



March 31, 2020

The Honorable Steven Mnuchin
Secretary of the Treasury
U.S. Department of Treasury
1500 Pennsylvania Ave, NW
Washington, D.C. 20220

The Honorable Jovita Carranza
Administrator
U.S. Small Business Administration
409 3rd Street SW
Washington, D.C. 20416

Dear Secretary Mnuchin & Administrator Carranza:

As the voice of over of over 550 Institutional Investors across the globe, including 327 investors based in the United States, invested in private equity and venture capital funds (“LPs” or “Limited Partners”)¹, I am writing to you today to encourage you to ensure that venture capital and private equity-backed small businesses are able to access the necessary capital provided under the Paycheck Protection Program. As you are aware, this program was recently enacted into law under *the Keeping American Workers Paid and Employed Act*, Title I of the *Coronavirus Aid, Relief and Economic Security Act* (“*CARES Act*”).

The *Keeping American Workers Paid and Employed Act* expands the eligibility criteria for borrowers accessing the 7(a) loan program through the U.S. Small Business

¹ILPA is the voice of the institutional investors invested in private equity, colloquially known as Limited Partners or LPs. Our 550+ member institutions represent over \$2 trillion in private equity assets under management globally and include public and private pension funds, insurance companies, university endowments, charitable foundations, family offices and sovereign wealth funds, all of which invest in the U.S. alternative investment market. LPs provide the capital that fuels private equity and venture capital investment, generating economic growth and job creation, across America and around the world.

In addition to providing this critical capital for economic growth, LPs are the trusted financial stewards investing the assets of millions of Americans. Limited partner beneficiaries include teachers, first responders, students receiving university scholarships, charity recipients, and insurance policyholders, among others. ILPA is headquartered in Washington, D.C. with additional offices in Toronto, Ontario. For more information on ILPA’s members, please visit: <http://www.ilpa.org/members>.

Administration (“SBA”), providing federally guarantee loans up to a maximum amount of \$10 million to eligible businesses to retain employees during the COVID-19 crisis. The *CARES Act* committed an additional \$349 billion towards this program, while relaxing eligibility for the loans between February and June 2020. The increased eligibility provided that small businesses as defined under the Small Business Act, business concern, non-profit organization, veterans organization and tribal business would be eligible to receive a loan during this period if (1) the company had 500 employees or less; or (2) if the size standard under the relevant North American Industry Classification System (“NAICS”) code was met. Furthermore, the legislation provided that the 500-employee threshold only applied to one location of an accommodation or food service business under NAICS Code 72.

Unfortunately, there is a significant limitation on the ability for American small businesses to access the critical capital under the *Keeping American Workers Paid and Employed Act*, and that is the SBA affiliation rules under 13 C.F.R. §121.103. These regulations effectively prevent the small business portfolio companies owned by venture capital or private equity funds from accessing the Paycheck Protection Program, just because they are owned within a private fund structure, unless there is a Small Business Investment Company (“SBIC”) involved in the financing of that company. The rules could effectively aggregate the 500 employee threshold across the entirety of the fund’s portfolio, even though these businesses are distinctly separate entities.

We encourage the Treasury Department and SBA to issue guidance on the affiliation rules under 13 C.F.R. §121.103 will be applied in the context of the Paycheck Protection Program, by either extending the exemption in 13 C.F.R. §121.103(b)(1) that currently applies to SBICs to all private fund structures for the time period of the *Keeping American Workers Paid and Employed Act*, or clarifying that each individual company in a portfolio of a 3(c)(1) or 3(c)(7) exempted fund under the Investment Company Act of 1940 will be considered unaffiliated for purposes of meeting the 500 employee threshold test. At a minimum, if this extension is not possible, the SBA should provide an expedited process for these funds with these investments to convert to non-levered SBICs to access the existing exemption under the regulations.

ILPA’s members invest on behalf of a cross section of beneficiaries, including retirees, first responders, teachers, scholarship recipients, insurance policyholders, and charitable causes, all of whom are active, indirect and direct investors in American small businesses, with as much as US\$1 trillion or more invested in American small businesses. Many of our members invest indirectly, through private equity and venture capital fund structures, in turn providing critical capital to these businesses, while also

pursuing returns for their beneficiaries. Given the nature of this crisis and its broad impact across the country, small businesses are in the crossfire and have a high risk of failure, significantly harming both the U.S. economy and American workers, due to the perfect storm of COVID-19 shutting down the economy. All small businesses are likely to suffer some impairment, whether they are individual businesses, or those that happen to be owned as a portfolio company of a private equity or venture capital firm. We see no reason why being owned in a fund structure should result in these businesses having less access to the capital needed to keep their employees on the payroll. If these businesses are unable to access the provisions in the *Keeping American Workers Paid and Employed Act*, this will likely result in significant harm not only to employees that see their hours reduced or jobs eliminated, but also significantly reduced returns to the institutions providing retirement security through pensions, insurance policies and other investments that serve hundreds of thousands of Americans.

As you craft the final regulations under the *Keeping American Workers Paid and Employed Act*, we encourage you to provide these clarifications to save jobs and protect the retirement and other assets of everyday Americans. If you have any additional questions or seek additional information on this issue, please contact ILPA's Senior Policy Counsel, Christopher Hayes at (202) 871-9367 or chayes@ilpa.org.

We appreciate your consideration.

Sincerely,



Steve Nelson
Chief Executive Officer
Institutional Limited Partners Association (ILPA)