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June 22, 2020

Hon. Steven T. Mnuchin
Secretary of the Treasury
c/o Hon. Brian Callanan
General Counsel
Department of the Treasury
1500 Pennsylvania Ave. NW
Washington, DC 20220

Hon. Jovita Carranza, Administrator
c/o Mr. Chris Pilkerton, General Counsel
Small Business Administration
409 Third Street SW
Washington, DC 20416

Hon. Marco Rubio, Chairman
Committee on Small Business
United States Senate
Washington, DC 20510

Hon. Ben Cardin, Ranking Democrat
Committee on Small Business
United States Senate
Washington, DC 20510

Dear Mr. Secretary, Madam Administrator, Mr. Chairman, and Senator Cardin:

The Small Business Administration (SBA) Press Release 20-51 (June 19, 2020) said the four of you agreed "to make public additional data regarding the Paycheck Protection Program (PPP)." The Press Release said you agreed to make public "the business names, addresses, NAICS [North American Industry Classification System] codes, zip codes, business type, demographic data, non-profit information, jobs supported, and loan amount ranges" for PPP loan recipients. On behalf of the small business members of the National Federation of Independent Business (NFIB), many of whom answered the call of the Congress to participate in the PPP to help keep Americans employed, NFIB petitions you to modify your agreement so that it respects the liberty and privacy of America's small businesses.

Congress established and funded the PPP in the CARES Act (Public Law 116-136, March 27, 2020), the PPP and Health Care Enhancement Act (Public Law 116-139, April 24, 2020), and the PPP Flexibility Act of 2020 (Public Law 116-142, June 5, 2020). The power of Congress to conduct investigations "encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes," but "[t]here is no general authority to expose the private affairs of individuals without justification in terms of the functions of the Congress." *Watkins v. United States*, 354 U.S. 178 (1957). NFIB recognizes that the Senate Small Business Committee may in some circumstances need access to Treasury and SBA information about PPP participants to perform its legislative functions, but the Committee has no need or authority to require the Treasury and SBA to disclose such information publicly.

Treasury and the SBA, to administer the PPP, need the identity and certain details of businesses that participate in the PPP, but they have no need to disclose publicly such information. Indeed, Treasury and the SBA have a duty to protect such information from disclosure:

-- Section 2 of the Privacy Act of 1974 made clear: "the right to privacy is a personal and fundamental right protected by the Constitution of the United States."

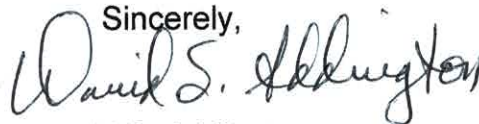
-- Section 1905 of the federal criminal code (18 U.S.C. 1905) states: "Whoever, being an officer or employee of the United States or of any department or agency thereof . . . publishes, divulges, discloses . . . any information coming to him in the course of his employment or official duties . . ., which information concerns or relates to the trade secrets . . . or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association . . . shall be fined under this title, or imprisoned not more than one year, or both; and shall be removed from office or employment."

-- The SBA recognized PPP loan applicants' privacy on the very Borrower Application Form SBA prescribed for the PPP: "*Disclosure of Information* – Requests for information about another party may be denied unless SBA has the written permission of the individual to release the information to the requestor or unless the information is subject to disclosure under the Freedom of Information Act."

Treasury, SBA, and the Senate Small Business Committee may need to make official use of PPP participant information, but they should leave the issue of whether to disclose publicly any such information to the Freedom of Information Act. Treasury, SBA, and the Small Business Committee should not single out America's small businesses for lesser privacy rights than other Americans; the Freedom of Information Act should govern federal disclosure of information for all Americans equally.

For the reasons set forth above, NFIB petitions Treasury, SBA, and the Small Business Committee to withdraw the portion of their arrangement that calls for public disclosure of Paycheck Protection Program participant information, instead leaving the issue of public disclosure to the regular process of the Freedom of Information Act. With that modification, the arrangement would properly respect the liberty and privacy of America's small businesses.

Sincerely,



David S. Addington

Executive Vice President and General Counsel