetary actions taken to counter that downturn, in 2009 the Committee launched Stimulus.org, a landmark effort to track spending and financing called for under the American Recovery and Reinvestment Act, the Troubled Asset Relief Program, new loan facilities and quantitative easing regimes, and other actions taken by the federal government and Federal Reserve. It remains the only comprehensive source compiling and tracking all measures undertaken as part of the Great Recession. It was regularly cited by policymakers, outside experts and the media, and had millions of individual views during the height of the crisis.

In the current crisis, with so much money being disseminated in so many novel ways, billions of dollars could be lost in the shuffle. Transparency and oversight can play a vital role in promoting fairness and efficacy. That's why COVID Money Tracker will catalog every policy enacted, trace how, when, and on whom each dollar is spent, and offer a user-friendly interface for researchers and ordinary citizens to view and understand this data. Over time, this tool will track and record every significant financial action that is taken to address the current crisis by Congress, the executive branch, and the Federal Reserve.

Within each policy, we'll also track what states, industries, or sectors of the economy receive assistance and what, if anything, is expected in return for the money. This data will be as granular as possible but sorted and categorized into a digestible and easy-to-understand format.

This Committee Is Uniquely Empowered to Help Transparency

I want to say thank you to this Committee. The work of the Pandemic Response Accountability Committee (PRAC) is incredibly important to the success of current and future stimulus efforts. Future borrowing may be needed to combat the health and economic crisis, and a future package will be much easier for lawmakers to craft if the American people have faith that previous packages have been relatively well-targeted to the individuals and businesses most in need of assistance, and with as little waste, fraud, and abuse as possible.

The most important thing to do is track where federal funding is distributed and ultimately allow determinations of whether the relief provided the return on investment policymakers were seeking. The 17 reports PRAC has posted up to now are such an important first step, reminding agencies where they ought to improve distributing funds in a way that matches the intended purpose of lawmakers.

In particular, I'd like to commend PRAC for its commitment to publish detailed data on grants, awards, and contracts offered across the federal government. Without PRAC's action to do so, such data could be nearly unusable to researchers, as agencies may not make it available at all or may fail to make it accessible. Similarly, PRAC's commitment to provide a central hotline for waste, fraud, and abuse tips spanning the entire pandemic response will be a valuable source of information.

The Congressional Oversight Commission, another oversight committee, has a much narrower mission, focused on oversight of the $500 billion in lending by the Treasury and associated lending by the Federal Reserve. While that amount could be a significant portion of the loans made available, there are many other tax and spending relief programs enacted in law and by regulation outside the Congressional Oversight Commission's purview.

Transparency efforts by federal entities thus far have been helpful but imperfect. The work we have done at COVID Money Tracker relies on the disclosure by individual agencies, yet compiling that information from dozens of different data sources to make it usable for the public has been a daunting task. Relying on agencies to disclose only the information they want to disclose will not tell the whole story.

For instance, the PPP has received a great deal of public attention thus far. While the SBA's initial reports showed loans broken down by industry, its recent reports have neglected that level of detail. Industry breakdowns of PPP lending would offer much-needed insight into how this program is performing and whether the financial aid is getting to businesses most in need during the downturn. Likewise, no data has been released about the number of loans that have been cancelled or returned, despite public interest. PRAC has the ability and the duty to ensure that data is reported consistently and fairly. This way, the public can get an accurate portrayal of the successes and failures of relief efforts thus far, not necessarily the rosy picture that an agency wishes to portray.

The impact of these federal dollars only goes as far as the due diligence of the agencies in charge of disbursing and tracking each dollar approved. PRAC's reports are a key backstop to ensure programs aid the individuals and businesses most in need that Congress intended to reach. The work of PRAC will not only improve the results of federally-approved COVID-19 fiscal relief, but also better allow projects like COVID Money Tracker to give lawmakers and the public additional understanding of the unprecedented relief efforts underway. With trillions of dollars authorized and more potentially on the way, that level of oversight is more important than ever.

Jason Grumet, founder and president of the Bipartisan Policy Center is respected on both sides of the aisle for his innovative approach to improving government effectiveness and impacting public policy.

Over the last decade, BPC has combined the best ideas from both parties to promote health, security, and opportunity for all Americans. Under Grumet's leadership, BPC has harnessed the power of collaboration to advocate for principled and politically viable policy solutions to major policy challenges facing our country. In 2019, BPC played a significant role in successful legislative efforts to strengthen key early childhood programs, accelerate the development of low-carbon energy technologies, expand access to retirement security for millions of Americans, and improve the nation's response to the migration crisis at the southern border.

In 2001, Grumet founded and directed the National Commission on Energy Policy, which produced a comprehensive set of policy recommendations many of which were incorporated into the 2005 Energy Policy Act. Previously, Grumet led the Northeast States for Coordinated Air Use Management, where he expanded the organization's technical and advocacy capabilities and increased its presence in national policy discussions.

Grumet regularly authors commentaries and editorials in national publications and participates in broadcast interviews on major cable news networks. He is frequently called upon to testify before Congressional committees on a range of topics, speak at national forums, and supply guidance to policymakers and business leaders.

Grumet is the author of City of Rivals: Restoring the Glorious Mess of American Democracy, released in September 2014.

Grumet received a Bachelor of Arts from Brown University and J.D. from Harvard University. He lives in Bethesda, Maryland with his wife and three children.

BIPARTISAN POLICY CENTER

Statement of Jason Grumet
Founder and President of the Bipartisan Policy Center
Before the Pandemic Response Accountability Committee
June 2, 2020

Acting Chairman Horowitz, Vice-Chair Martin, members of the PRAC, thank you for inviting me to this first oversight session of the COVID-19 pandemic response and stimulus efforts.

For over a decade, the Bipartisan Policy Center has fostered bipartisanship by combining the best ideas from both parties to promote health, security, and opportunity for all Americans. Our policy solutions are the product of evidence-based deliberations and debate among former elected and appointed officials, business and labor leaders, and academics and advocates who represent both sides of the political spectrum. BPC prioritizes one thing above all else: getting things done.

As I will further detail below, the Bipartisan Policy Center believes it is vital for the PRAC's work to be visible to the public. I commend you for hosting today's session and hope there will be more in the future.

In response to the unprecedented public health and economic threats caused by the COVID-19 pandemic, Congress acted swiftly in March of this year to advance the CARES Act with broad bipartisan input and support. Since its enactment, the Act has provided support to working families, businesses, health providers, and vulnerable communities. These public resources must be deployed boldly to confront challenges that were unimaginable just a few months ago. We must also have the humility to recognize that a response at this speed and scale will inevitably have flaws in design and execution. The PRAC must play a vital role in assessing these critical investments in real time so our nation's leaders can openly confront implementation challenges and improve program efficacy.

By guarding the integrity of the CARES Act and rigorously assessing its implementation, the PRAC can also ensure that the country resurges from this moment stronger than before. Prior to the economic devastation wrought by this public health crisis, tens of millions of American families were already living on the edge between financial solvency and ruin. In 2018, roughly two in five households reported that they would struggle to cover a $400 emergency expense, according to a Federal Reserve survey. A similar share was not on track to have enough saved for retirement. BPC's own analysis reveals that four in five workers reported not having access to paid family leave, and three in five lacked access to paid medical leave.

Moving forward, the country must address these frailties by enacting measures which set working families—and the economy as a whole—on a more resilient path. This goal is best achieved by following the principles of evidence-based policy making. The PRAC's work to assess the CARES Act can and should inform lawmakers about what works, and what does not, to shore up the financial strength and resiliency of American households and enable a more dynamic, resilient and equitable economy. While encouraged by Congress' recent bipartisan action to make critical investments, we are mindful that the bill for these necessary expenditures will hobble the next generation absent similar bipartisan courage to reduce spending once this crisis is behind us.

BPC, as some of you know, examined opportunities for improving government oversight with our Task Force on Inspectors General and our Task Force on Executive Branch Oversight, which released reports in 2018 and 2019, respectively. Some of you, including Inspector General Horowitz, appeared before one or both task forces and we are grateful for that. Today, I'd like to share with you relevant lessons and recommendations that we believe will aid the PRAC's work.

First, BPC recommends the PRAC provide Americans with as much information as possible about its work, reports, and findings regarding the pandemic response and stimulus. Just as the PRAC was created to provide transparency and accountability for taxpayer funds, so too must its work be done openly and with an eye toward informing the public, in addition to Congress and the executive branch. While maintaining IG community standards may at times require this Committee to keep information and investigations confidential, it is essential that the American people have confidence in the integrity of these massive expenditures of public funds. This first listening session is a heartening step and there is more than can be done to give Americans increased insight and confidence about its governments' commitment and competence in responding to this crisis.

Much can be learned and emulated from the work of the Recovery and Transparency Board created by the 2009 American Recovery and Reinvestment Act (ARRA). The Recovery Board—which like the PRAC was made up of IGs—has been hailed for the access to information it provided and the creation of Recovery.gov, a one-stop shop for information about the status of ARRA spending and oversight. A similar, dedicated effort is necessary for the PRAC, and we are impressed already with the progress being made at pandemic.oversight.gov.

One area BPC will call to attention is access to reports and information. The CARES Act specifies numerous reports that are to be made public. For example, we note that reports of those who receive large sums of funds—this may be state governments or businesses or nonprofits—are required to be made public. Yet, it is unclear whether federal agency reports on the use of funds are required to be made public. Given the rushed nature of passage of the CARES Act, this was perhaps not intentional.

Undoubtedly, each of your offices will have access to sensitive information not suitable for public disclosure, however, we encourage you to make as much information public as is allowed using the disclosure requirements as the foundation, but not the ceiling, of your public engagement.

Sadly, in this dynamic and challenging environment, some will seek to manipulate vulnerable individuals and small businesses with a variety of financial schemes. The PRAC can provide an essential public resource by serving as an early warning system as these scams are uncovered.

Second, the PRAC can help improve implementation of the CARES Act, not just catch bad actors. While much of the media coverage of inspectors general focuses on scandals involving waste, fraud and abuse, the IG community's focus on strengthening the efficiency, and effectiveness of agency performance are equally important. The same is true for the PRAC and coronavirus-related spending.

The CARES Act and subsequent stimulus bills are meant to provide critical resources to support individuals, businesses, non-profits, and health care facilities, among others. It is paramount that these programs are carried out in ways that gets these resources to the right people quickly. Yet, many of these programs are new, and the government will sometimes be learning on the job. Inspector general offices and the PRAC can shine a constructive light on areas that need improvement.

Your unique institutional knowledge—built up over extended periods of service—combined with your street-level understanding of agency operations and access to consistent information allow you to identify risks before they become liabilities.

Given that most of the programs in the CARES Act are new there will naturally be challenges along the way. In this polarized and stressful environment, IG's have a unique opportunity and obligation to present factual insight absent partisan agenda or favor. We note that some but not all IG offices have released detailed plans for how they will conduct coronavirus spending oversight. We believe that proactive efforts to promote consistent oversight will be essential to successful deliberation and encourage the PRAC to assist all relevant IG offices in publicizing their oversight plans.

A significant portion of IG work involves oversight of non-governmental organizations, such as businesses and non-profits, that receive taxpayer funds. Given the circumstances the country faces and the novel nature of these programs, we also recommend the PRAC make it a priority to monitor agency progress on the establishment of guidance for these types of entities, to reduce unwitting or unintentional violations.

To be clear, preventing waste, fraud, and abuse must always be core to the IG mission, but the opportunity to inform policy development in the coming months will be hugely consequential for our nation's economic recovery.

Third, even though recent legislation included additional funds for IG oversight, most IG offices do not have adequate resources for this new workload. To help meet this challenge, the PRAC should function as a clearinghouse for the IG community for assistance and best practices. Our commission noted that IGs need better channels for sharing staff and taking advantage of shared services to reduce costs. These efforts to expand capacity may not be attention-grabbing, but they can result in great returns. We urge the PRAC to seize the opportunity to serve as this temporary clearing house and demonstrate the benefits that can be gained from a more permanent structure to support IG collaboration.

Similarly, our task force heard time and time again that the IG community can be siloed. For example, the government has no less than four IG offices who touch health care and insurance issues, but coordination and learning between those offices is limited. With COVID-19 and the creation of this committee, you have an opportunity to improve information sharing across the IG community and develop a set of best practices that will last beyond the immediate crisis.

Finally, one of the greatest contributions the PRAC will provide is a comprehensive narrative and analysis of the government's stimulus efforts and their implementation. Inspectors general across government conduct thousands of investigations, audits, and reviews each year, resulting in a multitude of reports. While each report is valuable in its own respect, the public and even the government will not be able to learn their lessons fast enough by piecing them all together. A collaborative effort by the PRAC is necessary to provide the larger context that the public and policy makers need to make informed judgments. Absent these informed and trusted judgments, anecdote will overwhelm evidence and history will be written by the loudest voices regardless of evidence. The PRAC must provide substantive ballast to ensure that policy makers are not unduly swayed by extreme or unrepresentative examples of success or failure.

Let me close by saying that we recognize that inspectors general currently face an unprecedented level of scrutiny and politicization, but it is important that IGs continue to perform their jobs without bias while vigorously seeking out malfeasance. Americans should be encouraged by our government's ability to confront these extreme challenges with bold solutions. The IG community and the PRAC have a critical role to play in ensuring that these resources are being well spent consistent with the requirements of the law and the urgent needs facing millions of American families. BPC is confident that the IG community and the PRAC will rise to meet this challenge.