

April 1, 2020

Jovita Carranza
Administrator
U.S. Small Business Administration
409 3rd Street, SW
Washington, DC 20416

Dear Administrator Carranza,

We are writing today to ask that the U.S. Small Business Administration (SBA) issue guidance clarifying that agricultural businesses are eligible to participate in the Economic Injury Disaster Loan (EIDL) program as modified by Congress in the CARES Act.

Agricultural producers and businesses are critical elements of this nation's economy and food system. Prior to COVID-19, farmers and ranchers had already experienced a drastic 24-percent decline in net farm income from highs experienced just six years ago. With the further downturn in the economy, agricultural businesses are at risk of closure and may be required to lay off employees.

Earlier this week, the SBA posted a new EIDL website that states applicants must certify that they are "not an agricultural enterprise (e.g., farm), other than an aquaculture enterprise, agricultural cooperative, or nursery."

The notice on the website apparently is inconsistent with congressional intent. While agricultural enterprises had not previously been able to participate in the underlying EIDL program, there is every reason to believe Congress intended for agricultural producers to be able to participate during the COVID-19 emergency. The CARES Act does not exclude agricultural producers from this program and clearly states that all businesses with not more than 500 employees can participate in this program.

Section 1110(a)(2) of the CARES Act defines "eligible entity" as:

- (A) a business with not more than 500 employees;
- (B) any individual who operates under a sole proprietorship, with or without employees, or as an independent contractor;
- (C) a cooperative with not more than 500 employees;
- (D) an ESOP (as defined in section 3 of the Small Business Act (15 U.S.C. 632)) with not more than 500 employees; or
- (E) a tribal small business concern, as described in section 31(b)(2)(C) of the Small Business Act (15 U.S.C. 657a(b)(2)(C)), with not more than 500 employees.

Section 1110 of the CARES Act continues by stating that, from January 31, 2020 to December 31, 2020 "in addition to small business concerns, private nonprofit organizations, and small agricultural cooperatives, an eligible entity shall be eligible for a loan made under section 7(b)(2) of the Small Business Act (15 U.S.C. 636(b)(2))."

Since the term “eligible entity” under the CARES Act includes “a business with not more than 500 employees” and since Congress did not explicitly exclude agricultural businesses from this definition, agricultural businesses can qualify for EIDL loans during 2020 to respond to the economic downturn caused by COVID-19 notwithstanding the traditional exclusion of agricultural businesses from the EIDL program.

Many agricultural producers need access to this critical source of financing to help preserve their businesses and avoid further disruptions to our economy and food systems.

We believe that the clear statutory language of the CARES Act indicates that agricultural businesses can participate in the emergency EIDL program as was the intent of Congress. Accordingly, we ask that the SBA immediately modify the website listed above and quickly issue guidance clarifying that agricultural enterprises can participate in the EIDL program in the context of the on-going COVID-19 disaster.

Thank you for your consideration of this issue that is so critical to America’s agricultural producers.

Sincerely,

Agricultural Retailers Association
Amcot
American Coalition for Ethanol
American Farm Bureau Federation
American Soybean Association
AmericanHort
Edge Dairy Cooperative
Farm Credit Council
Growth Energy
Iowa Renewable Fuels Association
KCoe Isom, LLP
National Association of Wheat Growers
National Barley Growers Association
National Cattlemen’s Beef Association
National Corn Growers Association
National Cotton Council
National Council of Agricultural
Employers
National Council of Farm Cooperatives
National Milk Producers Federation
National Onion Association
National Pork Producers Council

National Potato Council
National Sunflower Association
National Turkey Federation
Renew Kansas Biofuels Association
Renewable Fuels Nebraska
U.S. Apple Association
U.S. Canola Association
U.S. Dry Bean Council
U.S. Rice Producers Association
USA Dry Pea & Lentil Council

Cc: Sonny Perdue
Secretary
U.S. Department of Agriculture
1400 Independence Ave, SW