

JAMES E. CLYBURN
CHAIRMAN
MAXINE WATERS
CAROLYN B. MALONEY
NYDIA M. VELÁZQUEZ
BILL FOSTER
JAMIE RASKIN
ANDY KIM

ONE HUNDRED SIXTEENTH CONGRESS
Congress of the United States
House of Representatives

STEVE SCALISE
RANKING MEMBER
JIM JORDAN
BLAINE LUTKEMEYER
JACKIE WALORSKI
MARK E. GREEN, M.D.

SELECT SUBCOMMITTEE ON THE CORONAVIRUS CRISIS

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

PHONE (202) 225-4400

<https://coronavirus.house.gov>

June 15, 2020

Mr. Brian Moynihan
Chairman and Chief Executive Officer
Bank of America Corporation
100 North Tryon Street
Charlotte, NC 28255

Dear Mr. Moynihan:

The Select Subcommittee on the Coronavirus Crisis is investigating whether implementation of the Paycheck Protection Program (PPP) has favored large, well-funded companies over struggling small businesses in underserved communities—contrary to Congress’ clear intent.

Bank of America is one of the largest PPP lenders, and we are writing to seek documents and information about the bank’s practices relating to the issuance of PPP loans and the guidance you received from the Department of the Treasury (Treasury) and Small Business Administration (SBA). We urge Bank of America to take immediate steps to ensure that remaining PPP funds are allocated to those businesses truly in need.

When Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act with strong bipartisan support, we intended to provide urgent relief to small businesses that otherwise could be forced to lay off employees or shut down. The CARES Act specifically encouraged SBA to issue guidance “to ensure that the processing and disbursement of covered loans prioritizes small business concerns and entities in underserved and rural markets,” including businesses owned by veterans, members of the military, socially and economically disadvantaged individuals, and women.¹

Media reports indicate that some large lenders apparently created a two-tier system for processing PPP loan applications. The banks’ wealthiest clients had access to a personalized application process that ensured their applications were processed first. Other applicants had to use poor-performing electronic portals, faced significant processing delays, and sometimes needed to find another lender to consider their application.² One report found that a bank

¹ Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, §§ 1102, 1106 (2020).

² See, e.g., *Banks Gave Richest Clients ‘Concierge Treatment’ for Pandemic Aid*, New York Times (Apr. 22, 2020) (online at www.nytimes.com/2020/04/22/business/sba-loans-ppp-coronavirus.html); *Many Small Businesses are Being Shut Out of a New Loan Program by Major Banks*, Vox (Apr. 7, 2020) (online at

“provided loans to virtually all of its commercial banking customers” that sought PPP loans “while the lender’s smallest customers were almost entirely shut out.”³

Unfortunately, SBA and Treasury did not provide any public guidance to lenders until nearly two weeks after lenders started processing loan applications, and just a day before the initial round of funding dried up. Despite Congress’ clear intent, this guidance made no mention of prioritizing loans to underserved communities.⁴

On May 8, 2020, SBA’s Inspector General reported that SBA’s guidance “did not fully align with” the CARES Act, noting, “We did not find any evidence that SBA issued guidance to lenders to prioritize the markets indicated in the Act.” The Inspector General also concluded SBA failed to provide an optional demographic questionnaire with the PPP loan application, undermining SBA’s ability to determine whether lenders appropriately prioritized loans to underserved communities. The Inspector General concluded:

Because SBA did not provide guidance to lenders about prioritizing borrowers in underserved and rural markets, these borrowers, including rural, minority and women-owned businesses may not have received the loans as intended. In addition, because SBA did not require demographic data to identify PPP borrowers in underserved markets, it is unlikely that SBA will be able to determine the loan volume to the intended prioritized markets.⁵

After facing public scrutiny, some larger companies that received PPP loans have returned the money.⁶ For example, on May 8, 2020, the Select Subcommittee sent letters to companies that had received at least \$10 million in PPP loans, despite having more than 600 employees, a market capitalization of more than \$25 million, and publicly traded stock.⁷ In

www.vox.com/2020/4/7/21209584/paycheck-protection-program-banks-access); *In Race for Small-Business Loans, Winning Hinged on Where Firms Bank*, Wall Street Journal (Apr. 20, 2020) (online at www.wsj.com/articles/in-race-for-small-business-loans-winning-hinged-on-where-firms-bank-11587410421).

³ *JPMorgan’s Small Business Loans Instead Went to Its Biggest Customers*, Bloomberg (Apr. 22, 2020) (online at www.bloomberg.com/news/articles/2020-04-22/jpmorgan-commercial-clients-beat-out-smaller-ones-for-sba-loans).

⁴ Small Business Administration, *Business Loan Program Temporary Changes; Paycheck Protection Program*, 85 Fed. Reg. 20811, 20813 (Apr. 15, 2020) (interim final rule); see also *The Paycheck Protection Program Ran Out of Funding. What’s Next For Small Business Owners?*, Forbes (Apr. 16, 2020) (online at www.forbes.com/sites/advisor/2020/04/16/the-paycheck-protection-program-ran-out-of-funding-whats-next-for-small-business-owners/#15c8ae8d7440).

⁵ Small Business Administration, Office of Inspector General, *Flash Report Small Business Administration’s Implementation of the Paycheck Protection Program Requirements* (May 8, 2020) (online at www.sba.gov/document/report-20-14-flash-report-small-business-administrations-implementation-paycheck-protection-program-requirements).

⁶ *Relief Aid Stalls With Small Businesses Returning Loans Unused*, Bloomberg Law (May 29, 2020) (online at <https://news.bloomberglaw.com/coronavirus/relief-aid-stalls-with-small-businesses-returning-loans-unused>).

⁷ Select Subcommittee on the Coronavirus Crisis, *In First Official Action, House Coronavirus Panel Demands That Large Public Corporations Return Taxpayer Funds Intended For Small Businesses* (May 8, 2020)

response, one company, which recently paid \$6.5 million to resolve allegations of defrauding the federal government, returned its \$10 million PPP loan.⁸

Congress acted to address these issues in the Paycheck Protection Program and Health Care Enhancement Act, which was enacted on April 24, 2020. Of the \$310 billion in additional PPP funds appropriated by that law, \$60 billion was reserved for various community lenders, which have a proven track record of serving small businesses lacking longstanding relationships with large financial institutions.⁹ As of June 6, 2020, SBA had approved more than \$511 billion in PPP loans, leaving more than \$130 billion available for future lending.¹⁰

We have significant concerns that the two-tiered system that some banks reportedly developed for wealthy clients may have diverted PPP funds intended for vulnerable small business owners in underserved and rural markets, including small businesses owned by veterans, members of the military, socially and economically disadvantaged individuals, women, and businesses in operation for under two years. We urge you to take immediate steps to ensure that your bank prioritizes underserved communities when issuing PPP loans going forward.

To assist the Select Subcommittee with this investigation, please produce by June 29, 2020, the following documents and information from March 1, 2020, to the present:

1. All formal or informal guidance from Treasury or SBA regarding PPP requirements, including but not limited to guidance regarding SBA's "first come, first served" policy, the prioritization or exclusion of any applicants, and the issuance of loans to entities in underserved and rural markets.
2. All communications with Treasury or SBA regarding the prioritization or exclusion of any applicants and the issuance of loans to entities in underserved and rural markets.
3. All internal communications regarding the prioritization or exclusion of any applicants and the issuance of loans to entities in underserved and rural markets.
4. All internal policies and training materials regarding procedures for processing or expediting PPP loans.

(online at <https://coronavirus.house.gov/news/press-releases/first-official-action-house-coronavirus-panel-demands-large-public-corporations>).

⁸ Select Subcommittee on the Coronavirus Crisis, *Company Returns \$10 Million In Taxpayer Funds Intended For Small Businesses In Response To Select Subcommittee Inquiry* (May 11, 2020) (online at <https://coronavirus.house.gov/news/press-releases/company-returns-10-million-taxpayer-funds-intended-small-businesses-response>).

⁹ Paycheck Protection Program and Health Care Enhancement Act, Pub. L. No. 116-139, § 101 (2020).

¹⁰ U.S. Small Business Administration, *Paycheck Protection Program (PPP) Report* (June 6, 2020) (online at www.sba.gov/sites/default/files/2020-06/PPP_Report_Public_200606%20FINAL_-508.pdf).

5. A complete list of all PPP applications received by your bank, including the following information:
 - a. the applicant's name, street address, NAICS Code, NAICS description, and business type;
 - b. the lender's name and street address;
 - c. the amount of funds requested;
 - d. the date the application was received;
 - e. whether the application was approved;
 - f. the amount and date of the approved loan;
 - g. the employee size of the applicant;
 - h. the loan status;
 - i. the number of jobs supported;
 - j. whether the applicant was an existing customer of your bank, and if so, the applicable line(s) of business;
 - k. whether the small business is owned or controlled by a veteran, woman, or a socially and economically disadvantaged individual as set forth in the CARES Act; and
 - l. the amount and date of any funds returned by the borrower.

In addition, please provide written responses to the following questions by June 29, 2020:

1. What steps did your bank take to ensure PPP funds went to support underserved and rural markets, as defined in the CARES Act? What additional steps do you plan to take?
2. What guidance from SBA or Treasury did your bank consider regarding the prioritization of loan applications benefiting underserved and rural markets?
3. What steps did your bank take to ensure all PPP loan origination and account servicing activities adhered to applicable fair lending and Unfair or Deceptive Acts or Practices (UDAP) requirements, and any other applicable laws and regulations?
4. What controls did your bank employ to ensure compliance with fair lending, UDAP, and any other applicable legal requirements for PPP loans?
5. What is your bank's revenue and profit from operating PPP to date?

In addition, we request a staff briefing from Bank of America on these issues by June 29, 2020.

Modeled after the Truman Committee during World War II, the Select Subcommittee on the Coronavirus Crisis was established by the U.S. House of Representatives on April 23, 2020, pursuant to House Resolution 935, "to conduct a full and complete investigation" of the "efficiency, effectiveness, equity, and transparency of the use of taxpayer funds and relief

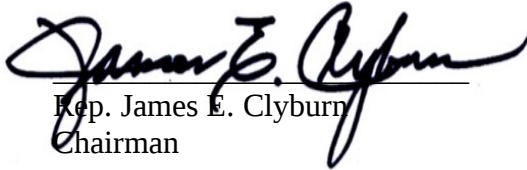
Mr. Brian Moynihan

Page 5

programs to address the coronavirus crisis,” the nation’s “preparedness for and response to the coronavirus crisis,” and “any other issues related to the coronavirus crisis.”

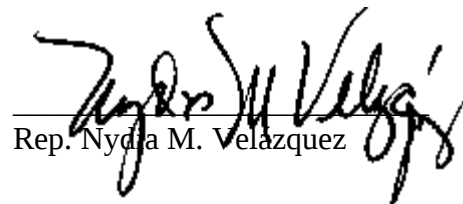
An attachment to this letter provides additional instructions for responding to the Select Subcommittee’s request. If you have any questions regarding this request, please contact Select Subcommittee staff at (202) 225-4400.

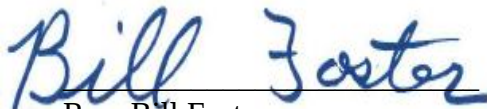
Sincerely,


Rep. James E. Clyburn
Chairman

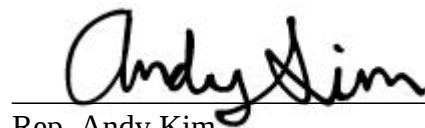

Rep. Maxine Waters


Rep. Carolyn B. Maloney


Rep. Nydia M. Velazquez


Rep. Bill Foster


Rep. Jamie Raskin


Rep. Andy Kim

Enclosure

cc: The Honorable Steve Scalise, Ranking Member

Responding to Oversight Committee Document Requests

1. In complying with this request, produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. Produce all documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party.
2. Requested documents, and all documents reasonably related to the requested documents, should not be destroyed, altered, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization, or individual denoted in this request is or has been known by any name other than that herein denoted, the request shall be read also to include that alternative identification.
4. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, thumb drive, or secure file transfer) in lieu of paper productions.
5. Documents produced in electronic format should be organized, identified, and indexed electronically.
6. Electronic document productions should be prepared according to the following standards:
 - a. The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - b. Document numbers in the load file should match document Bates numbers and TIF file names.
 - c. If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - d. All electronic documents produced to the Committee should include the following fields of metadata specific to each document, and no modifications should be made to the original metadata:

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD,

INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION,
BEGATTACH.

7. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, zip file, box, or folder is produced, each should contain an index describing its contents.
8. Documents produced in response to this request shall be produced together with copies of file labels, dividers, or identifying markers with which they were associated when the request was served.
9. When you produce documents, you should identify the paragraph(s) or request(s) in the Committee's letter to which the documents respond.
10. The fact that any other person or entity also possesses non-identical or identical copies of the same documents shall not be a basis to withhold any information.
11. The pendency of or potential for litigation shall not be a basis to withhold any information.
12. In accordance with 5 U.S.C. § 552(d), the Freedom of Information Act (FOIA) and any statutory exemptions to FOIA shall not be a basis for withholding any information.
13. Pursuant to 5 U.S.C. § 552a(b)(9), the Privacy Act shall not be a basis for withholding information.
14. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
15. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) every privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author, addressee, and any other recipient(s); (e) the relationship of the author and addressee to each other; and (f) the basis for the privilege(s) asserted.
16. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (by date, author, subject, and recipients), and explain the circumstances under which the document ceased to be in your possession, custody, or control.
17. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, produce all documents that would be responsive as if the date or other descriptive detail were correct.

18. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data, or information not produced because it has not been located or discovered by the return date shall be produced immediately upon subsequent location or discovery.
19. All documents shall be Bates-stamped sequentially and produced sequentially.
20. Two sets of each production shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2105 of the Rayburn House Office Building.
21. Upon completion of the production, submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control that reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, data, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone call, meeting or other inter-office or intra-office communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, mail, releases, electronic

message including email (desktop or mobile device), text message, instant message, MMS or SMS message, message application, or otherwise.

3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information that might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neutral genders.
4. The term “including” shall be construed broadly to mean “including, but not limited to.”
5. The term “Company” means the named legal entity as well as any units, firms, partnerships, associations, corporations, limited liability companies, trusts, subsidiaries, affiliates, divisions, departments, branches, joint ventures, proprietorships, syndicates, or other legal, business or government entities over which the named legal entity exercises control or in which the named entity has any ownership whatsoever.
6. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual’s complete name and title; (b) the individual’s business or personal address and phone number; and (c) any and all known aliases.
7. The term “related to” or “referring or relating to,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is pertinent to that subject in any manner whatsoever.
8. The term “employee” means any past or present agent, borrowed employee, casual employee, consultant, contractor, de facto employee, detailee, fellow, independent contractor, intern, joint adventurer, loaned employee, officer, part-time employee, permanent employee, provisional employee, special government employee, subcontractor, or any other type of service provider.
9. The term “individual” means all natural persons and all persons or entities acting on their behalf.