

To urge the United States Congress to adopt federal legislation to hold financial institutions accountable for gross negligence in the processing of PPP loans and to endorse the *Bank Negligence Act*.

WHEREAS, every financial institution in the District of Columbia, the Washington Metropolitan Area, and the entire United States ought to be held accountable;

WHEREAS, in the passage of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, the Federal Government authorized the utility of forgivable loans, as a part of the Paycheck Protection Program (PPP);

WHEREAS, the PPP authorized up to \$349 billion in forgivable loans to small businesses during the COVID-19 crisis;

WHEREAS, Section 1102 of the Act temporarily permits the Small Business Association (SBA) to guarantee 100 percent of 7(a) loans under the PPP;

WHEREAS, Section 1106 of the Act provides for forgiveness of up to the full principal amount of qualifying loans guaranteed under the program;

WHEREAS, the SBA received funding and authority through the Act to modify existing loan programs and establish a new loan program to assist small businesses nationwide adversely impacted by the COVID-19 emergency;

WHEREAS, the SBA is responsible for distributing these loans through the financial institutions;

WHEREAS, the loan proceeds were disbursed with intention to cover payroll costs, mortgage interest, rent, utility costs and to ensure the tally of employees and compensation levels are maintained;

WHEREAS, PPP Loans have qualifications that must be met before approval is decided. Filers must have owned and operated their business before February 15, 2020, possess self-employment income, have a main residence in the United States, and have or plan to have filed a Form 1040 Schedule C for 2019 or 2020;

WHEREAS, financial institutions must perform their due diligence to prevent fraud from occurring and continuing;

WHEREAS, the SBA proffered PPP loans originating only by participating Community Financial Institutions (CFIs) which include Certified Development Companies (CDCs), SBA Microlenders, Community Development Financial Institutions (CDFIs) and Minority Depository Institutions (MDIs) until May 31, 2021 or when funds were depleted;

WHEREAS, these financial institutions hold substantial responsibility in accrediting individual filers;

WHEREAS, according to the SBA Business Loan Program Temporary Changes; Paycheck Protection Program Rules and Regulations, “the intent of the Act is that the SBA provide relief to America’s small businesses expeditiously, which is expressed in the Act by giving all lenders delegated authority and streamlining the requirements;”

WHEREAS, “SBA will allow lenders to rely on certifications of the borrower in order to determine eligibility of the borrower and use of loan proceeds and to rely on specified documents provided by the borrower to determine qualifying loan amount and eligibility for loan forgiveness;”

WHEREAS, “lenders must comply with the applicable lender obligations set forth in this interim final rule, but will be held harmless for borrowers’ failure to comply with program criteria; remedies for borrower violations or fraud are separately addressed in this interim final rule;”

WHEREAS, financial institutions currently bear no responsibility when borrowers falsify criteria and are permitted to collect hefty fees for loan disbursement to individual filers;

WHEREAS, for first-draw PPP loans made on or after Dec. 27, 2020, lenders will receive processing fees in the following amounts: 50% or \$2,500, whichever is less, for loans of not more than \$50,000; 5% for loans of more than \$50,000 and not more than \$350,000; 3% for loans of more than \$350,000 and less than \$2 million; and 1% for loans of at least \$2 million;

WHEREAS, for second-draw PPP loans, lenders will receive a 50% processing fee or \$2,500, whichever is less, for loans of not more than \$50,000; a 5% processing fee for loans of more than \$50,000 and not more than \$350,000; and a 3% processing fee for loans above \$350,000;

WHEREAS, it is only reasonable to create guidelines and penalties for all SBA loan processors to increase accountability, decrease fraud, and share in responsibility when crime is committed;

WHEREAS, according to the Financial Crimes Enforcement Network, “The CDD Rule, which amends Bank Secrecy Act regulations, aims to improve financial transparency and prevent criminals and terrorists from misusing companies to disguise their illicit activities and launder their ill-gotten gains;”

WHEREAS, to be in full compliance with the Customer Due Diligence Final Rule, financial institutions must “identify and verify the identity of the natural persons (known as beneficial owners) of legal entity customers who own, control, and profit from companies when those companies open accounts;”

WHEREAS, financial institutions must understand the nature and purpose of customer relationships, conduct ongoing monitoring to identify and report any suspicious transactions on a risk basis, and maintain updated customer information;

WHEREAS, lenders should use SBA Form 1502 to report fully disbursed loans to SBA within 10 calendar days after the disbursement of a PPP loan;

WHEREAS, these set guidelines, if followed with accuracy and strict protocol, would detect fraudulent behavior prior to PPP loan application approval and/or disbursement;

WHEREAS, Gross negligence is lawfully stated as the recklessness, or actions taken or omitted with conscious indifference to or the complete disregard of consequences or rights of others affected;

WHEREAS, in the case of, Rudolph Brooks, Jr., a Pastor from Cheltenham, MD, arrested and charged with fraud after using pandemic relief funds to buy 39 cars and a property in Baltimore, MD;

WHEREAS, Brooks allegedly applied for and received more than \$1.5 million in Paycheck Protection Program funds on April 7, 2020, for a car dealership he had operated for two years before closing it in 2012;

WHEREAS, Brooks has been charged with wire fraud and faces a maximum sentence of 20 years in federal prison if convicted;

WHEREAS, the criminal intent of Brooks’ displayed actions have led to criminal repercussions and personal restitution;

WHEREAS, the negligence of this financial institution who processed this \$1.5 million loan has received no action nor suspension of activity;

WHEREAS, this institution and others alike who exhibit gross negligence must be held responsible when additional reasonable action would have prevented excessive fraud;

WHEREAS, the challenge the Department of Justice faces to rectify the fraud surrounding the PPP is not based on individual criminal activity, but based on institutional criminal activity;

WHEREAS, parallel to the behavior of the 2008 Mortgage Crisis, financial institutions are found faultless of criminal activity more times than not due to non-specific legislation addressing willful blindness;

WHEREAS, in the bank negligence case, *Government v. Countrywide, Bank of America, and Countrywide Executive Susan Mairone*, the government brought the case under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 to hold all parties accountable for selling Hustle Mortgages to Fannie Mae and Freddie Mac contractually promising mortgages would be of investment quality only to discover the mortgages were below investment grade;

WHEREAS, the closing statement of the Government summarized Hustle loans were no below value with the claim that the defendants knew the Hustle loans were below value and that the defendants passed the Hustle loans off as par value to illegally profit from the contract;

WHEREAS, the decision by the U.S. Court of Appeals for the Second Circuit stated the Government presented adequate evidence proving Countrywide knew that the loans were below grade when it sold it them, however there was no substantial evidence to show that, Countrywide intended to the sell the Government below-grade mortgages when it made the original sales contract;

WHEREAS, to further highlight the fraud-related stage in this systemic breakdown, these below grade mortgages were initiated based on incomplete and/or false information and packaged into securities when sold, the packaging is not defined to be done with fraudulent intent, which under legal constraints fails to prove criminal fraud, but does prove negligent failure to check and investigate the underlying value;

WHEREAS, financial institutions are built to protect, lend, and oversee collections of monies and provide accurate, legal transactions to all parties involved;

WHEREAS, the *Bank Negligence Act* will hold financial institutions accountable for the services provided to the SBA and the individual filers;

WHEREAS, it is reasonable to adopt federal legislation to prevent further negligent action admitted and permitted by financial institutions;

RESOLVED, BY THE U.S. REPRESENTATIVE OF THE DISTRICT OF COLUMBIA, that this resolution may be cited as the "Bank Negligence Resolution of 2021".

Sec. 2. The U.S. Representative of the District of Columbia urges the United States Congress to adopt federal legislation to hold financial institutions accountable for gross negligence in the processing of PPP loans and to endorse the *Bank Negligence Act*, and calls on our federal legislators to work toward the immediate enactment of this, or substantially similar legislation, to ensure appropriate restitution for all residents of the United States during this crisis and the crisis recovery period or allow states and the District of Columbia to do so for their residents.

Sec. 3. The U.S. Representative of the District of Columbia endorses the *Bank Negligence Act*.

Sec. 4. This resolution shall take effect immediately.