PAYCHECK PROTECTION PROGRAM FAIRNESS

Paycheck Protection Program loans were a critical lifeline that enabled small engineering firms – including many women-owned and minority-owned firms – to maintain their payroll and meet other expenses during a national emergency and period of extreme economic disruption. However, a regulatory change made months after firms received their loans could force small engineering businesses that qualify for loan forgiveness to give some of that needed assistance back. ACEC supports a clarification in the law to ensure that all firms that qualify for loan forgiveness – including America's engineering industry – can keep this critical assistance.

Engineering firms working for State Departments of Transportation and federal agencies are subject to procurement rules based on the Federal Acquisition Regulation (FAR). The FAR includes a "credits" clause (under FAR 31.201-5) that was put in place to ensure that agencies benefit from any discounts a contractor receives on costs to be reimbursed under a contract. While the credits clause works well in the routine work between State DOTs and engineering firms during normal economic cycles, the decision to apply this clause to emergency PPP loans has effectively removed the ability of firms that qualify for loan forgiveness to keep this assistance. According to guidance from the Federal Highway Administration, firms must provide a refund or a reduction in billing rates in the amount of forgiven PPP loans that are allocable to contract costs. Depending on how this policy is implemented, some firms could actually lose more than the amount of the federal loan, especially in the case of firms working for multiple state DOTs or transit agencies, or on multi-year contracts that lock in the reduced billing rate.

The House passed bipartisan legislation sponsored by Representatives Anthony Brown (D-MD) and John Katko (R-NY) to provide a narrow, one-time waiver of the FAR clause as it applies to PPP loans, and similar stand-alone legislation (S. 3711) is pending in the Senate sponsored by Senators Mike Braun (R-IN) and Tammy Duckworth (D-IL).

Key Points:

- This policy unfairly penalizes engineering firms – other businesses doing State DOT or other public agency work are not impacted and can keep all of their forgiven loans.

- Firms were not advised of this requirement when they applied for PPP loans – the application of the FAR credits clause to forgiven PPP loans was clarified in guidance issued months after the program was launched.

- The disparate impact will fall most heavily on small, minority- and women-owned firms that need the assistance the most.

- It creates a disincentive for engineering companies to compete for work for public agencies – as implementation of the infrastructure investment law ramps up, and it will hamper DOT efforts to expand small business and WDBE contracting opportunities.

Request:

✓ Pass legislation to waive the FAR credits clause as it applies to forgiven PPP loans on State DOT and transit projects.