May 1, 2020

The Honorable Michael Bennet
United States Senator

The Honorable Scott Tipton
Member of Congress

The Honorable Diana DeGette
Member of Congress

The Honorable Ken Buck
Member of Congress

The Honorable Ed Perlmultter
Member of Congress

The Honorable Cory Gardner
United State Senator

The Honorable Joe Neguse
Member of Congress

The Honorable Doug Lamborn
Member of Congress

The Honorable Jason Crowe
Member of Congress

Dear Members of the Colorado Congressional Delegation,

While the CARES Act Payroll Protection Program (PPP), which deployed the first tranche of $349B and is rapidly deploying the second tranche of funds and the Economic Injury Disaster Loan Emergency Advance (EIDL) program deployed billions more in critical capital to small businesses, there is a critical need for adjusting these programs.

The recovery from the economic shutdown which was driven by the public health emergency likely will not be the "V" shaped recovery that was discussed early in the crisis and may be slower resembling a "U" shaped curve (with a prolonged bottom in economic activity). In order to address this emerging outcome and based on feedback from a wide range of program stakeholders from lenders to trade associations to borrowers, we are asking for you to push for the following policy and statutory adjustments to the PPP and EIDL programs through new federal legislation and conversations with the SBA and Treasury Departments.

Ways to Improve the Payroll Protection Program:

These are a mixture of policy or statutory suggestions that need to be addressed (these are not in ranked order):

1) Loan forgiveness
   a) Based on stakeholder feedback, we are concerned that many small businesses – in their rush to get the CARES Act's PPP funds before the funding ran out – did not fully understand loan terms. Under implementation of the current law and regulations, many of them will qualify for much less PPP forgiveness than they expected and thus they will end up with more debt than they planned for which could result in many not being able to repay the PPP loan and lead to solvency issues.
   b) Businesses need flexibility in how they reopen based on how the public health timeline unfolds, the new buying patterns of customers and the availability of the workforce which all vary across geography and sector. There is not a "one size fits all" solution. Many businesses are reporting that lower-wage workers are financially better off on combined state and federal Unemployment Insurance (UI) than receiving PPP wages (due to the temporary $600 a week in UI from the federal government) and so these businesses are having a difficult time hiring back all their employees.
   c) The loan forgiveness requirements need to be broadened and made more flexible so that businesses have multiple different pathways to obtaining forgiveness that they can select based on their individual circumstances.
      i) The current formula reduces the amount of forgiveness as a multiplier of both the decreases in payroll dollar amounts spent and the percent FTE reductions. This is too severe as businesses can lose forgiveness for the same personnel reduction two times. The formula should be changed to reduce the forgiveness based on the greater of the payroll dollar percent reduction or the FTE reduction percent not by the product of the two.
      ii) Some businesses participating in the PPP program need much longer than June 30, 2020 to bring payroll and FTEs back to pre-COVID-19 levels and they should be able to seek forgiveness based on a later date through at least December 31, 2020.
      iii) Other businesses may need to have the requirement to get employment back to 100% of their pre-COVID-19 levels removed entirely, as long as they keep some employees on payroll for even longer periods of time such as several quarters.
      iv) Businesses need the option to take more than eight weeks to spend their PPP proceeds or to be able to choose a different eight-week period than

the period immediately following the issuance of the loan to spend their funds up to any period before December 31, 2020.

v) Also that statutory parameters of loan forgiveness reduction (Sec. 1106) should be adjusted to mirror the employee count and payroll costs used in calculating the amount of PPP loan funds a business receives (e.g., change FTE to employee count in the forgiveness reduction formula; likewise, add language to clarify that the 25% wage/salary reduction limitation applies to the average wages/salaries of all employees paid and that reduction in the wages/salaries of employees who make more than $100,000 only counts if wages/salaries for these employees are reduced below $75,000).

d) To the extent there was flexibility built into the loan forgiveness formulas to account for seasonal businesses, summer seasonal businesses seemed to be the focus when statutory and regulatory standards were developed for the PPP loan program. However, the critical impact of the winter recreation economy in Colorado should be taken into account and appropriate revisions made to laws and rules. Winter seasonal businesses, such as family owned ski areas and the food services businesses that serve those ski areas (which according to a 2015 study the Colorado ski and tourism industries supports hundreds of thousands of direct and indirect jobs and generates tens of billions in economic activity), cannot meet the current statutory requirements to qualify for maximum PPP Loan forgiveness due to the look-back period from February 15, 2019 to June 30, 2019. Hiring back at 100% of peak winter season in the middle of the summer is not possible. Only the retention of essential staff is required in the off months. With the winter sports season all but canceled this year, right at the end of peak season and the mountain towns impacted by high infection rates due to the presence of global ski visitors, these businesses did not make the revenues required to carry them forward to the next winter season. Therefore, we request that in the case of all seasonal businesses, Congress via statutory changes and/or the SBA updates via regulatory guidance allow alternative look-back periods for purposes of re-hiring/PPP loan forgiveness so these winter seasonal businesses can benefit from the program and ensure that they can retain as many employees as possible and survive the lean off season.

e) Businesses that have relatively high non-payroll costs (like rent, mortgage interest, and utilities) compared to payroll need flexibility to spend more than 25% of loan proceeds on non-payroll costs and still get loan forgiveness.

i) This 25% threshold needs to be increased for businesses with structurally higher non-payroll operating costs or smaller businesses with less than 50 employees.

ii) SBA and U.S. Department of the Treasury added a personnel costs limit to the loan forgiveness determination – not in the CARES Act – that at least 75% of the forgivable portion must be attributable to payroll costs.

iii) Allowing businesses with less than 50 employees a higher percentage of non-payroll costs is appropriate since these are the most vulnerable and highly impacted businesses affected by the COVID-19 crisis.

iv) We also note that the current 75%/25% rule will especially hurt those businesses that laid off staff and can't rehire for various reasons by limiting what can be forgiven.

2) There is a pressing need for more funding at both the aggregate and per business level.

a) It has been estimated that the first $349B tranche of the PPP Loan program covered 38% of the total need of small businesses and non-employee (sole-proprietor and gig workers, also known as NES) establishments. The second tranche of an additional $310B for the PPP Loan program, recently approved by Congress and the President, is a step in the right direction. But there is a need for still more funding as this new infusion of funding is expected to be distributed quickly. In total there is a need for about $1.3T or an additional $640B.

b) Loans amounts should be based on 6 months of payroll, not 2.5 months, to address the longer economic "U" shaped recovery timeframe. Without the longer timeframe, businesses will find themselves once again on the edge of solvency and will find themselves having to shutter operations. The efforts and funding to date will have been for naught, leaving taxpayers with no return on their billions in investment to date. Only a program that can bridge the downtown and return our economy to pre-COVID-19 levels of prosperity (with viable businesses and employment) is worthy of our country's investment. Two and a half months of payroll support is simply not enough.

3) Other changes to PPP.

a) Expand the definition of small businesses to cover slightly larger, but moderately capitalized, private companies or create an entirely new broader loan facility to help businesses with up to 1,000 employees and with only partial forgiveness. This will give mid-sized businesses access to capital to help cover the specific circumstances necessary to restructure or reopen (e.g., a restaurant company might need to do construction work to ensure employees and customers can comply with social distancing requirements before they can reopen their doors).

b) The Unemployment Insurance and Payroll Protection Programs need to be explicitly designed to take into account how they interact and impact each other. For example, Enhanced Unemployment Insurance, if extended, should have the "look for work" requirements that take PPP into account and phase out payments to the employee should their previous employer receive a PPP loan and attempt to rehire the employee.

c) The SBA should allow borrowers to use the full statutory ten years repayment period for PPP loans for the portion not forgiven. The 18 months full amortized payback period will be too onerous for many businesses particularly given uncertainty about the economic recovery timeline and will likely lead to liquidity and/or solvency issues for these businesses.
d) The fee structure needs to be changed. Compensation for lenders needs to be increased above the current limits permitted by statute. This will give lenders a stronger incentive to serve the smallest of businesses and sole proprietors that need small dollar value loans which are currently less profitable for the lender. So far, the PPP program has seen the lenders serve primarily larger small businesses. The current fee constraints are a disincentive for lenders to make smaller loans because their margins are less. The fees do not cover their time spent on underwriting and loan servicing as they do for larger loans to larger businesses. One solution would be to make lender fees flat, such as a set dollar amount for all loans regardless of size.
e) Expand eligibility to include trade associations that are 501C6 non-profits.
f) The state also supports efforts to weed out and expose abuses to the program to find those who have received PPP loans, but cannot demonstrate that their business has suffered "substantial economic injury" or have actually had hardships from the COVID-19 crisis including, but not limited to, "substantial" loss of revenue/sales and/or customers. It has been suggested that some companies who have not seen downturns in their businesses are taking the cheap 1% loans, knowing they may not qualify for the "forgiveness" portion of the loan and do not economically need the funds to maintain operations. This intentional act is taking money out of the PPP program that otherwise could be used by struggling small businesses.

Improving/expand the Economic Injury Disaster Loan (EIDL) and EIDL Advance Program:

1. Make additional EIDL money available, reserved for businesses at the state to ensure an equitable distribution based on census data on the small business payroll in the state. Reserve a large portion of these funds for the smallest businesses in each state.
2. Restore the original intent of the EIDL Advance (grant) to allow up to $10K per business regardless of the number of employees. In many cases smaller businesses and newer businesses without strong banking relationships will eventually not qualify for the EIDL Loans or the PPP Loans and therefore are in the greatest needs of the EIDL Advance (grant) funds. All these COVID-19-relief programs are attempting to avoid liquidity issues and bankruptcies and keep Americans employed and ready for the recovery. This

change in the EIDL Advance program could go a long way in this regard for businesses without access to the other relief programs.

3. Amend the EIDL program eligibility (Sec. 1110) to mirror the PPP loan expanded eligibility (Sec. 1102) so that any business that qualifies for a PPP loan and that can demonstrate that it has suffered "substantial economic injury" can also receive funding through the EIDL program – this will help businesses cover expenses other than payroll.

Sincerely,

Jared Polis
Governor

Dave Young
Treasurer