

Submitted May 15, 2020 to United States Treasury and Federal Reserve via regulations.gov re:
Docket No. SBA 20220 - 0015

Re: **Independent Film & Television Alliance's Comments to the Federal Register Notice
– Vol 85, No 73 at 20811, April 15, 2020, *Business Loan Program Temporary Changes
Paycheck Protection Program***

Dear Chairman Powell and Secretary Mnuchin,

The Independent Film & Television Alliance (IFTA) is the trade association representing the independent film and television industry, those companies that finance, produce, and distribute programming outside the major fully integrated studios. We would like to express our appreciation to you for the efforts to rapidly implement the Paycheck Protection Program (PPP) as part of the CARES Act Program to assist small businesses across the country to have the financial stability to maintain operations, provide for all employees, and recover from the downturn caused by the pandemic. We write now to recommend specific adjustments in the PPP that are necessary to enable the independent film and television industry to participate meaningfully in the Program

The U.S. film and television production industry is a key economic driver of our economy and one of our nation's most successful sectors, generating \$242 Billion in direct economic activity in the U.S. and producing \$16.3 Billion in export activity, a trade surplus of \$9.4 Billion. The industry creates 2.5 million jobs of which 892,000 are direct jobs and over 1.6 million are in companies that support the industry. In all some 93,000 businesses, located in every state, comprise the U.S film and television industry. Most are small businesses with fully 87% employing fewer than 10 people. Over \$28 Billion in sales taxes, federal taxes, state income taxes and other taxes are paid by the industry. IFTA Member companies are collectively responsible for creating nearly \$2.4 Billion in intellectual property exports (with a good portion of these sales made each year at IFTA's *American Film Market*), and U.S. domestic sales activity at \$3.15 Billion.

In March 2020, the U.S. film and television industry was brought to a standstill as all production ceased under safety orders, cast and crews were sent home, cinemas throughout the world ceased operating, and the revenue streams on which all industry stakeholders depend dropped precipitously to reflect only in-home viewing. History tells us that this industry will revitalize and emerge again to make and deliver the programming demanded worldwide and to be an economic engine across the country, providing thousands of jobs in California, New York, Georgia, and many more states. It is in our national economic interest to support that revival.

For those companies able to access funds through the PPP, the Program has been an important factor in keeping businesses alive. But the Program is modeled heavily on the manufacturing and retail industries in which continuous operation throughout the year and

reliance on employed staff is the norm. In contrast, film production is episodic with activities concentrated around a limited period of physical activity for each film, multiple times a year. The size of the companies' workforce thus changes regularly during the year.

Moreover, many who work production are independent contractors, including electricians, grips, cameramen, and other journeymen. These individuals have the experience needed for the specific project but can remain committed only so long as the production company can retain their services. The work stoppages to date have interrupted that relationship and there will be further delays before the launch of meaningful production work, due to both existing civil orders and the need to revamp production to meet developing safety requirements on set.

For the purpose of responding to this Federal Register Notice regarding the PPP requirements, IFTA would like to provide comments on specific requirements listed in the Notice that could be quickly modified to better reach independent companies in the business of production and distribution of copyrighted content and who are in crisis. We understand that time is of the essence with loan applications due by June 30th, and hope that these modifications will be considered and implemented as quickly as possible so that there is some degree of certainty for the independent film and television industry as it seeks to maintain its valued workforce and begins to ramp up and revive film production activity.

Do independent contractors count as employees for the purposes of PPP loan calculation?

Currently, the PPP excludes compensation to independent contractors (1099 workers) and relies upon these workers to file on their own behalf. This is not an effective approach for the film and television production sector or for other industries that are built around the regular services of self-employed individuals. In the case of the production sector, these workers are a necessary part of any film company's production-related workforce and during active periods may constitute the majority of headcount. In many instances, they are closely affiliated to the production company for which they work regularly.

The inability to include these workers as part of the production company's payroll is both a financial issue and a practical one for the company and for the individual. The company relies on these workers to return when production re-starts and has invested in related training; excluding them from the payroll for PPP severs the ongoing relationship between the parties. For the individual, it may result in losing compensation completely as the process of applying for PPP alone is onerous and anecdotal evidence suggests that banks have not been hospitable to these applications. IFTA urges that, insofar as the workers themselves consent, the PPP should recognize the mutual benefits and allow the film and television companies to include these individuals in its calculation of payroll and application for funds.

Do independent contractors count as employees for the purposes of PPP loan forgiveness?

As set forth above, IFTA urges that the film and television sector should be allowed to include independent contractors for purposes of calculating its loan amount where those workers consent and that the full benefits of the PPP including loan forgiveness are applicable to these companies.

IFTA reiterates that the industry relies heavily on these workers, whether retained as individuals or through “loan out” companies, the smallest of small businesses primarily used in the entertainment industry to lend the services of a specific person (usually the company owner) to perform services on a production. These are individual creators who are unlikely to navigate the myriad of rules and applications and secure a qualified lender. Small businesses are having a hard enough time securing the relief funds through their established business banking relationships and are relying on business and legal experts to apply for the PPP funds, especially in light of the certifications necessary. Simply put, if SBA intends to meaningfully include all workers in film production in its relief plan, it must modify or set a special industry rule allowing these 1099 workers to rely upon their affiliated production company employer in accessing compensation through the PPP.

Allowing 1099 production workers to access the PPP through another small business also streamlines the application process and provides for greater efficiencies and accessibility in accordance with the expressed intentions of the CARES Act. IFTA encourages the Federal Reserve and SBA to use its leadership to promote this approach across the industry.

Can my PPP Loan be forgiven in whole or part?

Currently, the loan can be forgiven up to the full principle amount of the loan and any accrued interest. However, not more than 25% of the loan forgiveness amount may be attributable to non payroll costs. IFTA recommends decreasing this requirement and allow the employer more flexibility, especially during the closure which is preventing film production or non essential small business activity, and any secondary closures that may arise, or other pauses to or limitations on production activity due to COVID 19. Businesses must first survive the pandemic, in order to welcome back their employees and staff up, and during that survival period they must pay rent and keep the lights on. They need flexibility to maintain facilities and services and to phase in the return of workers to match safety requirements and the practicalities of restarting production in high costs production centers like Atlanta, Orlando, New Orleans, Dallas, New York and California.

How can a PPP loan be used?

The Program requires that at least 75% of the loan go toward payroll costs and that the funds be spent within an eight-week period after disbursement. For the reasons stated above, IFTA recommends that more flexibility should be provided. We now know that the process of re-opening will be slow in most cases and certainly for film and television production and that there remains the risk of more shut-downs if secondary outbreaks appear. Accordingly, IFTA recommends that the period for spending the funds be extended to a minimum of twelve weeks without jeopardizing forgiveness of the loan.

Other issues with PPP

Although the subject of a separate Federal Register Notice and Comment period covering PPP and seasonal employers, IFTA also calls attention to the urgent need to adjust the look back period specified for seasonal employees. The current rules specify a limited twelve-week period in 2019 (starting either February 15 or March 1) as the baseline for applications by seasonal employers. Given the vagaries of film production scheduling as well as the numerous different time intervals that give rise to episodic seasonal work, we urge that the employer be permitted to

elect the twelve-week period that corresponds to his own business cycle. As shut-down conditions have extended in many locations far past predictions, it is appropriate to recognize additional time periods of significance to different businesses.

Finally, IFTA is asking Congress to include IRC section 501(c)6 nonprofits in the COVID relief legislation. Trade and business organizations are on the frontlines as they provide vital services directly to the enterprises and individuals in their sector and will be key to economic revitalization in the country. But they are also small businesses in their own right, faced with payroll obligations and revenue losses from cancelled events and a decline in dues payments. If the necessary legislation is enacted to include these nonprofits in the Main Street Lending Facility and the Paycheck Protection Program, IFTA asks that the SBA quickly announce any additional administrative requirements applicable to the unique needs of nonprofit organizations, including the ability to defer payments.

We look forward to further engagement on the PPP and how it can help to support the survival and economic recovery of the U.S. film and television industry. Thank you.

Respectfully submitted by IFTA,

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