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New Treasury PPP Rules Clarify Recent Changes to PPP Program, Extend Time to Obtain a PPP Loan to March 31, 2021

By: [Michael C. Flynn](#)

On January 6, 2021, Treasury issued two new Interim Final Rules (IFRs) addressing the new Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act's (Act) creation of PPP Second Draw Loans, and the Act's various changes to PPP requirements generally. The major PPP components of the Act are set forth in detail in Buchalter's COVID Alert of December 28, 2020 (Buchalter PPP Changes Alert), which can be found [here](#).

While discussing the Act's requirements in some detail, the two IFRs made several key clarifications not fully spelled out, or left ambiguous, in the Act:

- The time to obtain a PPP loan is extended to March 31, 2021.
- All new PPP borrowers may use either 2019 or 2020 for purposes of calculating their maximum loan amount.
- The \$2 million loan amount necessity certification safe harbor remains in place.
- Borrowers who returned or did not accept PPP loan proceeds may apply to receive those funds.
- A borrower receiving a Second Draw Loan must use all first PPP loan funds for authorized purposes before disbursement of the Second Draw Loan.
- A Second Draw Loan guaranty application will not be completed by SBA while SBA is reviewing the original PPP loan.

These clarifications are briefly discussed below.

The IFR regarding changes to the PPP requirements generally (PPP Changes IFR) can be found [here](#).

The IFR regarding the Second Draw Loan requirements (Second Draw Loan IFR) can be found [here](#).

I. Clarification of Certain Changes to PPP Loan Requirements Generally – should be read along with specific details of December 28 Buchalter PPP Changes Alert

Extension of time to obtain a PPP loan: The PPP Changes IFR states that eligible borrowers may now obtain PPP loans until March 31, 2021.

Time period for calculating maximum loan amount: All new PPP borrowers may use either 2019 or 2020 for purposes of calculating their maximum loan amount.

\$2 million loan amount necessity certification safe harbor remains in place: Any PPP borrower, together with its affiliates, that received PPP loans with an original principal amount of \$2 million or less will be deemed to have made the required certification concerning the necessity of the loan request in good faith.

Prior borrowers applying for increased amounts: The following borrowers can reapply for or request an increase in their original PPP loan amount:

- If a borrower returned all of a PPP loan, the borrower may reapply for a PPP loan in an amount the borrower is eligible for under current PPP rules.
- If a borrower returned part of a PPP loan, the borrower may reapply for an amount equal to the difference between the amount retained and the amount previously approved.
- If a borrower did not accept the full amount of a PPP loan for which it was approved, the borrower may request an increase in the amount of the PPP loan up to the amount previously approved.

II. Clarification of Certain Second Draw Loan Requirements – should be read along with specific details of December 28 Buchalter PPP Changes Alert

Using all first loan funds for authorized purposes before disbursement of Second Draw Loan: The Second Draw Loan IFR states that SBA can guarantee Second Draw Loans for borrowers that “have used or will use the full amount of the initial PPP loan for authorized purposes on or before the expected date of disbursement of the Second Draw PPP Loan.”

Further, the borrower must certify that:

The Applicant received a First Draw Paycheck Protection Program Loan and, before the Second Draw Paycheck Protection Program Loan is disbursed, will have used the full loan amount (including any increase) of the First Draw Paycheck Protection Program Loan only for eligible expenses.

Second Draw Loan application will not be completed by SBA while SBA is reviewing the original PPP loan:

The Second Draw Loan IFR states that:

If a borrower’s First Draw PPP loan is under review by SBA and/or information in SBA’s possession indicates that the borrower may have been ineligible for the First Draw PPP Loan it received or for the loan amount it received, the lender will receive notification from SBA when the lender submits an application for a guaranty of a Second Draw PPP Loan and will not receive an SBA loan number until the issue related to the unresolved borrower’s First Draw PPP Loan is resolved . . . SBA will resolve the issue related to the unresolved borrower expeditiously and will notify the lender of the process to obtain an SBA loan number for the Second Draw PPP Loan, if appropriate.

Buchalter’s Commercial Finance Group has organized its attorneys to create in-depth expertise in every aspect and requirement of the PPP. Buchalter’s Commercial Finance Group is comprised of attorneys with extensive

transactional and regulatory expertise, and is one of the largest firms on the West Coast providing sophisticated counseling to both creditors and borrowers. Thus, our commercial finance attorneys are uniquely positioned to advise clients on the PPP. Please feel free to contact any of the attorneys in Buchalter's Commercial Finance Group if you have questions regarding the PPP or would like to discuss the various options and details under the program.

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