



May 19, 2020

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

The Honorable Mitch McConnell
Majority Leader
United States Senate
Washington, DC 20515

The Honorable Kevin McCarthy
Minority Leader
U.S. House of Representatives
Washington, DC 20515

The Honorable Chuck Schumer
Minority Leader
United States Senate
Washington, DC 20515

Speaker Pelosi, Leader McConnell, Leader McCarthy and Leader Schumer,

Like many industries, construction and the industries that supply construction materials and equipment have been devastated by COVID-19. Residential and commercial construction has been dramatically curtailed and public works projects are being canceled or delayed, despite many states declaring construction to be an essential service. This has left many of our members operating at severely reduced capacity.

Thank you for your leadership in establishing the Paycheck Protection Program (PPP) in the CARES Act, it has allowed our members to keep their doors open and their employees paid despite rapidly declining demand for construction services. Our members applied for PPP funds in good faith and have utilized them in the spirit they were intended. Moreover, they deferred layoffs and furloughs because of the critical liquidity provided by PPP loans. As a result, thousands of jobs have been preserved and thousands of workers who would otherwise be seeking unemployment compensation remain employed and ready to return to work when America re-opens.

Despite the success of the PPP loan program, the recent retroactively imposed guidelines regarding loan forgiveness have created confusion. Indeed, the many ambiguities of the new rules, combined with the liabilities added to the loan forgiveness provisions, has left many of our members concerned that they may inadvertently be running afoul the PPP requirements and exposing themselves to the threat of civil and criminal penalties.

There are two points that are particularly concerning to our members: “Necessity” and Tax Deductibility of Expenses.

First, there is no clarity on how a firm demonstrates necessity in seeking a loan. Businesses applying for PPP loans were required to certify in good faith that the uncertainty of economic conditions made the loan necessary for their business at the time they applied for it. Comments by public officials in the wake of revelations of publicly held companies receiving loans have left small businesses concerned that they may face penalties, despite acting in good faith. We appreciate the addition of Question 46 to the Small Business Administration's (SBA) FAQ, regarding how the SBA will review borrowers' good-faith certification concerning necessity addresses this question for loans less than \$2 million. However, further assurances for small businesses with loans above \$2 million are needed.

Second, we are concerned about the tax deductibility of expenses paid with PPP funds. PPP loans were intended to cover payroll and limited business expenses like rent and mortgage obligations. Guidance issued by Treasury more than three weeks after SBA began accepting PPP loans indicated that business expenses previously considered tax deductible would not be so considered if paid for with PPP funds. This change after the fact has caused serious challenges to our Members. Indeed, it significantly diminishes the available liquidity provided by the PPP funds and increases small businesses' tax liabilities. We believe this issue is adequately addressed in Section 20235 of H.R. 6800, the Heroes Act and urge Congress to ensure that this issue is resolved in future relief legislation.

Finally, many small businesses are now uncertain how to use their PPP funds because of the ambiguities and complexities of the guidance. The level of guidance does not provide sufficient detail necessary for small businesses to proceed with any degree of certainty, and our members now fear SBA audits, fraud charges and bad publicity, despite acting in good faith from the start.

We appreciate the May 13 guidance from SBA, and we support Section 20235 of the Heroes Act. We urge Congress to provide additional assurances that companies utilizing PPP loans, in the spirit in which they were intended, will not face penalties for failure to comply with retroactively imposed requirements.

It would be unfortunate and contrary to congressional intent when establishing PPP through the CARES Act if confusing and worrisome guidance forced small businesses to mitigate risk by returning PPP loans that would otherwise be used to keep workers paid and the business afloat.

Small businesses that took PPP loans in good faith should not fear reprisal or penalty for using those loans while complying with original the spirit of the program.

Thank you for your support for the PPP program and we stand ready to assist in addressing these concerns.

Sincerely,

American Coal Ash Association
American Concrete Pavement Association
American Traffic Safety Services Association
Associated Equipment Distributors

Association of Equipment Manufacturers
Concrete Reinforcing Steel Institute
National Asphalt Pavement Association
National Ready Mixed Concrete Association
National Stone, Sand and Gravel Association
Portland Cement Association
Precast/Prestressed Concrete Institute

Cc: Members of Congress