

January 15, 2021

Dear Senator/Representative:

On behalf of ACEC/XX – the business association of XX’s engineering industry – I am writing to seek your assistance in correcting a serious problem involving Paycheck Protection Program loan forgiveness that could negate critical assistance provided to engineering firms in our state and throughout the country.

PPP loans have been a critical lifeline that have enabled firms to maintain their payroll and meet other expenses. We appreciate Congress’ support in creating and expanding the program over the past year, as well as the improvements that were made in the year-end stimulus bill enacted in December.

However, there is an outstanding problem for engineering firms in our state – including minority and women-owned businesses -- that could force firms which qualify for loan forgiveness to give some of that needed assistance back. Firms working for State Departments of Transportation and federal agencies are subject to procurement rules based on the Federal Acquisition Regulation (FAR), which includes a “credits” clause (under FAR 31.201-5) that was put in place to ensure that agencies benefit from any discounts contractors receive on costs covered in contracts. While this makes good sense for reimbursing our public clients for discounts on insurance rates or rental car expenses (for example), this credits provision never envisioned a national pandemic and the necessity of a forgivable loan program to keep America’s smaller firms afloat.

Under current federal guidance, the FAR credits clause will require a refund or reduction in billing from a small business contractor who has properly qualified for PPP loan forgiveness, essentially forcing them to repay the forgiven loan through such credits. If the credit is applied to future billing rates, some firms may lose more than the amount of the loan, especially in the case of multi-year contracts. Unlike most other contractors working for the DOT, engineering firms are negated from realizing the full benefit of PPP loans because of this regulation.

Such a policy is grossly unfair, and essentially invalidates the core purpose of PPP loans. Congress created the loan program to stabilize the nation’s economy during a national emergency and set forth criteria for businesses to apply for loans and for loan forgiveness. Engineering firms in our state broadly participated in the PPP program, which helped them to meet basic expenses and keep their people on the payroll. However, because of an unforeseen regulatory requirement those firms will be treated differently from other businesses.

We strongly believe this is not what Congress intended. Firms were not advised of this requirement when they applied for loans and if this policy is implemented it will fall most heavily on the small and minority firms that need the assistance the most. It creates a disincentive for engineering companies to compete for work for public agencies, depriving the government of qualified engineering services, and it will hamper DOT efforts to expand small business contracting opportunities.

ACEC supports a simple legislative fix that clarifies that the FAR credits clause will not apply to forgiven PPP loans for small business contractors who have properly qualified for loan forgiveness. Failing to address this issue would undercut an essential pillar of economic relief for this critical sector and impact our ability to hire and retain employees. Thank you for your attention and consideration of this urgent issue.

Sincerely,