

March 8, 2021

The Honorable Isabel Guzman
Administrator
Small Business Administration
409 Third Street, SW
Washington, D.C. 20416

Dear Administrator Guzman,

We are writing to respectfully request your assistance in permitting long-term care (LTC) providers with affiliates to access “second-draw loans” under the Paycheck Protection Program (PPP). Many LTC providers have suffered tremendous financial losses due to the pandemic, and the Small Business Administration’s (SBA) PPP loans were essential to their viability. However, a number of LTC entities with affiliates are ineligible for second-draw loans. Your engagement to authorize second-draw loans for these entities, by issuing an emergency rule-making, is their best hope to withstand the pandemic’s remaining months and ensure continued service to seniors. We recognize that this request may exceed the typical authorities exercised by the SBA. However, the consequences of inaction demand extraordinary action.

As you may know, LTC facilities – which include skilled nursing facilities, residential care homes, and assisted living communities – serve approximately three million seniors. However, their ability to continue serving seniors is very much in jeopardy as a result of the ineligibility of some to access second-draw loans. Indeed, 90 percent of nursing facilities are operating at a loss and two-thirds of those providers report that they will be unable to sustain operations over the next year under present conditions. Similar financial challenges confront half of senior living communities. It is estimated that the LTC industry is expected to lose \$94 billion over two years due to the pandemic. The need for second-draw PPP loans could not be more urgent.

The *Economic Aid Act* excluded some LTCs from eligibility for PPP second-draw loans due to SBA affiliation rules. While the *CARES Act* permitted alternative eligibility criteria under the SBA’s alternative size standard, sufficiently similar language was not included in the *Economic Aid Act*. To be clear, we have no reason to suspect that this change was designed to deny LTCs access to second-draw loans. Nevertheless, the affiliation rules present an incredible challenge.

To resolve this matter, we encourage the SBA to undertake an emergency rule-making. Using your existing authority, the SBA should amend 13 CFR 121.103 (b) to include an *exemption to the affiliation rules* for concerns assigned an NAICS subpart code beginning with 623, specifically long term care facilities and senior living communities.¹ The proposed regulatory amendment would allow relief dollars to be targeted to LTCs that serve populations of advanced age, who are particularly vulnerable to the coronavirus.

¹ This could be done by creating a new subsection, 13 CFR 121.103(b)(11), stating: “The provisions applicable to affiliations under either 121.103 or 121.301 of title 13, Code of Federal Regulations, or any successor regulations, are waived with respect to eligibility for a loan authorized pursuant to 15 U.S.C. 636(a)(37) for business concerns assigned a North American Industry Classification System code beginning with 623.”

Without the assistance and support contemplated under the *Economic Aid Act*, LTCs with affiliates that exceed the employee cap may not be sustainable. We hope that you will use the full extent of your authority to assist these small businesses as they contend with the immense challenges of COVID-19. They are counting on the SBA to deliver financial support without unnecessary delay; and we stand ready to work with you on this critical matter.

Sincerely,

Lori Trahan
U.S. Representative

Anthony Gonzalez
U.S. Representative