



New Paycheck Protection Program: Expert Overview and TSoftPlus Enhancements

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Notice

Covers guidance posted through January 6, 2021

- *The information presented in this webinar summarizes general guidance under the CARES Act, including Guidance from the Small Business Administration and other sources, based on the existing information available at the time of the presentation*
- *It is intended only to act as a quick reference and not as a substitute for the law, regulations or official commentary*
- *There are continuing, ongoing developments in this area. Therefore, always consult official sources of information, including the regulation text and official commentary, for a complete understanding of the law, including the regulations*

Today's Presenter



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Webinar Agenda

Part I

- Overview of PPP
- Review of Changes in new Legislation
- Q&A

Purpose of the Paycheck Protection Program (PPP)

- Stabilizing and assisting the American economy
- Keeping American workers paid and employed
- Helping small businesses meet short-term ongoing expenses including payroll costs and other costs
- Managed jointly by the Small Business Administration (SBA) and the Department of the Treasury utilizing existing E-Tran and new forgiveness portal



U.S. Small Business
Administration

COVID Relief Bill: Changes to PPP

- Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (“Hard-Hit Act”)
- Signed by the President on December 27, 2020
- \$284.5 billion allocated to PPP (through March 31, 2021)
- Covers both 2nd draw loans and new initial loans
- SBA has up to 10 days to issue regulations and is given emergency powers

DISCLAIMER: Content subject to change due to technical corrections, further analysis, SBA & Treasury regulations, etc.

Section 340: Lender Processing Fees

- Provides for PPP lender reimbursement by SBA for **new** PPP loans (initial loans and 2nd draw)
- Establishes a tiered reimbursement rate for PPP loans:
 - Loans of less than \$50,000 that is equal to the lesser of 50 percent of the loan principal or \$2,500
 - loans of more than \$50,000 and not more than \$350,000 equal to five percent of the loan principal
 - loans of more than \$350,000 and less than \$2,000,000 equal to three percent of the loan principal
 - loans of more than \$2,000,000 equal to one percent (for initial loans only)
- SBA cannot require fees to be repaid by a lender unless the lender is guilty fraud
- PPP borrowers who knowingly retained a loan agent may not pay agent fees out of the PPP proceeds. Lenders responsible for paying fees if lender directly contracts with the agent.

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Section 323: Set Asides – For Smaller Lenders and Borrowers

LENDERS

- \$15 billion for community financial institutions as defined in the SBA Act: including community development financial institutions (CDFIs) and minority depository institutions (MDIs)
- \$15 billion for financial institutions under \$10 billion in assets, including banks, credit unions and farm credit institutions

BORROWERS

- \$35 billion for first time borrowers
 - \$15 billion of which is for borrowers with 10 or fewer employees
- \$25 billion for second draw loans for borrowers with 10 or fewer employees
- After 25 days SBA can adjust the set asides as needed to ensure full usage of funding

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Section 304: Use of Proceeds & Forgiveness

- Expanded allowable uses of PPP loans (initial loans and 2nd draws)
 - Operational expenses for software (installed or cloud)
 - Property damage from looting and vandalism
 - Supplier costs of goods
 - Worker protection from COVID expenses such as drive thru windows, barriers, PPE, etc.
- Above are all forgivable up to 40% of PPP loan amounts
- 60% of PPP loan amounts must still be used on payroll
- All PPP loans eligible to utilize expanded uses for forgiveness except for Borrowers who already had loans forgiven (before date of Hard-Hit Act).

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Section 305: Hold Harmless

- Lender Hold Harmless provisions clarified
 - Lender may rely on Borrower certification or documentation
 - Attesting that certification or documentation is in accordance with PPP requirements
 - Applies to origination or forgiveness Process
- Lender protection from enforcement if:
 - Lender acts in good faith relating to origination or forgiveness (substantiate with documentation of process and training programs)
 - Lender complies with other relevant regulatory requirements
- Applies to all PPP loans (before or after Hard-Hit Act)

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Section 306: Covered Period for Forgiveness

- Borrower can choose any period between 8 and 24 weeks starting from date of origination

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Section 307: Simplified Forgiveness Application

- Simplified application process for loans of \$150,000 and under:
 - Not more than one page in length
 - Includes number of employee's borrower was able to retain, estimated total amount of the loan spent on payroll costs and the total loan amount
 - Borrower must attest compliance with Paycheck Protection Program loan requirements
- SBA must establish this form within 24 days of enactment
 - Query: One-page 3508S limited to \$50k now or new form?
 - SBA may not require additional materials unless necessary to substantiate revenue loss for 2nd draw loans
 - Does not exempt Borrower from having to provide other documentation required by a lender to satisfy other relevant statutory or regulatory requirements or required in connection with an audit
- Borrowers required to retain relevant records related to employment for 4 years and other records for 3 years
- Applies to loans made before, on, or after the date of enactment
- No changes to loans over \$150,000

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Section 308: Specific Group Insurance Payments as Payroll Costs

- Payroll costs include other employer-provided group insurance benefits. This includes, group life, disability, vision, or dental insurance. Previously language was limited to health benefits.
- Applies to loans made before, on, or after the date of enactment, including the forgiveness of the loan.

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Section 309: Demographic Information

- Requires the SBA to include a voluntary demographic information section on the loan origination application for initial PPP loans and second draw PPP loans. All PPP loan applications after enactment must include this section.
- Previously this applied only to Forgiveness Applications.

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Section 310: Additional Limitations on Eligibility

- A business or organization not in operation on February 15, 2020 is not eligible for an initial PPP loan or a second draw PPP loan.
- Prohibits eligible entities that receive a grant under the Shuttered Venue Operator Grants from obtaining a PPP loan.

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Section 311: Paycheck Protection Program Second Draw Loans

- Creates a “PPP second draw” loan for smaller and harder-hit businesses
- Maximum loan amount: \$2 million
- Only one PPP second draw loan per entity
- Eligible entities must:
 - Employ not more than 300 employees
 - Have used or will use the full amount of their Initial PPP loan
 - Have at least a 25 percent reduction in gross receipts in a quarter in 2020 relative to the same 2019 quarter
- For loans up to \$150,000, entity may submit a certification **with PPP Loan application** attesting entity meets the revenue loss requirements
 - Documentation may be required with Forgiveness Application

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Section 311: Paycheck Protection Program Second Draw Loans

Continued

- Businesses with multiple locations eligible entities for initial PPP requirements may employ not more than 300 employees per physical location.
- Ineligible entities include:
 - Entities excluded from SBA loans (i.e., lenders, passive, illegal activity, cannabis, etc.)
 - Entities primarily involved in political and lobbying activities (including think tanks)
 - Entities affiliated with the People's Republic of China (20% or more ownership)
 - Registrants under the Foreign Agents Registration Act
 - Entities that receive a grant under the Shuttered Venue Operator Grant program

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Section 311: Paycheck Protection Program Second Draw Loans

Continued

- Loan terms:
 - Amount: 2.5X the average monthly payroll
 - NAICS code 72 (Accommodation and Food Services)
 - ✓ Amount: 3.5X average monthly payroll costs
 - ✓ Eligible if each location has less than 300 employees
 - ✓ Waiver of affiliation rules for initial loans continues
 - Seasonal employers may calculate their maximum loan amount based on a 12-week period beginning February 15, 2019 through February 15, 2020.

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Section 311: Paycheck Protection Program Second Draw Loans

Continued

- Loan forgiveness equal to
 - the sum of their payroll costs, as well as covered mortgage, rent, and utility payments
 - Covered operations expenditures, covered property damage costs, covered supplier costs and covered worker protection expenditures incurred during the covered period
- 60/40 cost allocation between payroll and non-payroll costs to receive full forgiveness continues to apply
- Extends safe harbors on restoring FTE and salaries and wages to end of the 8 to 24 week covered period selected by the Borrower for Second Draw loans (and new Initial PPP Loans)

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Section 311: Paycheck Protection Program Second Draw Loans

Continued

- Churches and religious organizations: Codifies IFR that the prohibition on eligibility in 13 CRF 120.110(k) shall not apply for initial and second draw loans.
- Lender eligibility. A lender approved to make loans under initial PPP loans may make covered loans under the same terms and conditions as the initial loans.

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Section 312: Increase in Loan Amount per Updated Regulations

- SBA to release guidance to lenders within 17 days:
 - to allow borrowers who returned all or part of their PPP loan to reapply for the maximum amount applicable
 - so long that they have not received forgiveness.
- Allows borrowers whose loan calculations have increased due to changes in interim final rules to increase their loan regardless of whether the loan has been fully disbursed, **or if Form 1502 has already been submitted.**
 - Partnerships and Seasonal Employers covered by SBA IFR from May 19
 - Corrects the IFR which did not allow increases if Form 1502 had been submitted.

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Section 313: Farmers and Ranchers

- Allows farmers and ranchers reporting income and expenses on a Schedule F, to utilize their gross income in 2019 as reported on a Schedule F.
- Lenders may recalculate loans that have been previously approved to these entities if they would result in a larger loan.
- Applies to PPP loans before, on, or after the date of enactment, except for loans that have already been forgiven.

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Section 314: Farm Credit System Institutions

- Farm Credit System Institutions are eligible to make PPP loans
- Provides a zero-risk weight for Paycheck Protection Program loans and aligns Farm Credit System Institutions with other Paycheck Protection Program lenders

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Section 315: Seasonal Employer

- Defines a seasonal employer to be an eligible recipient which:
 - operates for no more than seven months in a year, or
 - earned no more than 1/3 of its receipts in any six months in the prior calendar year
- Applies to any loan made before, on or after enactment including the forgiveness of the loan

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Section 316: Housing Cooperatives

- Extends PPP eligibility to housing cooperatives defined in the Internal Revenue Code which employ no more than 300 employees.

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Section 317: News Organizations

- News organization that certifies that the loan will support locally focused or emergency information:
 - FCC broadcast station license holders and newspapers with more than one physical location, as long as there is no more than **500 employees** per physical location or the otherwise meets applicable SBA size standard;
 - Nonprofit or tax-exempt private and public colleges and universities that have a public broadcasting station
- Waives affiliation rules for newspapers, TV and radio broadcasters, as well as for nonprofit public broadcasters.
- SBA shall not consider whether an affiliated entity is a public company.

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Section 318: 501(c)(6)

- 501(c)(6) organizations (trade & industry associations) eligible if:
 - not more than 15 percent of receipts from lobbying;
 - lobbying activities not more than 15 percent of activities;
 - annual cost of lobbying activities does not exceed \$1,000,000;
 - 300 or fewer employees;
 - Not a Professional sports leagues; and
 - Not a political organization

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Section 318: Destination Marketing

Continued

- Destination Marketing Organizations eligible if:
 - not more than 15 percent of receipts from lobbying;
 - lobbying activities not more than 15 percent of activities;
 - 300 or fewer employees; and
 - registered as a 501(c) organization, a quasi-government entity, or a political subdivision of a state or local government.

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Section 319: Lobbying Activities

- Prohibits use of proceeds for lobbying activities
 - As defined by the Lobbying Disclosure Act;
 - Lobbying expenditures related to state or local campaigns; and
 - Expenditures to influence the enactment of legislation, appropriations, or regulations.

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Section 320: Bankruptcy Provisions

- SBA may allow small business debtors in bankruptcy proceedings (i.e., debtors with less than \$7.5 million in debt) to be eligible for PPP loans.
 - If they otherwise qualify.
- The loan would receive superpriority administrative claim status to protect taxpayers and financial institutions making these PPP loans.
 - Superpriority administrative claims must be paid in full and in cash for a debtor to emerge from bankruptcy
 - Permits debtors to emerge from bankruptcy without necessarily paying PPP loans in full, so long as the debtor emerges under a plan to make payments on PPP loans in accordance with their original terms

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Section 322: Conflicts of Interest

- The President, Vice President, the head of an Executive department, or a Member of Congress
- And Spouses (all covered individuals)
- Entities controlled by covered individuals receiving a PPP loan must disclose this status at forgiveness or 30 days after the Hard-Hit Act.
- Prohibits the entities from receiving a PPP loan in the future if covered individuals (see above) have more than a 20% interest (directly or indirectly).

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Section 333: Repeal of EIDL Advance Deduction from Forgiveness

- Repeals section 1110(e)(6) of the CARES Act, which requires PPP borrowers to deduct the amount of their EIDL advance from their PPP forgiveness amount.
- EIDL Advance borrowers to be made whole without regard to whether those borrowers are eligible for PPP forgiveness.
- SBA shall issue rules that ensure borrowers are made whole if they received forgiveness and their EIDL was deducted from that amount.

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Sections 342

- **Section 342: Publicly Traded Companies.**
 - Excludes publicly traded companies from PPP eligibility.

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Section 276: Taxation of Forgiveness

- Forgivable amounts not taxable
- Corresponding expenses are now deductible for all PPP loans forgiven regardless of whether forgiven before the date of enactment or after.

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Please use chat to submit your question.

Q&A