



VIA ELECTRONIC SUBMISSION

July 27, 2020

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

Michael Faulkender  
Assistant Secretary for Economic Policy  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, N.W.  
Washington, DC 20220

**Re: Docket No. SBA-2020-0038, Business Loan Program Temporary Changes; Paycheck Protection Program – Revisions to Loan Forgiveness and Loan Review Procedures Interim Final Rules**

Dear Administrator Carranza and Assistant Secretary Faulkender:

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 June 26, 2020, at 85 Fed. Reg. 38304.

### **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%.<sup>1</sup>

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,

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<sup>1</sup> *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.<sup>2</sup> 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.<sup>3</sup>

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.<sup>4</sup>

On June 5, 2020, President Trump signed the Paycheck Protection Program Flexibility Act of 2020 (the Flexibility Act), which modified provisions related to loans made to small businesses under the PPP, including provisions relating to the maturity of PPP loans, the deferral of PPP loan payments and the forgiveness of PPP loans.<sup>5</sup>

On June 26, SBA and Treasury issued another IFR changing key provisions of the PPP to conform to the Flexibility Act, and the agencies are seeking feedback on these changes.<sup>6</sup>

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

ABC applauds Congress and SBA's efforts to enact positive change on the requirements of the PPP, which include decreasing the portion of a PPP loan that must be spent on payroll costs from 75% to 60% and increasing the timeline to spend PPP funds from eight weeks to 24 weeks.

However, following the latest changes to the PPP's loan forgiveness guidance, along with other aspects of the program, 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 when businesses should apply for loan forgiveness and when they are notified of their forgiveness status.**

While the June 26 IFR from SBA and Treasury states that PPP borrowers may apply for loan forgiveness when "the borrower has used all of the loan proceeds for which the borrower is requesting forgiveness,"<sup>7</sup> businesses would benefit from a clearly defined timeline from when they apply for forgiveness to notification of their forgiveness status in order to budget for potential payback of loans.

#### **Issue further guidance on the PPP audit process.**

While many borrowers are acting in good faith and following the rules of the program, it would be helpful for borrowers to have additional guidance on audit criteria as well as a mechanism to ensure that those who have received loan forgiveness are cleared from potential federal audit after a specified time period.

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

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

<sup>4</sup> 85 Fed. Reg. 20811.

<sup>5</sup> <https://www.congress.gov/bill/116th-congress/house-bill/7010/text>.

<sup>6</sup> 85 Fed. Reg. 38304.

<sup>7</sup> 85 Fed. Reg. 38306.

Without a clear indication from the federal government, borrowers may fear that they could come under an audit years down the road. This could have a devastating impact on the ability of companies to grow and thrive following the recovery from the current health and economic crisis. ABC urges the SBA and Treasury to establish a specified timeline notifying borrowers that they no longer would be subject to an audit. For example, after the SBA funds the lender, the SBA would notify the taxpayer within six months as to whether or not they would be included in the group of borrowers subject to an audit at a future date.

Additionally, if a borrower goes through the SBA 90-day review, is granted loan forgiveness but is later audited and found to have been ineligible for loan forgiveness, then each respective borrower should not face a worse result, such as criminal penalties, and should simply be required to pay back the initial loan under a similar time period. Obviously in cases of fraud, this should not apply. However, if the entire audit process is able to occur during the 90-day SBA review period specified in the CARES Act and SBA and Treasury IFR, then there should be no reason to leave the borrower without a clear statement that they will not be further “audited.”

### **Increase flexibility for employee retention requirements and loan forgiveness.**

Through the PPP, SBA has allowed for thousands of small businesses to stay in business and keep their employees throughout the COVID-19 public emergency. However, due to the unanticipated extent of this emergency, many businesses currently require additional support in order to retain workers. ABC urges SBA to offer greater flexibility and clear guidance on worker retention as well as determining a small businesses’ loan forgiveness status if the business is unable to retain employees.

### **Provide further clarification of nonpayroll costs.**

As mentioned above, ABC supports the decrease in the payroll cost percentage of PPP loans from 75% to 60% to remain eligible for full loan forgiveness; however, further guidance is needed to provide a clear understanding of the expenses covered under non-payroll costs.

Specifically, SBA and Treasury should clarify what the term ‘transportation’ includes as part of Utilities under non-payroll costs.<sup>8</sup> The business community has been seeking an effective answer to this question since the law was issued, and the SBA has only addressed this so far with an insufficient example under the context of “self-employed individuals.”<sup>9</sup>

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

On July 6, the PPP resumed accepting application through Aug. 8. ABC urges the agency to focus its outreach efforts on delivering these remaining PPP funds to underserved communities, as well as women- and minority-owned small businesses.

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 it is clear that additional efforts are required to assist these impacted businesses in our communities.

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<sup>8</sup> *Paycheck Protection Program, Loan Forgiveness Application Revised June 16, 2020*, U.S. Small Business Administration, at Page 2, <https://www.sba.gov/sites/default/files/2020-06/PPP%20Loan%20Forgiveness%20Application%20Instructions%20%28Revised%206.16.2020%29.pdf>.

<sup>9</sup> 85 Fed. Reg. 21749.

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 have the ability to access much-needed PPP funding.

**Conclusion**

ABC is encouraged by SBA'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 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, flowing style.

Ben Brubeck  
Vice President of Regulatory, Labor and State Affairs