



VIA ELECTRONIC SUBMISSION

May 15, 2020

Jovita Carranza
Administrator
U.S. Small Business Administration
409 3rd Street, S.W.
Washington, DC 20416

Re: Docket No. SBA-2020-0015, Business Loan Program Temporary Changes; Paycheck Protection Program; Interim Final Rule

Dear Administrator Carranza:

Associated Builders and Contractors hereby submits the following comments to the U.S. Small Business Administration in response to the above-referenced interim final rule published in the *Federal Register* on April 15, 2020, at 85 Fed. Reg. 20811.

About Associated Builders and Contractors

ABC is a national construction industry trade association representing more than 21,000 members. ABC and its 69 chapters help members develop people, win work and deliver that work safely, ethically and profitably for the betterment of the communities in which ABC and its members work.

ABC's membership represents all specialties within the U.S. construction industry and is comprised primarily of firms that perform work in the industrial and commercial sectors. Moreover, the vast majority of our contractor members are classified as small businesses. This is consistent with the U.S. Small Business Administration Office of Advocacy's findings that the construction industry has one of the highest concentrations of small business participation at more than 82%.¹

Our diverse membership is bound by a shared commitment to the merit shop philosophy in the construction industry, which is based on the principles of nondiscrimination due to labor affiliation and the awarding of construction contracts through open, competitive bidding based on safety, quality and value.

Background

On March 27, 2020, President Trump signed into law the Coronavirus Aid, Relief and Economic Security Act, which authorized SBA to temporarily guarantee loans under a new 7(a) loan program titled the Paycheck Protection Program and provided up to \$349 billion in immediate assistance to individuals,

¹ *Annual Report of the Office of Economic Research, FY 2018*, U.S. Small Business Administration, Office of Advocacy (2019), at Page 22, <https://cdn.advocacy.sba.gov/wp-content/uploads/2019/08/09111927/OER-Annual-Report-2018.pdf>.

families and businesses affected by the COVID-19 emergency.² Further, on April 24, President Trump signed into law the Paycheck Protection Program and Health Care Enhancement Act, which extended an additional \$310 billion for PPP loans.³

On April 15, 2020, SBA published an interim final rule announcing the implementation of sections 1102 and 1106 of the CARES Act, which adds the PPP to the 7(a) loan program and provides for loan forgiveness of up to the full principal amount of qualifying loans guaranteed under the PPP.⁴ As part of the rulemaking, SBA is seeking public comment on the key provisions of SBA's implementation of sections 1102 and 1106 of the CARES Act in formal guidance.

ABC's Comments in Response to SBA's Interim Final Rule

ABC applauds Congress and SBA's efforts to combat this ongoing health crisis and ensure our economy remains strong through the passage of the CARES Act and implementation of the PPP. However, ABC, as noted below, encourages the agency to modify the program and provide further clarification on the program's current policies that assist our small businesses and maintain employment for millions of America's workers.

Expand the formula for PPP loan disbursement.

ABC has expressed concerns with the formula that sets the loan amount at 2.5 times the average monthly payroll for small businesses and provides only eight weeks of payroll coverage. The scale of the COVID-19 crisis has eclipsed the current eight-week period, and we have already seen construction projects in numerous states and cities shut down until this virus is contained.

The original proposal for the CARES Act envisioned four months of payroll coverage and a broader formula that included rent and other operating expenses. ABC encourages revising this formula to provide small businesses with the resources they need to effectively meet business obligations and keep employees on payroll, thereby keeping their businesses intact. While this may not be within the administrator's power at this time, ABC supports these enhancements to the program in the next congressional response.

Provide further clarification on certification guidance.

As unemployment has surged to nearly 15% in the United States in April with a record 20.5 million jobs lost, many construction companies are in need of PPP loans to keep workers on payroll and their businesses intact.⁵ One of the most critical issues currently facing the PPP is guidance issued mid-stream in the FAQs indicating that the restrictions on PPP loans could apply to not only businesses that have

² <https://www.congress.gov/bill/116th-congress/house-bill/748/text>.

³ <https://www.congress.gov/bill/116th-congress/house-bill/266/text>.

⁴ 85 Fed. Reg. 20811.

⁵ <https://www.bls.gov/news.release/empsit.nr0.htm>.

access to the capital markets but also private companies “with adequate sources of liquidity.” This could include private companies with sufficient cash reserves or existing lines of credit.⁶

While ABC appreciates the additional FAQ No. 46 that was issued to clarify that borrowers with loans of less than \$2 million are deemed to have made the certification in good faith and provide additional guidance on SBA reviews for borrowers with loans of more than \$2 million, the issues of adequate sources of liquidity and existing lines of credit still remain unclear for borrowers. This continued lack of clarity could prompt some eligible contractors with larger budgets to return the funds to avoid unwarranted scrutiny from the government or public and similarly could discourage other eligible businesses from accessing the program and helping their employees. It would be helpful to provide further clarification on these requirements to ensure certainty for our construction employers as they seek to do what is best for their businesses and workers.

Eliminate the requirement to dedicate at least 75% of PPP loans to payroll costs and lengthen the repayment period to align with the CARES Act.

Section 1102 of the CARES Act allows a small business to use a PPP loan for payroll costs, rent or mortgage interest payments, utility payments and a few other uses.

The SBA Inspector General’s flash report on the implementation of PPP requirements⁷ notes the following:

We found the formal guidance in SBA’s Interim Final Rule did not align with the allowable use requirements for PPP loans [...] While the Act did not create any restrictions on the portion of the loan that needed to be used for payroll, SBA added a requirement in its Interim Final Rule, that at least 75% of the loan proceeds must be used for payroll.

The SBA IG report also notes that “the maturity term established by the administrator and the secretary would require the borrowers to repay any amount not eligible for forgiveness within the remainder of the initial two-year term. The act, however, allowed for a maximum maturity of up to 10 years. SBA’s requirements could result in an unintended burden to the borrowers. For example, PPP borrowers who do not use at least 75% of the loan for payroll (therefore use more than 25% of their loan proceeds for nonpayroll expenses) may not be able to have all of their loan forgiven. It may be important to consider that many small businesses have more operational expenses than employee expenses. Our review of data from round one found that 10 of thousands of borrowers would not meet the 75% payroll cost threshold and would therefore have to repay the amount of nonpayroll costs in excess of 25% in less than two years.” Further, while the loan allows for payments of utilities, the definition of utilities and what that

⁶ Question 31, *Paycheck Protection Program Loans: Frequently Asked Questions*, Small Business Administration, https://www.sba.gov/sites/default/files/2020-05/Paycheck-Protection-Program-Frequently-Asked-Questions_05%2013%2020_2.pdf.

⁷ *Flash Report: Small Business Administration’s Implementation of the Paycheck Protection Program Requirements*, U.S. Small Business Administration, Office of Inspector General (2020), https://www.sba.gov/sites/default/files/2020-05/SBA_OIG_Report_20-14_508.pdf?utm_medium=email&utm_source=govdelivery.

encompasses remains unclear, especially when it comes to transportation, which could potentially have significant construction applications. Additional clarification on this matter would be helpful.

The SBA should adhere to the law's intent for the allowable use requirement of PPP loans and provide our small construction businesses with the flexibility needed to best fit their needs. Doing so will allow them to continue to provide critical jobs while recovering from this health and economic crisis.

Provide further guidance on loan forgiveness.

Included in the CARES Act was a requirement that the SBA issue guidance on the loan forgiveness provisions of the PPP within 30 days of enactment, or April 26, 2020. While the SBA and Treasury continue to provide much needed guidance and updated FAQs, there continues to be a lack of clear guidance when it comes to the loan forgiveness provisions of this essential program for our small businesses.

Many of our members and small construction businesses are relying on loan forgiveness when it comes to these loans. Without clear guidance, though, these businesses remain wary of the risk associated with taking a large loan, especially with the uncertainty surrounding this crisis and reopening of the U.S. economy. It is critical that the SBA and Treasury act swiftly to issue this much-needed guidance to provide clarity and certainty for our members.

Provide increased flexibility on rehiring requirements and further guidance on full-time equivalent employees in calculating the amount eligible for forgiveness.

ABC appreciates the clarification for employees who decline an offer of rehire.⁸ However, clarification is needed on whether this requires the rehiring of an individual of the same employment status as the individual who declined.

For purposes of loan forgiveness, the SBA follows the standard of “full-time equivalent employees” as described in the CARES Act to determine the extent to which the loan forgiveness amount will be reduced in the event of workforce reductions.⁹ While ABC welcomes SBA's additional guidance on calculating payroll costs to determine PPP loan amounts,¹⁰ further guidance should be issued in calculating the total amount eligible for forgiveness to assist employers in their financial planning before and after applying for a loan.

⁸ Question 40, *Paycheck Protection Program Loans: Frequently Asked Questions*, Small Business Administration, https://www.sba.gov/sites/default/files/2020-05/Paycheck-Protection-Program-Frequently-Asked-Questions_05%2013%2020_2.pdf.

⁹ Question 36, *Paycheck Protection Program Loans: Frequently Asked Questions*, Small Business Administration, https://www.sba.gov/sites/default/files/2020-05/Paycheck-Protection-Program-Frequently-Asked-Questions_05%2013%2020_2.pdf.

¹⁰ <https://home.treasury.gov/system/files/136/How-to-Calculate-Loan-Amounts.pdf>.

Conclusion

ABC is encouraged by SBA's efforts to provide these loans to our nation's small businesses through the PPP. However, without much needed modification and clarifications, we remain concerned that this program will not fulfill its intended goals of keeping America's workers employed and our small businesses opened to assist in the recovery efforts needed on the other side of this crisis.

ABC believes that these improvements to the PPP will ensure that more of America's workers remain employed and our businesses have the resources to succeed into the future and keep the U.S. economy strong.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ben Brubeck". The signature is written in a cursive style with a large, stylized "B" at the beginning.

Ben Brubeck
Vice President of Regulatory, Labor and State Affairs