

The Latest on the U.S. Small Business Administration's Paycheck Protection Program

The U.S. Small Business Administration (SBA) and the U.S. Department of the Treasury have released new information concerning the Paycheck Protection Program, a new loan program enacted in the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

- **Who Can Apply:** Guidance from Treasury states: “All businesses – including nonprofits, veterans organizations, Tribal business concerns, sole proprietorships, self-employed individuals, and independent contractors – with 500 or fewer employees can apply.” For more information from Treasury about this and more, click [HERE](#). You can also visit the SBA website [HERE](#) for more information and updates.
- **Consider Consulting Legal Counsel about your Business's Eligibility:** Under SBA regulations, the determination of whether a construction business is a small business is generally based upon a calculation of average annual income corresponding to the North American Industrial Classification (NAICS) Code applicable to that construction business. However, for purposes of the Paycheck Protection Program, the guidance from Treasury appears to allow construction businesses to determine if they are an eligible small business based on their total number of employees (500 or fewer).
 - **Employee Calculation under SBA Regulations:** To determine the number of employees, a construction business needs to calculate the average number of employees (including the number of employees of its domestic and foreign affiliates) based upon the numbers of employees for each of the pay periods for the preceding completed 12 calendar months. To review the applicable SBA regulations, click [HERE](#). Additionally, unless an exception applies, a construction business determining its size must presumably identify and include the number employees of its affiliates when determining whether it meets the applicable size standard. These [SBA affiliation rules](#) are complex and could prevent, for example, subsidiaries of other companies from being eligible for this loan program, among others.
- **Loan Application:** Treasury posted a loan application small businesses can utilize under the new program [HERE](#). One potential issue AGC will note for agency officials and lawmakers is something that may deter some eligible AGC members from participating. At issue is one of the representations applicants will be required to sign off on, which states: “[t]o the extent feasible, I will purchase only American-made equipment and products.” AGC is not aware of how federal agencies will enforce such a provision upon loan recipients, as the language references no clear definition of how to determine if equipment or materials are “American-made.” Similarly, it seems that such a representation would be very difficult for federal agencies to practically enforce.
- **Lenders May Begin Processing Applications on April 3:** Eligible AGC members may apply through any existing SBA 7(a) lender (list of some of those lenders [HERE](#)) or through any federally insured depository institution, federally insured credit union, and Farm Credit System institution that is participating. Consult with your local lender as to whether it is participating in the program. Lenders may begin processing loan applications as soon as April 3, 2020. Please note that AGC is hearing reports that the ability to process loans may not keep up with anticipated demand.
- **Additional Information:** For more information on this and other small business programs created in the CARES Act, click [HERE](#) and [HERE](#).