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DONNA CAMPBELL, M.D.

TEXAS STATE SENATOR
DISTRICT 25

April 22, 2020

The Honorable Ken Paxton
Attorney General of Texas
Attention: Opinions Committee
P.O. Box 12548
Austin, TX 78711

Dear General Paxton:

On March 27, 2020, the President signed the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), Section 1102 of which creates the Paycheck Protection Program ("PPP"). The purpose of the PPP is to provide aid to small businesses, nonprofits, veterans organizations, and Tribal businesses affected by COVID-19. The PPP provides loans to businesses with 500 employees or less, or who fall within the SBA's industry specific size standards up to two and a half times the businesses payroll costs or \$10,000,000, whichever is less.

PPP loans are also 100% guaranteed by the Small Business Administration (the "SBA") and have the full faith and credit of the United States behind this guaranty. The loans presently bear interest at the rate of 1% per annum and the Bank lender has the authority to forgive principal and interest if the loan funds are used for payroll costs, rent, utilities or interest on mortgage obligations and the borrower does not reduce the number of employees it employs or reduce the wages of those employees beyond a certain amount. The full amount of the forgiveness will be reimbursed to the Bank lender by the SBA. The SBA has committed to purchase pools of loans from Bank lenders authorized to make the loans beginning in the seventh week of the program or approximately June 1, 2020, however, many banks do not have the liquidity or the ability to hold these loans on their own balance sheet though the Federal Reserve has announced the availability of a Term Facility to provide funding to Bank lenders making PPP Loans. The CARES Act permits the loans to be sold into the secondary market or purchased by the SBA. We believe that public entities whose investments are governed by the Public Funds Investment Act (PFIA) in Texas would be an excellent source for a secondary market for these relatively short-term instruments that are 100% guaranteed by the United States government.

It is estimated that most of the loan principal and interest will be forgiven by mid July 2020 and as such the loans will bear interest until the date of forgiveness. The individual loans could be pooled together and purchased by the public entities while the Bank Lenders continue to service the loans including managing the forgiveness. The loans will likely be outstanding no more than 90-120 days and at a 1% interest rate and 100% guaranteed by the full faith and credit of the United States, they would provide an excellent investment over currently available short-term investments. In addition, the purchase of these loans by public entities will support their communities and the community banks who are making these loans and allow them to maintain

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their capital ratios while still originating, selling, and servicing these loans. Section 2256.009(a)(4) of the PFIA includes as an authorized investment:

“other obligations, the principal and interest of which are unconditionally guaranteed or insured by, or backed by the full faith and credit of, this state or the United States or their respective agencies and instrumentalities, including obligations that are fully guaranteed or insured by the Federal Deposit Insurance Corporation or by the explicit full faith and credit of the United States.”

Because, as noted above, PPP loans are 100% guaranteed by the SBA, we believe they fall within this provision and are therefore authorized investments under the PFIA. We believe many school districts, hospital districts, cities, and counties would like confirmation from your office that the PPP loans created by the CARES Act are eligible investments for them under the PFIA.

We respectfully request that you offer your opinion on this matter so that public entities interested in purchasing PPP loans will have some guidance to rely on when determining whether or not their investment is authorized under the PFIA.

Respectfully,

A handwritten signature in black ink, appearing to read "Donna Campbell". The signature is written in a cursive, flowing style.

Senator Donna Campbell