



VIA ELECTRONIC SUBMISSION

February 16, 2021

Tami Perriello
Acting Administrator
U.S. Small Business Administration
409 3rd Street, S.W.
Washington, DC 20416

Andy P. Baukol
Principal Deputy Assistant Secretary
for International Monetary Policy
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, DC 20220

Re: Docket No. SBA-2021-0001, Business Loan Program Temporary Changes; Paycheck Protection Program as Amended by Economic Aid Act

Dear Acting Administrator Perriello and Principal Deputy Assistant Secretary Baukol:

Associated Builders and Contractors hereby submits the following comments to the U.S. Small Business Administration and U.S. Department of the Treasury in response to the above-referenced interim final rule published in the *Federal Register* on Jan. 14, 2021, at 86 Fed. Reg. 3692.

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, former 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 2020 *Small Business Profile*, U.S. Small Business Administration, Office of Advocacy (2020), at Page 3, <https://cdn.advocacy.sba.gov/wp-content/uploads/2020/06/04144224/2020-Small-Business-Economic-Profile-US.pdf>.

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

Following passage of the CARES Act and Paycheck Protection Program Flexibility Act of 2020 (the Flexibility Act),⁴ SBA and Treasury issued subsequent interim final rules, which included an IFR adding the PPP to the 7(a) loan program and providing for loan forgiveness of up to the full principal amount of qualifying loans guaranteed under the PPP,⁵ and an IFR changing key provisions of the Program to conform to the Flexibility Act.⁶

On Dec. 27, 2020, former President Trump signed the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (Economic Aid Act), which includes an additional \$284 billion in funds for the PPP, critical tax deductibility of these forgivable loans, funding to allow the hardest-hit small businesses to receive a second forgivable PPP loan and expansion of loan eligibility to certain 501(c)(6) organizations.

On Jan. 14, 2021, SBA and Treasury published an IFR⁷ that not only extended the authority to make PPP loans through March 31, 2021 but also incorporated revisions to the PPP program to conform to the Economic Aid Act, and the agencies are seeking feedback on these changes.

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

ABC applauds Congress, SBA and Treasury's efforts to reopen the PPP for new and certain existing borrowers and to enact positive change on the PPP by expanding the program's eligibility to include 501(c)(6)s, housing cooperatives and destination marketing organizations, among other types of organizations, allowing borrowers to apply for a Second Draw PPP Loan, providing greater flexibility for seasonal employees, and more.

However, ABC encourages the SBA and Treasury 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.

Provide further guidance on the eligibility status of 501(c)(6) organizations and the definition of lobbying activity.

Among the most pressing issue for ABC and our members is clear guidance on the expansion of PPP to 501(c)(6) organizations. ABC state and local chapters have been impacted by the COVID-19 pandemic and advocated for the inclusion of 501(c)(6) organizations in this new round of PPP funding to ensure that they can continue to provide essential services for their members and the construction industry. While Public Law No: 116-260 provides eligibility requirements focused on "lobbying activities," the issue is not clearly defined and requires clear interpretation from SBA and Treasury.

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 <https://www.congress.gov/bill/116th-congress/house-bill/7010/text>.

⁵ 85 Fed. Reg. 20811.

⁶ 85 Fed. Reg. 38304.

⁷ 86 Fed. Reg. 3692.

To ensure the eligibility of deserving 501(c)(6) organizations that need PPP loans, ABC urges SBA and Treasury to:

1. Clearly define 501(c)(6) nonprofits “receipts from lobbying” as revenue generated by the nonprofit for the express purpose of financing lobbying activities;
2. Define “lobbying activities” as having the same meaning as set forth under the Lobbying Disclosure Act; and
3. Clarify that the timeframe parameters for the third criterion (the most recent tax year that ended prior to February 15, 2020) should also be used as the period for measuring the organization’s percentages of expenditures and receipts relating to “lobbying activities” under the first two criteria.

Remove the requirement for PPP recipients of \$2 million or more to complete the Loan Necessity Questionnaire.

In December 2020, SBA published FAQ Number 53, which addresses why certain borrowers will receive PPP Loan Necessity Questionnaires,⁸ stating that PPP borrowers with loans of \$2 million or more must return the completed form to their lender within 10 business days, as SBA is reviewing all loans of \$2 million or more for eligibility, fraud or abuse, and compliance with loan forgiveness requirements.⁹

This proposal imposes unnecessary and burdensome requirements on businesses working to recover from the impact of the COVID-19 pandemic and could discourage small businesses from applying for a potential new round of PPP funding and would limit the impact of this critical program in our nation’s recovery.

ABC fully supports the agencies’ efforts to conduct appropriate review and oversight of PPP loans, and existing PPP Forgiveness Applications, such as SBA Forms 3508,¹⁰ 3508EZ¹¹ and 3508S,¹² which already allow SBA and Treasury to provide detailed, relevant facts to ensure that PPP loan funds were used as intended by Congress. ABC does not believe the Loan Necessity Questionnaires achieve the balance of providing the agencies with the appropriate information for effective oversight of the PPP while avoiding undue burden on the Program’s borrowers and lenders.

Refocus efforts to deliver PPP funds to underserved communities and minority businesses.

ABC continues to encourage the agency to focus its outreach efforts on delivering remaining PPP funds to underserved communities, as well as women- and minority-owned small businesses.

⁸ <https://home.treasury.gov/system/files/136/SBA-Form-3510-PPP-Loan-Necessity-Questionnaire-Non-Profit.pdf>.

⁹ Question 53 published Dec. 9, 2020, <https://www.sba.gov/sites/default/files/2020-12/Final%20PPP%20FAQs%20%28December%20%202020%29-508.pdf>.

¹⁰ https://www.sba.gov/sites/default/files/2020-06/PPP%20Loan%20Forgiveness%20Application%20%28Revised%206.16.2020%29-fillable_0-508.pdf.

¹¹ <https://www.sba.gov/sites/default/files/2021-01/PPP%20--%20Forgiveness%20Applications%20and%20Instructions%20--%203508EZ%20%281.19.2021%29-508.pdf>.

¹² <https://www.sba.gov/sites/default/files/2021-01/PPP%20--%20Forgiveness%20Application%20and%20Instructions%20--%203508S%20%281.19.2021%29-508.pdf>.

We remain concerned that efforts to provide funding through the traditional banking system to many of ABC's women- and minority-owned small contractors has fallen short, and additional efforts must be required to assist these impacted businesses in our communities.

SBA and Treasury have taken efforts to expand access to PPP funds for nontraditional and alternative lenders in underserved areas, and it is critical that we continue to ensure that more women- and minority-owned and -operated small businesses can access much-needed PPP funding.

Ensure businesses can optimize the Employee Retention Tax Credit and PPP forgiveness.

With the passage into law of H.R. 133, Coronavirus Response and Relief Supplemental Appropriations Act (Public Law No: 116-260),¹³ employers can now benefit from both the PPP loans and the Employee Retention Tax Credit. This retroactive change in the law needs to be accommodated so that taxpayers and PPP loan borrowers can do what is necessary to optimize both the credit and PPP loan forgiveness.

ABC encourages the SBA and Treasury to allow businesses to adjust payroll tax dollars that were reported to SBA for forgiveness under the PPP. For those who used payroll dollars specified as part of the PPP application for forgiveness that was already filed (i.e., qualified expenses for the use of PPP proceeds), borrowers should be able to use up to 40% of those payroll dollars for the ERTC if they are able to replace the PPP eligible expenditures with costs that would otherwise qualify for PPP loan forgiveness. This will ensure that PPP borrowers are able to fully benefit from these critical programs to keep employees on payroll and maintain the operation of their businesses.

Conclusion

ABC is encouraged by SBA and Treasury's continued efforts to provide PPP loans to our nation's small businesses. However, without much needed modification and clarifications, we remain concerned that this program will not fulfill its intended goals of ensuring that more of America's workers remain employed and our businesses have the resources to succeed in the future and keep the U.S. economy strong.

Respectfully submitted,



Ben Brubeck
Vice President of Regulatory, Labor and State Affairs

¹³ <https://www.congress.gov/bill/116th-congress/house-bill/133/text>.