



April 8, 2020

The Honorable Steven T. Mnuchin
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

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

Dear Secretary Mnuchin and Administrator Carranza:

For more than 25 years, the National Multifamily Housing Council (NMHC) and the National Apartment Association (NAA) have partnered to provide a single voice for America's apartment industry. Our combined memberships are engaged in all aspects of the apartment industry, including ownership, development, management and finance. NMHC represents the principal officers of 1,500 firms that own, develop, manage and finance apartments. As a federation of more than 160 state and local affiliates, NAA encompasses over 73,000 members representing nearly 9 million apartment homes globally. One-third of all Americans rent their housing and 40 million of them live in an apartment home.

We write to you to ask that you expeditiously amend the Small Business Administration's (SBA) Interim Final Rule (the Rule), *Business Loan Program Temporary Changes; Paycheck Protection Program*, to enable multifamily businesses to participate in the Paycheck Protection Program. The SBA's Rule inexplicably precludes multifamily businesses with 500 or fewer employees from qualifying for the program, which both thwarts the intent and is contrary to the express language of the *Coronavirus Aid, Relief, and Economic Security (CARES) Act*. This failure is putting our industry's ability to keep workers on the payroll at significant risk. It must be immediately addressed. While we believe that this issue can be rectified administratively, we are also sending a letter to the congressional leadership asking, among other things, that Congress use legislation to direct these modifications.

In addition to enabling multifamily businesses to utilize the Paycheck Protection Program, we also ask that SBA clarify that student housing owners and operators be able to utilize the exclusion for businesses with more than 500 employees under the exclusion provided to businesses with a North American Industry Classification System (NAICS) code beginning with 72.

Reverse Regulations that Inexplicably Preclude Multifamily Businesses to Qualify for the Paycheck Protection Program

Lessors of residential buildings and dwellings should qualify as "small businesses" under the Paycheck Protection Program and related programs, if, as with other similar businesses, the business has 500 or fewer employees and meets similar basic requirements. Unfortunately, the SBA's Rule, published on April 2, 2020, abrogates the CARES Act and applies pre-existing

regulations and guidance which is overly broad. This results in the exclusion of multifamily businesses from the Paycheck Protection Program.

Multifamily housing providers utilize a wide variety of business structures. The multifamily housing industry can be thought of as having four main business structures:

- (1) Management, which usually employs the greatest number of employees and is responsible for daily management of buildings and provision and coordination of services;
- (2) Development, which may rely heavily on independent contractors;
- (3) Owners, a special purpose entity, which typically owns the particular apartment building and which secures the financing for that property and is responsible for debt repayment; and
- (4) Contractors and their subcontractors used in the construction and rehabilitation of buildings.

We request that the SBA issue corrective instructions, waiver or announcement, correcting the Rule, in relevant part. The Rule incorporates the provisions regarding ineligible businesses from the 2019 Standard Operating Procedures (the “Standard Operating Procedures”)¹ and 13 CFR 120.110. By incorporating this prior guidance, the Rule would categorize certain passive business as ineligible business types, including “apartment buildings” and “residential facilities that do not provide healthcare and/or medical services.” The Rule, as issued, would thereby result in the exclusion of the different business structures within the multifamily industry discussed above. This is contrary to the intent of the CARES Act, Section 1102, which specifically expands the kinds of small businesses that are eligible and also generally expands allowable business types. Applying the ineligible business rules from the Standard Operating Procedures and 13 CFR 120.110 is, therefore, contrary to the language and goals of the CARES Act, and excludes businesses by virtue of their structure, the reverse of what the CARES Act provides.

Provide Confirmation for Off Campus Student Housing:

The CARES Act provides a waiver for businesses that have more than one physical location and that are classified under NAICS code 72. The Act goes further to waive affiliation rules for businesses under the NAICS code 72. We are requesting confirmation from the SBA that off campus student housing providers are included in this waiver as described under NAICS code 721310.

721310 Rooming and Boarding Houses, Dormitories, and Workers' Camps

This industry comprises establishments primarily engaged in operating rooming and boarding houses and similar facilities, such as fraternity houses, sorority houses, off campus dormitories,

¹ Small Bus. Admin., “Lender and Development Company Loan Programs,” SOP 50-10-5 (*available online at <https://www.sba.gov/sites/default/files/2019-02/SOP%2050%2010%205%28K%29%20FINAL%202.15.19%20SECURED%20copy%20paste.pdf>*).

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residential clubs, and workers' camps. These establishments provide temporary or longer-term accommodations, which, for the period of occupancy, may serve as a principal residence. These establishments also may provide complementary services, such as housekeeping, meals, and laundry services.

Additionally, while student housing firms may currently use a NAICS code beginning with 53, we ask that SBA deem all student housing operators to use NAICS code 72 for purposes of the Paycheck Protection Program. Clarifying that student housing firms that provide off-campus housing may benefit from the benefits provided to entities with a NAICS code beginning with 72 would allow student housing operators to utilize the Paycheck Protection Program on a location-by-location basis.

Thank you for your attention to these matters. Please feel free to contact me with any questions or if I can be helpful in addressing these matters further in any way.

Sincerely,



Cindy V. Chetti
Senior Vice President of Government Affairs
National Multifamily Housing Council



Gregory Brown
Senior Vice President of Government Affairs
National Apartment Association