American Bankers Association
Building Success. Together.

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The Honorable Tim Kaine
United States Senate
Washington, D.C. 20510

The Honorable Chris Coons
United States Senate
Washington, D.C. 20510

The Honorable Angus King
United States Senate
Washington, D.C. 20510

Dear Senators Kaine, Coons and King:

Thank you for your recent letter encouraging sensible and appropriate actions to assist small businesses directly and indirectly affected by COVID-19 (coronavirus). We agree that it is critical to get funds to any and all small businesses that need support during the coronavirus pandemic. Even before enactment of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), our members were working diligently to support their small business customers with a range of assistance programs. The CARES Act expanded those options, with banks particularly focused on the Small Business Administration's (SBA) Paycheck Protection Program (PPP) and its goal of quickly providing funds to America's struggling small businesses.

As you note in your letter, implementation of the PPP has been fraught with challenges for both the government and financial institutions. Banks of all sizes have been frustrated by technical issues and conflicting program guidance that slowed the initial movement of funds. Yet despite this troubled rollout, lenders have originated more than 900,000 loans for over $220 billion in less than 10 days.

I want to assure you that bankers share your frustration with the PPP loan process, yet they are committed to ensuring that all small businesses—both current business banking customers and non-customers—have access to the SBA program. However, the overwhelming demand for the program, along with mandatory Know-Your-Customer (KYC) and anti-money laundering (AML) requirements, have led many banks to initially limit the application process to existing customers for whom banks have previously conducted the bank's Customer Due Diligence (CDD) process. While the CARES Act calls for speed, other existing banking laws require banks to take the time to verify important borrower information.

The key to speeding up the process for all financial institutions is the temporary – and appropriate – adjustment of KYC/AML requirements. As noted by former Treasury Secretary Jacob Lew, during this very unusual time, it is important to introduce flexibility into the program to ensure that funds flow to where they are needed, particularly to borrowers that do not traditionally borrow from banks.

The clock is ticking to distribute – fairly – an unprecedented amount of funding through agency infrastructure built for much smaller volumes. For this reason, we urge policymakers to identify the appropriate balance between KYC/AML requirements and the urgent need to get funds into the communities.

This situation is further complicated by the ongoing pandemic. Due to social distancing requirements, bank personnel, including their anti-money laundering staffs, are working from home. Not only do they face challenges handling normal day-to-day operations, but they also have no present capacity to devise, implement and test new methods for identifying fraud in these new government programs, and operational errors in authenticating borrowers.

Accordingly, former Federal Reserve Board Chair Yellen recently urged policymakers to address "…banks' concern about liability [that] could cause them to restrict the loans they initiate and engage in due diligence that could slow down payments," possibly through creation of a safe harbor.

Building on Chair Yellen's comments, we recommend that FinCEN and the banking agencies issue joint guidance stating that:

- Banks are exempt from collecting, identifying, verifying and certifying KYC/AML information for accounts set up to accept funds provided under the CARES Act. This can easily be accomplished by exempting these loans from the definition of new accounts for the purposes of FinCEN requirements.

- Similarly, for any renewals, modifications or extensions of existing loans or lines of credit, banks may rely on the CDD already on file without taking further steps.

- For any new account opened during the national emergency for a current legal entity customer and for which the institution already has beneficial owner information on file, the bank can rely on the existing information with no further expectation that the bank will examine or confirm that the information is still current.

- Similarly, for any account opened for a new customer during the national emergency, the bank will be permitted to collect beneficial ownership information after the account is established, similar to current requirements for Customer Identification Programs established under Section 326 of the USA PATRIOT Act.

- For any account opened for a new customer during the national emergency by a business that already has an established bank account with any other financial institution, it will be presumed by law that the customer has been examined for the appropriate due diligence.

- A bank may rely on the information submitted by any loan applicant on one of the Small Business Administration forms provided for the purpose of these loans. Absent a reason to suspect otherwise evident on the face of the application, the bank may take the information provided as accurate.

- A bank shall not be required to conduct a KYC/AML risk assessment for any customer applying to open an account for disbursement of these funds. The bank shall have a reasonable time after the loan is established to conduct a risk assessment of the customer.

ABA believes that these modest changes will streamline the process and help banks get much needed funds into the small businesses that serve their local communities. These changes, if adopted, will also allow more banks to serve non-customers as well as current customers. We are pleased thus far that regulatory agencies have been proactive and responsive to bank efforts to work with customers, and it is reassuring that the regulators appear poised to introduce new efforts and will support the good judgment of lenders as they prudently work with borrowers while maintaining their safety and soundness.

We strongly believe the PPP has provided great benefit to our country's small businesses, and we thank you for your interest in measures that can help banks further expand that aid to even more. The banking sector, working in partnership with the federal government, has worked tirelessly to implement this new program in a matter of days, which in normal circumstances, would have taken several months to launch. Banks of all sizes are eager to continue those efforts to an expanded group of borrowers.

We look forward to working with you as you consider additional funding and changes to the PPP that will allow banks to do even more to serve their communities, so we can emerge – together – poised for a strong and equitable economic recovery.

Sincerely,

Bob Nichols