



Update on Fourth Package Negotiations

(July 27 7 PM EDT) As fourth package negotiations pick up steam this week, here is a quick rundown of where things currently stand:

The Senate GOP **announced their proposal** of how to approach the fourth package this afternoon (**[read the section by section overview here](#)**). NAGGL will be doing a follow-up GR message this week to outline this initial proposal and others.

Negotiations are expected to be ongoing likely over the next two to three weeks. During this time, know that various proposals, including the proposal above, will unfold, change, and be constantly fluid. Given the nature of this process, mixed with the understandable desire for your institution to plan ahead, we remind you not to assume that any changes being discussed are a done deal.

There are many issues being discussed and considered for possible inclusion by both sides of the aisle. Some of these include simplified or streamlined forgiveness, a second draw on PPP for borrowers who already received one PPP loan and who meet certain narrowed eligibility criteria, and creating a new program based on 7(a) program parameters for borrowers with proven reductions in revenue.

For NAGGL's part, we have been championing a long list of concerns for the past month that we would like to see addressed in a fourth package. Generally, these can be seen in three buckets: over-arching policy issues in the current PPP, technical corrections to the *CARES Act*, and traditional 7(a) loan program stimulus or enhancement provisions. Some of these, like the technical corrections and 7(a) enhancement provisions have been issues NAGGL has been calling for since March in ongoing conversations with Congress.

Please see the **[NAGGL letter \(excerpt below\) sent today](#)** to Senate and House Leadership outlining NAGGL's priorities for a fourth package in which we detail in three bullet point lists our critical asks of Congress on your behalf. We stand by to hear more from you and thank you for all you do.

Here are the issues NAGGL is advocating for:

To address the over-arching PPP policy issues, a fourth package must:

- Require comprehensive guidance on all aspects of the PPP;
- Strengthen hold harmless provisions for lenders to clarify the lenders' role and liability;
- Require SBA to pay fees to lenders for loans that were disbursed regardless of a future determination of eligibility based on changing eligibility rules;
- Streamline forgiveness for loans \$150,000 or less that would prescriptively detail that no application and no documentation would be required by the borrower;
- Clarify the lender role for loans \$150,000 or less to be defined as needing to review for completeness and submit to SBA, but allow the lender to rely on a certification from the borrower that it used the PPP loan in the way the law required without requiring the lender to verify or certify any application or documentation;
- Simplify forgiveness for loans more than \$150,000 up to \$350,000 that would prescriptively detail that a simplified one-page application would be required to be submitted by the borrower, but specifically detail that no documentation would be required;
- Clarify the lender role for loans more than \$150,000 up to \$350,000 to be defined as needing to review for completeness and submit to SBA, but allow the lender to rely on a certification from the borrower that it used the PPP loan in the way the law required without requiring the lender to verify or certify any application or documentation;
- Amend 1106 (g) to remove misleading information that lenders have any "decision" to make on forgiveness applications to address the inherent conflict of interest in lenders determining which loans it will receive forgiveness payments on;
- Address the agent fee issue by clarifying that lenders must only pay an agent if they directly contract with that agent;
- Cement in statute that borrowers may elect to apply prior to the end of the recently extended 24 week covered period;
- Clarify the credit elsewhere confusion by ensuring the certification for the borrower in Section 1102 (G)(i)(I) is in sync with the statutory waiver of credit elsewhere Section 1102 (I);
- Allow for "reinstatement" of PPP loans if the borrower repaid its loan and now wants to reapply, or if the borrower decreased the loan size and now wants to increase it (and has the proper justification/documentation to do so);
- Address the taxability issue in Section 1112 to clarify that no amount of payments provided shall be included in the gross income of the borrower for tax purposes;
- Extend both the length of Section 1112 payments and the period of time for new loans to be eligible for Section 1112 payments in order to utilize the full appropriations provided for those payments; and
- Clarify that loans are eligible for Section 1112 payments based on the date on which the loan was approved by SBA, and not the date the loan is fully disbursed, although the full payments of principal, interest, and other associated fees shall not begin until the loan is fully disbursed, regardless of that date.

To provide the technical fixes to CARES Act that are needed, a fourth package must:

- Clarify bifurcation of FY20 7(a) appropriation cap and PPP appropriation to safeguard against any future changes;
- Ensure all requirements outlined in Section 1102 apply to the life of the loan, not just "During the covered period";
- Match all eligible use of proceeds with eligible forgivenesses so that borrowers cannot be automatically strapped with debt if they comply with the law's outline of eligible uses of proceeds in Section 1102 that are not in the list of eligible forgivenesses in Section 1106;
- Clarify the ability for a seasonal borrower to elect *any* 12-week period during a lookback period, as well as broaden that lookback period in order to capture the months during which many seasonal borrowers around the country are operating;

- Clarify language in Section 1102 (Q) to reflect that a borrower may receive an EIDL and PPP loan as long as they are for different purposes, as the current language continues to suggest that this was not permitted after April 3rd;
- Clarify the period of time at which point lenders are paid the processing fees by SBA to be 5 days after the *reported* disbursement of loans to acknowledge the proper time frame based on the date on which SBA actually receives its first notice that the loan has been disbursed;
- Clarify language outlining the necessary documentation for sole proprietors, independent contractors, and self-employed borrowers to acknowledge that the forms of business structures have different IRS filing requirements;
- Clarify non-recourse language to include all eligible uses of proceeds (e.g. refinancing of EIDL loans) to provide the same protections to borrowers if they elect to refinance an EIDL loan as permitted by Section 1102; and
- Define the use of “same purpose” as used in Section 1102 (G)(i)(IV) “Borrower Requirements—Certification” and in Section 1109 (f) to permit a borrower to receive a subsequent 7(a) loan for the same purpose as long as it is not for the same purpose during the same time period.

The 7(a) enhancement provisions that lenders have called for over the past four months that need to be addressed in a fourth package include:

All the following for a period of 2 years:

- Complete waivers of all program fees (upfront and ongoing guaranty fees) for borrowers and lenders;
- Increased guaranty;
- Increased deferment flexibility for both sold and unsold loans, especially to put deferment flexibility for sold loans on par with the same flexibilities for unsold loans;
- Increased 7(a) authorization cap (*note: the Secondary Market Guarantee Program authorization cap was sufficiently increased in CARES Act through September 30, 2021 in Section 1107*); and
- Extension of increased loan size for Express loans established in CARES Act which expires on January 1, 2021.

[READ THE LETTER](#)

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