The Honorable Richard Neal
Chairman, Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

The Honorable Charles Grassley
Chairman, Committee on Finance
U.S. Senate
Washington, DC 20510

Re: IRS Notice 2020-32 regarding deductible expenses related to Paycheck Protection Program loans

Dear Chairmen Neal and Grassley,

Thank you for your continued support for Congressional action to support the economy as the country continues to grapple with the difficulties related to the novel coronavirus (COVID-19). As Congress has aggressively responded to provide relief for both employers and employees, the Paycheck Protection Program (PPP), administered by the Small Business Administration (SBA) and the Department of the Treasury (Treasury) has emerged as an essential lifeline for struggling small business owners as they deal with federally, state, and/or locally mandated shutdowns or slowdowns of economic activity due to COVID-19.

As you are aware, on Thursday, April 30th, the Internal Revenue Service (IRS) issued Notice 2020-32 which "clarifie[d] that no deduction is allowed under the Internal Revenue Code (Code) for an expense that is otherwise deductible if the payment of the expense results in forgiveness of a covered loan pursuant to section 1106(b) of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act)." This is at odds with the legislative text of the CARES Act, which included Section 1106(i), which says that, with regard to the "taxability" of the loan forgiveness available to PPP recipients, any amounts forgiven by a PPP loan "*shall be excluded from gross income* (emphasis added)."

The impact of this latest IRS ruling is significant. The effect will be to substantially increase the tax liability of PPP loan recipients at the worst possible time. For C-Corporations, it means an increase in the net after tax benefit of PPP loan forgiveness by as much as 21%. For pass-through businesses, such as S Corporations, the marginal increase could be as high as 37%. Once state income taxes are included, the impact will be even greater.

As both of you have publicly stated, the IRS's interpretation of the CARES Act is contrary to the intent of Congress. It makes little sense to exclude an employer's PPP loan forgiveness income from tax liability with the one hand, only lose the same amount in deductions with the other hand. With many businesses struggling to stay afloat, it is imperative that the rescue measures enacted by Congress, including PPP loans, provide the maximum amount of flexibility to employers that they can. We strongly encourage you to convey to the IRS that Congress intended PPP loan forgiveness to be tax free, including waiving IRC Section 265, which would otherwise severely limit the benefit of PPP loan forgiveness, and create additional administrative burdens on employers. Absent clarification from the IRS, we encourage you to amend the CARES Act in subsequent legislation that would explicitly waive IRC Section 265 from applying to PPP loan forgiveness. Thank you again for your continued support.

Sincerely,

Cc: The Honorable Kevin Brady
The Honorable Ron Wyden