

February 23, 2021

The Honorable Ben Cardin, Chairman
Committee on Small Business and
Entrepreneurship
United States Senate
428A Russell Senate Office Building
Washington, DC 20515

The Honorable Nydia Velázquez, Chairwoman
Committee on Small Business
United States House of Representatives
2361 Rayburn House Office Building
Washington, DC 20515

The Honorable Rand Paul, Ranking Member
Committee on Small Business and
Entrepreneurship
United States Senate
428A Russell Senate Office Building
Washington, DC 20515

The Honorable Blaine Luetkemeyer, Ranking
Member
Committee on Small Business
United States House of Representatives
2361 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Cardin, Chairwoman Velázquez and Ranking Members Paul and Luetkemeyer,

We are writing today to thank you for your efforts to ensure that America's farmers and ranchers are able to receive vital economic assistance through the Paycheck Protection Program (PPP) and to ask for your assistance to ensure that all farm and ranch families are able to participate in this program on an equal footing.

As you know, farming and ranching are capital-intensive operations often operating at a loss and with owners who frequently do not work for wages. When Congress designed the original PPP program, it did not recognize these special circumstances facing those working in agriculture. As a result, many farmers and ranchers did not qualify for PPP assistance.

Fortunately, Congress saw fit to address these challenges and made changes to the eligibility requirements for the PPP in Section 313 of The Economic Aid Act. This provision creates a special calculation of a borrower's maximum loan amount for farmers and ranchers, if certain criteria are met. To be eligible, the borrower:

- (1) must operate as "a sole proprietor or as an independent contractor, or is an eligible self-employed individual";
- (2) must report their farm income on Schedule F; and
- (3) must have been in operation on February 15, 2020.

Section 313 is an important provision for the agriculture industry and was a successful step in helping many farmers and ranchers participate in the PPP program.

In the months since Congress passed the Economic Aid Act, however, the Small Business Administration (SBA) has interpreted this language to *exclude* farm and ranch operations structured as partnerships and limited liability corporations (LLCs). We believe this interpretation is in error and is preventing many farm and ranch families from participating in the PPP.

Section 313 includes farmers and ranchers who are "eligible self-employed individuals" and report their farm income on Schedule F. We believe Congress intended this definition to encompass farmers and

ranchers operating through partnerships and LLCs. Individuals operating through these structures pay self-employment taxes and their operations report their farm income on Schedule F.

Reading Section 313 to exclude farm partnerships and LLCs produces disparate results based solely on farm structure. Under the SBA interpretation, farmers and ranchers who operate their business through a partnership or LLC, are limited to payroll costs they pay to their non-owner employees, unless they have net income from operations. The following two scenarios illustrate the disparity inadvertently created through this reading of Section 313. If two farmers each operate as sole proprietors, Section 313 allows them to qualify for \$41,666 in PPP loans. If those same two farmers operate as a general partnership, under SBA's interpretation, they would be not be able to secure a PPP loan.

Scenario 1: Brother and Sister Farmers Operating as Sole Proprietors

John Smith is a farmer who operates as a sole proprietor, reporting his farm income on Form 1040, Schedule F. He has no employees. John's 2019 gross income on Line 9 of Schedule F was \$200,000, and his net income for the year was a loss of \$50,000. Under Section 313, John is eligible for a PPP loan of \$20,833 – gross income of \$200,000, limited to \$100,000, prorated to 2.5 months.

Jane Smith, John's sister, is a farmer who operates as a sole proprietor, reporting her farm income on Form 1040, Schedule F. She has no employees. Jane's 2019 gross income on Line 9 of Schedule F was \$300,000, and her net income was \$15,000. Under Section 313, Jane is eligible for a PPP loan of \$20,833 – gross income of \$300,000, limited to \$100,000, prorated to 2.5 months.

Total PPP eligibility: \$41,666

Scenario 2: Brother and Sister Farmers Operating in a Farm partnership

Instead of operating as sole proprietors, farmers John and Jane Smith formed Smith Family Farms, a general partnership, sharing in profits equally. Smith Family Farms' 2019 gross income is \$500,000, and the partnership reports a net operating loss of \$35,000 (the same gross income and net operating loss as in Scenario 1). The partnership has no employees.

Smith Family Farms is not eligible for a PPP loan. It has no employees, and its net income is a loss, making its maximum loan amount \$0.

Total PPP eligibility: \$0

In passing Section 313, Congress intended to provide critical PPP assistance to farmers who are not paid wages and who have net operating losses. Unfortunately, as illustrated by these two scenarios, SBA's interpretation of this provision has significantly limited the relief that Congress intended to afford. Many American farm and ranch families have structured their operations as partnership and LLCs. These families are currently excluded from receiving assistance through the PPP as intended by Congress.

We ask that you clarify to SBA that Congress intended to include farm partnerships and LLCs in Section 313. This clarification could be included legislative language amending Section 313 or could be included in the committee reports accompanying the next stimulus bill. Further, given that Congress will likely not pass the next stimulus bill until March, we ask that you consider extending the current March 31 enrollment deadline to allow eligible farmer and rancher partnerships and LLCs time to enroll in this program.

We thank you for your attention to this matter and for your on-going efforts to assist America's farmers and ranchers during these trying economic times. Please do not hesitate to reach out to any of the undersigned organizations should we be able to provide additional details.

Sincerely,

Agricultural Retailers Association

Almond Alliance of California

American Farm Bureau Federation

American Feed Industry Association

AmericanHort

American Mushroom Institute

American Pistachio Growers

American Sheep Industry Association

American Soybean Association

American Sugar Alliance

California Walnut Commission

CoBank

Crop Insurance Professionals Association

Farm Credit Council

First Farmers Bank & Trust

KCoe Isom, LLP

Land O'Lakes, Inc.

Livestock Marketing Association

National Association of Wheat Growers

National Cattlemen's Beef Association

National Corn Growers Association

National Cotton Council

National Council of Agricultural Employers

National Council of Farmer Cooperatives

National Milk Producers Federation

National Pork Producers Council

National Sorghum Producers

Panhandle Peanut Growers Association

Southwest Council of Agribusiness

United Fresh Produce Association

U.S. Apple Association

United States Peanut Federation

USA Rice

Western Growers

Western Peanut Growers Association