

*Dear Administrator Carranza,*

*We write to call your attention to small businesses in the State of Mississippi and across the United States who will be excluded from participation in the Paycheck Protection Program because of the joint ownership affiliation rules provided by the Small Business Administration (SBA).*

*We are concerned about a discrepancy in the treatment of affiliated businesses under the Families First Coronavirus Response Act (FFCRA; P.L. 116-127) and the Coronavirus Aid, Relief, and Economic Security Act (CARES Act; P.L. 116-136). Given the severe constraints businesses are facing, we ask that the Department of Labor (DOL) and SBA apply linear small business definitions as they relate to guidance or regulations to which small businesses are subject.*

*Based on the interim final rule released on April 2, 2020, SBA intends to apply the affiliation rules under CFR 121.103 for the purposes of determining whether or not an employer has over 500 employees. Under that regulation, SBA looks at ownership, and all employees of all businesses owned by the same owner(s) are counted. In DOL's Question and Answer with respect to the FFCRA, DOL chose to adopt the "integrated employer test" under CFR 825.104 to determine whether two or more entities are separate or combined for the purposes of determining the number of employees.*

*SBA's affiliation rules are customarily used to determine whether an owner's application for loans under the Small Business Act should be granted. When making a loan for the benefit of an owner, it is appropriate to consider the owner's total financial capabilities, including any joint ownership. The Paycheck Protection Program, however, was adopted to protect employees, including those who work for a business with less than 500 people but may fall under a larger subsidiary or affiliation. These workers are the ones who will bear the brunt of negative impacts if the businesses they work for do not receive the same treatment as those defined under SBA's current small business rules. Their companies should have a chance to apply.*

*We ask that SBA issue additional guidance either to waive the current affiliation rules or, in the alternative, to at least adopt the integrated employer test under CFR 825.104 with respect to small businesses applying to receive loans under the Paycheck Protection Program.*

*Sincerely,*

*Roger F. Wicker, United States Senator*

*Cindy Hyde-Smith, United States Senator*

*Bennie G. Thompson, Member of Congress*

*Steven Palazzo, Member of Congress*

*Trent Kelly, Member of Congress*

*Michael Guest, Member of Congress*

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