



November 25, 2020

Mr. Curtis Rich
Agency Clearance Officer
Small Business Administration
409 3rd Street SW
5th Floor
Washington, DC 20416

Re: Reporting and Recordkeeping Requirements Under OMB Review, Paycheck Protection Program. OMB Control Number: 3245-0407.

Dear Mr. Rich:

The American Road & Transportation Builders Association (ARTBA) respectfully offers these comments on the Oct. 26 Small Business Administration (SBA) notice of information collection regarding forms related to the Paycheck Protection Program (PPP). We specifically wish to address Form 3509, one of SBA's new "Loan Necessity Questionnaires."

Need for Guidance

ARTBA's membership includes numerous smaller transportation construction, engineering and material supply firms that applied for and received PPP loans earlier this year. These borrowers, like all participants in the program, had to submit comprehensive loan applications at the initial stage of the PPP process. At that time, borrowers had to certify in "good faith" that "[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant."

Now, as SBA reviews loans greater than \$2 million, PPP lenders have begun providing Form 3509 to borrowers in our industry who are applying for loan forgiveness. There is currently no published guidance relating to these forms, raising many questions among recipients about the purpose and intended use of their content. ARTBA respectfully requests SBA temporarily suspend use of these questionnaires while providing such guidance.

Need for Industry-Specific Information

SBA should also amend the questionnaires themselves so borrowers can offer more clarity and context about their initial "good faith" certification in applying for a PPP loan. ARTBA does not believe Form 3509, as currently structured, affords all borrowers from the transportation construction industry the opportunity to fully explain their reasoning in having made that certification.

For example, the form's "business activity assessment" section asks the borrower to provide the firm's second quarter gross revenue for both calendar years 2019 and 2020. This question appears to imply that comparable revenue totals undercut the borrower's claim of "good faith" in applying for the PPP loan, in that the firm did not demonstrably experience the effects of the pandemic-related economic downturn.

In another submission with a large coalition of national associations, ARTBA has questioned the premise of requiring this information in the new questionnaire, given that the loan applicant was making its certification based on its self-evaluation of "economic uncertainty" at the time.

Moreover, and specific to the members we represent, the applicants' view of the uncertain market outlook for the transportation construction industry is far more relevant to this retrospective assessment than that particular data point. During the second quarter of 2020, there was continued concern that the transportation construction industry would not be permitted to work through the pandemic. In fact, the governors of Pennsylvania, Vermont and Washington shut down all such projects for a time. While there turned out to be minimal disruptions throughout the rest of the country, and projects in those three states resumed as well, anxiety over potential project shutdowns has persisted throughout the pandemic.

At the same time, PPP loan applicants from the industry were well aware that the pandemic severely threatened their market opportunities. User fee revenue, such as motor fuels taxes and tolls, fund the vast majority of transportation improvement projects. As is well-documented, stay-at-home orders, which reached their peak in the second quarter of 2020, resulted in a sharp decline in driving, with related revenues dropping up to 60 percent, depending on the state. (In fact, since the pandemic began, 18 states have delayed or cancelled highway or bridge projects valued at \$12 billion.) Similarly, transit ridership and air travel declined severely, throwing many planned transit and airport capital projects into uncertainty. The early stages of these unfortunate developments were all top-of-mind when industry PPP loan applicants made their good faith certifications.

Comparable second quarter revenue numbers on Form 3509 could be misleading in another way. During the spring of 2020, most transportation construction contractors were working on – and deriving revenue from – projects for which public agencies had contracted with them months or years in advance. In the parlance of the industry, many firms were "working through their backlog" during that time. Therefore, these retrospective second quarter 2020 revenue totals for transportation construction firms are a reflection of the pre-pandemic market, and of limited relevance to the industry PPP loan applicant's certification.

Need for Amendment to Loan Necessity Questionnaires

The misleading quarterly revenue comparison is one reason SBA should amend the Loan Necessity Questionnaires and allow for borrowers to provide a narrative statement with any background documentation to support the basis for its good faith certification. (The current forms limit "open ended" responses to just one thousand characters.) This will enable

borrowers from the transportation construction industry to offer far better detail and context for their original good faith certifications.

ARTBA appreciates the enormity of the task SBA and other agencies has undertaken in administrating the Paycheck Protection Program. We hope these examples relating to transportation construction are helpful, and will look for more such opportunities to provide additional context.

Thank you for considering these views as the PPP loan review process moves forward.

Sincerely,

A handwritten signature in black ink that reads "David Bauer". The signature is written in a cursive, flowing style.

David C. Bauer
President & CEO

cc: SBA Desk Officer, Office of Information and Regulatory Affairs