



June 16, 2020

**VIA FOIA ONLINE**

Chief, FOIA Office  
Small Business Administration  
409 3rd Street SW, 8th Floor  
Washington, DC 20416  
Via FOIAOnline

**Re: Expedited Freedom of Information Act Request**

Dear FOIA Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the implementing regulations of your agency, American Oversight makes the following request for records.

The Paycheck Protection Program (PPP) is massive federal program that was established to support small organizations—including many for-profit, private businesses—impacted by the economic crisis that has resulted from the ongoing coronavirus pandemic. For eligible entities, it provides loans to cover payroll, rent, mortgage interest, or utilities, which can be forgiven if the entities keep their workforce on payroll for at least eight weeks after receiving their loan.<sup>1</sup> A small share of these companies have received over \$5 million in forgivable loans.<sup>2</sup> Recently, high-ranking members of the Trump administration have announced that the federal government will not make public the identities of the companies who have received unprecedented public assistance through this program.<sup>3</sup> This contradicts the Small Business Administration's (SBA's) prior practices and its stated intentions.<sup>4</sup> Though the PPP has been administered by SBA, Treasury Secretary Mnuchin represented to Congress that the administration believed the identity of recipients was confidential and "proprietary."<sup>5</sup>

American Oversight seeks records that will shed light on the companies that received the largest awards of public funds from the PPP—one of the most significant programs enacted by the current Congress and administered by the current administration.

**Requested Records**

American Oversight seeks expedited review of this request for the reasons identified below and requests that SBA produce the following records as soon as practicable, and at least within twenty business days:

<sup>1</sup> *Paycheck Protection Program*, SMALL BUS. ADMIN., <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program>.

<sup>2</sup> *Id.*

<sup>3</sup> Aaron Gregg, *Trump Administration Won't Say Who Got \$511 Billion in Taxpayer-Backed Coronavirus Loans*, WASH. POST (June 11, 2020, 10:55 AM), <https://www.washingtonpost.com/business/2020/06/11/trump-administration-wont-say-who-got-511-billion-taxpayer-backed-coronavirus-loans/>.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*



Records sufficient to show the following information concerning organizations that received loans totaling \$5 million or more from the Paycheck Protection Program (PPP):

- (1) the name of the recipient organization or company;
- (2) the total amount of funds disbursed to that recipient organization or company through the PPP;
- (3) any business address(es) provided by the recipient organization or company;
- (4) any email address(es) provided by the recipient organization or company;
- and
- (5) the names of any corporate officers, organizational leaders, or board members provided by the recipient organization or company.

To the extent that SBA has this information compiled in a single document or set of documents, American Oversight requests that those documents compiling the relevant information be produced rather than individual submissions of the relevant PPP recipients in order to allow for an expeditious response. American Oversight notes that it has targeted this request to the recipients who received the largest disbursements in order to ensure a prompt processing and production of responsive records. SBA reported that only 4,412 of the approximately 1.6 million original PPP recipients received loans exceeding \$5 million. See U.S. SMALL BUSINESS ADM., *Paycheck Protection Program (PPP) Report: Approvals through 12 PM EST 4/16/2020*, <https://bankbclp.com/wp-content/uploads/2020/04/SBA-PPP-Loan-Report-Deck-as-of-4-16-20.pdf> (last accessed June 15, 2020).

Please search for responsive records from April 1, 2020, through the date of the search.

### **Fee Waiver Request**

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and your agency's regulations, American Oversight requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures will likely contribute to a better understanding of relevant government procedures by the general public in a significant way. Moreover, the request is primarily and fundamentally for non-commercial purposes.

American Oversight requests a waiver of fees because disclosure of the requested information is "in the public interest because it is likely to contribute significantly to public understanding of operations or activities of the government."<sup>6</sup> The public has a significant interest in how the billions of dollars of public funds awarded through the PPP have been dispersed. Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the federal government, including whether there has been inappropriate favoritism in the award of PPP loans. American Oversight is committed to transparency and makes the responses agencies provide to FOIA requests publicly available, and the public's understanding of the government's activities would be enhanced through American Oversight's analysis and publication of these records.

<sup>6</sup> 5 U.S.C. § 552(a)(4)(A)(iii).

This request is primarily and fundamentally for non-commercial purposes.<sup>7</sup> As a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose and the release of the information requested is not in American Oversight's financial interest. American Oversight's mission is to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight also makes materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and Twitter.<sup>8</sup>

American Oversight has also demonstrated its commitment to the public disclosure of documents and creation of editorial content through numerous substantive analyses posted to its website.<sup>9</sup> Examples reflecting this commitment to the public disclosure of documents and the creation of editorial content include the posting of records related to an ethics waiver received by a senior Department of Justice attorney and an analysis of what those records demonstrated regarding the Department's process for issuing such waivers;<sup>10</sup> posting records received as part of American Oversight's "Audit the Wall" project to gather and analyze information related to the administration's proposed construction of a barrier along the U.S.-Mexico border, and analyses of what those records reveal;<sup>11</sup> posting records regarding potential self-dealing at the Department of Housing & Urban Development and related analysis;<sup>12</sup> posting records and analysis relating to the federal government's efforts to sell nuclear technology to Saudi Arabia;<sup>13</sup> posting records and analysis regarding the Department of Justice's decision in response to demands from Congress to direct a U.S. Attorney to undertake a wide-ranging review and make recommendations regarding criminal investigations relating to the President's political opponents and allegations of misconduct by the Department of Justice itself and the Federal Bureau of Investigation.<sup>14</sup>

<sup>7</sup> See 5 U.S.C. § 552(a)(4)(A)(iii).

<sup>8</sup> American Oversight currently has approximately 15,500 page likes on Facebook and 102,000 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited June 15, 2020); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited June 15, 2020).

<sup>9</sup> News, AMERICAN OVERSIGHT, <https://www.americanoversight.org/blog>.

<sup>10</sup> *DOJ Records Relating to Solicitor General Noel Francisco's Recusal*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>; *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents>.

<sup>11</sup> See generally *Audit the Wall*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigation/audit-the-wall>; see, e.g., *Border Wall Investigation Report: No Plans, No Funding, No Timeline, No Wall*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/border-wall-investigation-report-no-plans-no-funding-no-timeline-no-wall>.

<sup>12</sup> *Documents Reveal Ben Carson Jr.'s Attempts to Use His Influence at HUD to Help His Business*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/documents-reveal-ben-carson-jr-s-attempts-to-use-his-influence-at-hud-to-help-his-business>.

<sup>13</sup> *Investigating the Trump Administration's Efforts to Sell Nuclear Technology to Saudi Arabia*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigating-the-trump-administrations-efforts-to-sell-nuclear-technology-to-saudi-arabia>.

<sup>14</sup> *Sessions' Letter Shows DOJ Acted On Trump's Authoritarian Demand to Investigate Clinton*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/sessions-letter>.

Accordingly, American Oversight qualifies for a fee waiver.

### **Application for Expedited Processing**

Pursuant to 5 U.S.C. § 552(a)(6)(E)(1) and 13 C.F.R § 102.5(e)(ii & iv), American Oversight requests that your agency expedite the processing of this request.

I certify to be true and correct to the best of my knowledge and belief that the information requested is urgently needed in order to inform the public concerning government activity, and, as detailed below, American Oversight is primarily engaged in disseminating information to the public. There is an urgent need to inform the public regarding the identities of companies that have received large awards of public funds under the PPP for several reasons. First, the PPP is a major program passed by Congress and signed into law by the president to address a nearly unprecedented ongoing economic crisis<sup>15</sup> by keeping millions of people employed and millions of small businesses from closing.<sup>16</sup> As unemployment continues at record high levels and the coronavirus pandemic continues, the public needs access to the requested records to evaluate the effectiveness of the federal government's response to the ongoing economic crisis. Second, as PPP is one of the most significant programs enacted by the current Congress, and one of the most consequential economic programs administered by the current administration, the public needs the requested information to evaluate the effectiveness and integrity of this program and its administration in advance of approaching congressional and presidential elections.

I also certify to be true and correct to the best of my knowledge and belief that, under prong iv of SBA regulations, there is widespread and exceptional media interest and there exist possible questions concerning the government's integrity, which affect public confidence. From the beginning of the PPP, many have expressed concerns about whether the program would receive proper oversight to ensure it was operated effectively and with integrity.<sup>17</sup> Initial reports about disbursements of PPP funds caused public outrage as major companies, like the Los Angeles Lakers, received large awards of funds while many struggling small businesses were unable to receive assistance.<sup>18</sup> This widespread and exceptional interest in the recipients of PPP funds has continued, as many members of Congress have demanded the information requested here.<sup>19</sup> Public concerns over the integrity of the administration of the PPP have only

<sup>15</sup> Neil Irwin, *Don't Lose the Thread. The Economy Is Experiencing an Epic Collapse of Demand.*, N.Y. TIMES, June 6, 2020, <https://www.nytimes.com/2020/06/06/upshot/coronavirus-economic-crisis.html>.

<sup>16</sup> Emily Flitter, *Small Businesses Will Get Help Paying Workers, if They Can Wait*, N.Y. TIMES, Mar. 26, 2020, <https://www.nytimes.com/2020/03/26/business/coronavirus-stimulus-small-business.html>.

<sup>17</sup> Clare Floran et al., *Pelosi Announces House Committee on Coronavirus Crisis to Exercise Oversight of Pandemic Response*, CNN (Apr. 2, 2020, 6:25 PM), <https://www.cnn.com/2020/04/02/politics/coronavirus-house-committee-pelosi/index.html>.

<sup>18</sup> Erica Werner, *Oversight Efforts Stumble As White House Continues Changing Rules on Emergency Spending Measures*, WASH. POST (Apr. 28, 2020, 5:38 PM), <https://www.washingtonpost.com/us-policy/2020/04/28/mnuchin-coronavirus-small-business-ppp/>.

<sup>19</sup> Pete Schroeder, *Mnuchin Will Discuss PPP Oversight With Congress After Criticism*, REUTERS (June 15, 2020, 12:07 PM), <https://www.reuters.com/article/us-health-coronavirus-ppp/>

heightened since the Trump administration announced it would not release the identities of recipient companies and basic information about the public funds they received.<sup>20</sup> This widespread media interest in the program clearly concerns questions about the integrity of the PPP that affect public confidence in the government's expending of resources and response to an unprecedented economic crisis.

I further certify that American Oversight is primarily engaged in disseminating information to the public. American Oversight's mission is to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. Similar to other organizations that have been found to satisfy the criteria necessary to qualify for expedition,<sup>21</sup> American Oversight "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience."<sup>22</sup> American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, and other media. American Oversight also makes materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and Twitter.<sup>23</sup> As discussed previously, American Oversight has demonstrated its commitment to the public disclosure of documents and creation of editorial content.<sup>24</sup>

Accordingly, American Oversight's request satisfies the criteria for expedition.

[disclosure/mnuchin-will-discuss-ppp-oversight-with-congress-after-criticism-idUSKBN23M2AV](https://www.americanoversight.org/disclosure/mnuchin-will-discuss-ppp-oversight-with-congress-after-criticism-idUSKBN23M2AV).

<sup>20</sup> Marcy Gordon & Mary Clare Jalonick, *Treasury Secretary Mnuchin Refuses to Disclose Recipients of Taxpayer-Funded Coronavirus Business Loans*, USA TODAY (June 13, 2020, 1:14 PM), <https://www.usatoday.com/story/money/2020/06/13/mnuchin-ppp-small-business-loans-covid-19-aid/3182772001/>.

<sup>21</sup> See *ACLU v. U.S. Dep't of Justice*, 321 F. Supp. 2d 24, 30–31 (D.D.C. 2004); *EPIC v. Dep't of Defense*, 241 F. Supp. 2d 5, 15 (D.D.C. 2003).

<sup>22</sup> *ACLU*, 321 F. Supp. 2d at 29 n.5 (quoting *EPIC*, 241 F. Supp. 2d at 11).

<sup>23</sup> American Oversight currently has approximately 15,500 page likes on Facebook and 102,000 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited June 15, 2020); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited June 15, 2020).

<sup>24</sup> See generally *News*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/blog>; see, e.g., *DOJ Civil Division Response Noel Francisco Compliance*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>; *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents>; *Audit the Wall*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigation/audit-the-wall>; *Border Wall Investigation Report: No Plans, No Funding, No Timeline, No Wall*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/border-wall-investigation-report-no-plans-no-funding-no-timeline-no-wall>; *Documents Reveal Ben Carson Jr.'s Attempts to Use His Influence at HUD to Help His Business*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/documents-reveal-ben-carson-jr-s-attempts-to-use-his-influence-at-hud-to-help-his-business>; *Investigating the Trump Administration's Efforts to Sell Nuclear Technology to Saudi Arabia*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigating-the-trump-administrations-efforts-to-sell-nuclear-technology-to-saudi-arabia>; *Sessions' Letter Shows DOJ Acted On Trump's Authoritarian Demand to Investigate Clinton*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/sessions-letter>.

## **Guidance Regarding the Search & Processing of Requested Records**

In connection with its request for records, American Oversight provides the following guidance regarding the scope of the records sought and the search and processing of records:

- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics.
- Our request for records includes any attachments to those records or other materials enclosed with those records when they were previously transmitted. To the extent that an email is responsive to our request, our request includes all prior messages sent or received in that email chain, as well as any attachments to the email.
- Please search all relevant records or systems containing records regarding agency business. Do not exclude records regarding agency business contained in files, email accounts, or devices in the personal custody of your officials, such as personal email accounts or text messages. Records of official business conducted using unofficial systems or stored outside of official files are subject to the Federal Records Act and FOIA.<sup>25</sup> It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; American Oversight has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, by intent or through negligence, failed to meet their obligations.<sup>26</sup>
- Please use all tools available to your agency to conduct a complete and efficient search for potentially responsive records. Agencies are subject to government-wide requirements to manage agency information electronically,<sup>27</sup> and many agencies have adopted the National Archives and Records Administration (NARA) Capstone program, or similar policies. These systems provide options for searching emails and other electronic records in a manner that is reasonably likely to be more complete than just searching individual custodian files. For example, a custodian may have deleted a responsive email from his or her email program, but your agency's archiving tools may capture that email under Capstone. At the same time, custodian searches are still necessary; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.
- In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the

<sup>25</sup> See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145, 149–50 (D.C. Cir. 2016); cf. *Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 955–56 (D.C. Cir. 2016).

<sup>26</sup> See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016).

<sup>27</sup> Presidential Memorandum—Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), <https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidential-memorandum-managing-government-records>; Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments & Independent Agencies, “Managing Government Records Directive,” M-12-18 (Aug. 24, 2012), <https://www.archives.gov/files/records-mgmt/m-12-18.pdf>.

requested records. If a request is denied in whole, please state specifically why it is not reasonable to segregate portions of the record for release.

- Please take appropriate steps to ensure that records responsive to this request are not deleted by the agency before the completion of processing for this request. If records potentially responsive to this request are likely to be located on systems where they are subject to potential deletion, including on a scheduled basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

## **Conclusion**

If you have any questions regarding how to construe this request for records or believe that further discussions regarding search and processing would facilitate a more efficient production of records of interest to American Oversight, please do not hesitate to contact American Oversight to discuss this request. American Oversight welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, American Oversight and your agency can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in an electronic format by email. Alternatively, please provide responsive material in native format or in PDF format on a USB drive. Please send any responsive material being sent by mail to American Oversight, 1030 15th Street NW, Suite B255, Washington, DC 20005. If it will accelerate release of responsive records to American Oversight, please also provide responsive material on a rolling basis.

We share a common mission to promote transparency in government. American Oversight looks forward to working with your agency on this request. If you do not understand any part of this request, please contact Dan McGrath at [foia@americanoversight.org](mailto:foia@americanoversight.org) or 202.897.4213. Also, if American Oversight's request for expedition is not granted or its request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,



Austin R. Evers  
Executive Director  
American Oversight