

**Submitted Via Regulations.gov**

May 15, 2020

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

**Re: U.S. Small Business Administration Business Loan Program; Paycheck Protection Program Interim Final Rule, No. SBA-2020-0015, RIN 3245-AH34**

Dear Administrator Carranza:

The undersigned organizations offer these comments on the Small Business Administration's ("SBA") interim final rule (the "Rule") implementing the Paycheck Protection Program ("PPP") authorized in the CARES act (Public Law 116-136). *See* 85 Fed. Reg. 20811.

The Rule improperly denies access to the PPP based on a loan applicant's involvement with the criminal legal system. Any small business in which an owner or partial owner of an equity stake of 20 percent or greater has "been convicted of a felony within the last five years," or "is incarcerated, or on probation or parole," is automatically disqualified from SBA assistance. The Rule also excludes any business in which an owner or partial owner is "presently subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction," -- **even before any alleged crime has been adjudicated**. The Rule's exclusion of individuals who have been accused but not convicted not only unfairly denies businesses this critical lifeline, it also exacerbates our legal system's racial inequity.

The rule is inconsistent with provisions in both the CARES Act and the SBA enabling act. The CARES Act directs the SBA to "ensure that the processing and disbursement of covered loans prioritizes small business concerns and entities in underserved and rural markets, including... small business concerns owned and controlled by socially and economically disadvantaged individuals..."<sup>1</sup> a mandate that is overtly flouted by the Rule. Similarly, the SBA's enabling act permits (but does not require) the SBA to "verify the applicant's criminal background, or lack thereof,"<sup>2</sup> and it certainly does not impose the blanket exclusions contained the Rule. Elsewhere in the SBA enabling act, Congress recognized the importance of ensuring equal access to SBA assistance to socially and

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<sup>1</sup> Public Law 116-136, § 1102(a)(P)(iv).

<sup>2</sup> 15 U.S.C. § 636 (a)(1)(B).

economically disadvantaged individuals.<sup>3</sup> Voluminous literature has documented the racially and ethnically discriminatory nature of the criminal justice system in the United States,<sup>4</sup> and it is profoundly disappointing to see this unfair and punitive Rule negate the important goal of reversing this history of discrimination.

The Rule is also inconsistent with recent legislative achievements allowing persons with criminal records who have paid their debt to society to return to their communities as contributing citizens, as in the Fair Chance Act of 2019, which opened federal government work to people with criminal records, and the First Step Act of 2018, which provided for important correctional and sentencing reforms.

To exclude a class of business owners or partial owners from the Paycheck Protection simply on the basis of their past involvement with the criminal justice system or unadjudicated allegations concerning their present involvement is not only contrary to law, it is wrong. The PPP was intended to give **all** small businesses a lifeline to allow them to maintain their employees, not to perpetuate long-standing forms of racial and ethnic discrimination against some of them. The blanket ban punishes employees who are the intended recipients of this relief, based on their employer's interactions with the legal system. We urge you to modify the Rule to reflect that purpose.

We specifically ask that the final rule expressly:

- Eliminate the expanded disqualification of those with any felony conviction in the past five years (not just those serving sentences);
- Remove any requirement to disclose non-conviction records of pre-trial diversion (an agreement between a prosecutor and defendant to meet certain conditions to avoid going to trial) or pre-trial probation;
- Eliminate any requirement to disclose sealed and expunged records, to allow individuals to maintain the confidentiality of their records, as permitted under certain state laws;
- Allow for individualized determinations rather than mandatory disqualifications and allow employers to provide a mitigating explanation if a background check is positive.

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<sup>3</sup> 15 U.S.C. § 637(a)(5) defines “socially disadvantaged individuals” as “those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities.” 15 U.S.C. § 637(a)(6)(A) defines “economically disadvantaged individuals” as “those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged.”

<sup>4</sup> See, e.g., Report to the United Nations on Racial Disparities in the U.S. Criminal Justice System. Report to the United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia, and Related Intolerance. The Sentencing Project, April 19, 2018. <https://www.sentencingproject.org/publications/un-report-on-racial-disparities/>

Thank you for considering our views.

Sincerely,

**National**

Campaign for Youth Justice  
Fair and Just Prosecution  
Fairness, Dignity & Respect for Crime Victims and Survivors  
International Cure  
Juvenile Law Center  
Law Enforcement Action Partnership  
National Juvenile Justice Network

**Illinois**

Chicago Community Bond Fund

**Louisiana**

Louisiana Center for Children's Rights

**Massachusetts**

American Civil Liberties Union of Massachusetts  
Boston Release Network  
Boston University Coalition for Decarceration  
Charles Hamilton Houston Institute for Race and Justice  
Citizens for Juvenile Justice  
Coalition for Effective Public Safety  
Coalition for Social Justice  
Criminal Justice Policy Coalition  
The Criminal Justice Reform Task Force of Congregation Dorshei Tzedek  
Crystal Springs  
End Mass Incarceration Together (EMIT)  
Freitas & Freitas, LLP  
GLBTQ Legal Advocates and Defenders  
Greater Boston Legal Services CORI & Re-entry Project  
Jewish Alliance for Law and Social Action  
Jobs NOT Jails  
Justice Resource Institute  
Massachusetts Communities Action Network  
Massachusetts Law Reform Institute  
Mental Health Legal Advisors Committee

More Than Words

National Lawyers Guild, Massachusetts Chapter

The Real Cost of Prisons Project

Roxbury Youthworks

Student Collection of Correctional Housing Advocates for Greater Boston

**Pennsylvania**

Movement Alliance Project

NAACP Pennsylvania State Conference

**Washington**

Public Defender Association

TeamChild