



AMERICAN COUNCIL OF ENGINEERING COMPANIES

FAR CREDITS CLAUSE

ENSURE PAYCHECK PROTECTION PROGRAM BENEFITS FOR AMERICA'S ENGINEERING BUSINESSES

Paycheck Protection Program loans have been a critical lifeline that have enabled small engineering firms – including many women-owned and minority-owned firms – to maintain their payroll and meet other expenses. However, a provision in federal contracting rules could force engineering firms that qualify for loan forgiveness to give some of that needed assistance back. This policy is grossly unfair and essentially invalidates the core purpose of PPP loans. ACEC is requesting a clarification in the law to ensure that all firms that qualify for loan forgiveness – including America's engineering industry – are permitted to keep this critical assistance.

Background

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 (such as discounts or rebates on insurance rates, hotels, or rental car expenses covered in the contract). This provision is now being interpreted to apply to forgiven PPP loans, which would require a refund or a credit in billing rates in the amount of forgiven PPP loans that are allocable to contract costs. Depending on how this credit is applied, some firms could actually lose more than the amount of the loan, especially in the case of multi-year contracts that lock in the reduced billing rate.

Key Points

- **This policy unfairly penalizes engineering firms** – construction contractors and other businesses working for State DOTs are not subjected this to restriction and can keep the full amount 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** -- depriving the government of qualified engineering services, and it will hamper DOT efforts to expand small business and WDBE contracting opportunities.

Request

ACEC supports a simple fix to clarify that the FAR credits clause will not apply to PPP loans: *Principal amounts of qualifying loans forgiven pursuant to the provisions of Section 1106 of the Coronavirus Aid, Relief, and Economic Security Act (Pub. L. 116-136) shall not be considered income, a rebate, allowance, or other credit received by or accruing to a contractor under 48 CFR 31.201-5.*