

Davis Polk Blackline of Changes Made by the Paycheck Protection Program Flexibility Act of 2020 to the CARES Act—Sections 1102 and 1106, June 5, 2020

Note: This blackline uses the Davis Polk Reformatted Version of the CARES Act (March 30, 2020) and does not reflect the current U.S. Code, in particular changes made by the Paycheck Protection Program and Health Care Enhancement Act, Pub. L. No. 116-139.

§ 1102. PAYCHECK PROTECTION PROGRAM.

(a) In General.—Section 7(a) of the Small Business Act (15 U.S.C. 636(a)) is amended—

(1) in paragraph (2)—

(A) in subparagraph (A), in the matter preceding clause (i), by striking “and (E)” and inserting “(E), and (F)”; and

(B) by adding at the end the following:

“(F) PARTICIPATION IN THE PAYCHECK PROTECTION PROGRAM.—In an agreement to participate in a loan on a deferred basis under paragraph (36), the participation by the Administration shall be 100 percent.”; and

(2) by adding at the end the following:

“(36) PAYCHECK PROTECTION PROGRAM.—

“(A) DEFINITIONS.—In this paragraph—

“(i) the terms ‘appropriate Federal banking agency’ and ‘insured depository institution’ have the meanings given those terms in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

“(ii) the term ‘covered loan’ means a loan made under this paragraph during the covered period;

“(iii) the term ‘covered period’ means the period beginning on February 15, 2020 and ending on ~~June 30~~December 31, 2020;

“(iv) the term ‘eligible recipient’ means an individual or entity that is eligible to receive a covered loan;

“(v) the term ‘eligible self-employed individual’ has the meaning given the term in section 7002(b) of the Families First Coronavirus Response Act (Public Law 116–127);

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“(vi) the term ‘insured credit union’ has the meaning given the term in section 101 of the Federal Credit Union Act (12 U.S.C. 1752);

“(vii) the term ‘nonprofit organization’ means an organization that is described in section 501(c)(3) of the Internal Revenue Code of 1986 and that is exempt from taxation under section 501(a) of such Code;

“(viii) the term ‘payroll costs’—

“(I) means—

“(aa) the sum of payments of any compensation with respect to employees that is a—

“(AA) salary, wage, commission, or similar compensation;

“(BB) payment of cash tip or equivalent;

“(CC) payment for vacation, parental, family, medical, or sick leave;

“(DD) allowance for dismissal or separation;

“(EE) payment required for the provisions of group health care benefits, including insurance premiums;

“(FF) payment of any retirement benefit; or

“(GG) payment of State or local tax assessed on the compensation of employees; and

“(bb) the sum of payments of any compensation to or income of a sole proprietor or independent contractor that is a wage, commission, income, net earnings from self-employment, or similar compensation and that is in an amount that is not more than \$100,000 in 1 year, as prorated for the covered period; and

“(II) shall not include—

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- “(aa) the compensation of an individual employee in excess of an annual salary of \$100,000, as prorated for the covered period;
- “(bb) taxes imposed or withheld under chapters 21, 22, or 24 of the Internal Revenue Code of 1986 during the covered period;
- “(cc) any compensation of an employee whose principal place of residence is outside of the United States;
- “(dd) qualified sick leave wages for which a credit is allowed under section 7001 of the Families First Coronavirus Response Act (Public Law 116–127); or
- “(ee) qualified family leave wages for which a credit is allowed under section 7003 of the Families First Coronavirus Response Act (Public Law 116–127); and

“(ix) the term ‘veterans organization’ means an organization that is described in section 501(c)(19) of the Internal Revenue Code that is exempt from taxation under section 501(a) of such Code.

“(B) PAYCHECK PROTECTION LOANS.—Except as otherwise provided in this paragraph, the Administrator may guarantee covered loans under the same terms, conditions, and processes as a loan made under this subsection.

“(C) REGISTRATION OF LOANS.—Not later than 15 days after the date on which a loan is made under this paragraph, the Administration shall register the loan using the TIN (as defined in section 7701 of the Internal Revenue Code of 1986) assigned to the borrower.

“(D) INCREASED ELIGIBILITY FOR CERTAIN SMALL BUSINESSES AND ORGANIZATIONS.—

“(i) IN GENERAL.—During the covered period, in addition to small business concerns, any business concern, nonprofit organization, veterans organization, or Tribal business concern described in section 31(b)(2)(C) shall be eligible to receive a covered loan if the business

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concern, nonprofit organization, veterans organization, or Tribal business concern employs not more than the greater of—

“(I) 500 employees; or

“(II) if applicable, the size standard in number of employees established by the Administration for the industry in which the business concern, nonprofit organization, veterans organization, or Tribal business concern operates.

“(ii) **INCLUSION OF SOLE PROPRIETORS, INDEPENDENT CONTRACTORS, AND ELIGIBLE SELF-EMPLOYED INDIVIDUALS.—**

“(I) **IN GENERAL.—**During the covered period, individuals who operate under a sole proprietorship or as an independent contractor and eligible self-employed individuals shall be eligible to receive a covered loan.

“(II) **DOCUMENTATION.—**An eligible self-employed individual, independent contractor, or sole proprietorship seeking a covered loan shall submit such documentation as is necessary to establish such individual as eligible, including payroll tax filings reported to the Internal Revenue Service, Forms 1099–MISC, and income and expenses from the sole proprietorship, as determined by the Administrator and the Secretary.

“(iii) **BUSINESS CONCERNS WITH MORE THAN 1 PHYSICAL LOCATION.—**During the covered period, any business concern that employs not more than 500 employees per physical location of the business concern and that is assigned a North American Industry Classification System code beginning with 72 at the time of disbursal shall be eligible to receive a covered loan.

“(iv) **WAIVER OF AFFILIATION RULES.—**During the covered period, the provisions applicable to affiliations under section 121.103 of title 13, Code of Federal Regulations, or any successor regulation, are waived with respect to eligibility for a covered loan for—

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- “(I) any business concern with not more than 500 employees that, as of the date on which the covered loan is disbursed, is assigned a North American Industry Classification System code beginning with 72;
 - “(II) any business concern operating as a franchise that is assigned a franchise identifier code by the Administration; and
 - “(III) any business concern that receives financial assistance from a company licensed under section 301 of the Small Business Investment Act of 1958 (15 U.S.C. 681).
- “(v) EMPLOYEE.—For purposes of determining whether a business concern, nonprofit organization, veterans organization, or Tribal business concern described in section 31(b)(2)(C) employs not more than 500 employees under clause (i)(I), the term ‘employee’ includes individuals employed on a full-time, part-time, or other basis.
- “(vi) AFFILIATION.—The provisions applicable to affiliations under section 121.103 of title 13, Code of Federal Regulations, or any successor thereto, shall apply with respect to a nonprofit organization and a veterans organization in the same manner as with respect to a small business concern.
- “(E) MAXIMUM LOAN AMOUNT.—During the covered period, with respect to a covered loan, the maximum loan amount shall be the lesser of—
- “(i) (I) the sum of—
 - “(aa) the product obtained by multiplying—
 - “(AA) the average total monthly payments by the applicant for payroll costs incurred during the 1-year period before the date on which the loan is made, except that, in the case of an applicant that is seasonal employer, as determined by the Administrator, the average total monthly payments for payroll shall be for the 12-week period beginning February 15,

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2019, or at the election of the eligible recipient, March 1, 2019, and ending June 30, 2019; by

“(BB) 2.5; and

“(bb) the outstanding amount of a loan under subsection (b)(2) that was made during the period beginning on January 31, 2020 and ending on the date on which covered loans are made available to be refinanced under the covered loan; or

“(II) if requested by an otherwise eligible recipient that was not in business during the period beginning on February 15, 2019 and ending on June 30, 2019, the sum of—

“(aa) the product obtained by multiplying—

“(AA) the average total monthly payments by the applicant for payroll costs incurred during the period beginning on January 1, 2020 and ending on February 29, 2020; by

“(BB) 2.5; and

“(bb) the outstanding amount of a loan under subsection (b)(2) that was made during the period beginning on January 31, 2020 and ending on the date on which covered loans are made available to be refinanced under the covered loan; or

“(ii) \$10,000,000.

“(F) ALLOWABLE USES OF COVERED LOANS.—

“(i) IN GENERAL.—During the covered period, an eligible recipient may, in addition to the allowable uses of a loan made under this subsection, use the proceeds of the covered loan for—

“(I) payroll costs;

“(II) costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums;

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- “(III) employee salaries, commissions, or similar compensations;
- “(IV) payments of interest on any mortgage obligation (which shall not include any prepayment of or payment of principal on a mortgage obligation);
- “(V) rent (including rent under a lease agreement);
- “(VI) utilities; and
- “(VII) interest on any other debt obligations that were incurred before the covered period.

“(ii) DELEGATED AUTHORITY.—

“(I) IN GENERAL.—For purposes of making covered loans for the purposes described in clause (i), a lender approved to make loans under this subsection shall be deemed to have been delegated authority by the Administrator to make and approve covered loans, subject to the provisions of this paragraph.

“(II) CONSIDERATIONS.—In evaluating the eligibility of a borrower for a covered loan with the terms described in this paragraph, a lender shall consider whether the borrower—

“(aa) was in operation on February 15, 2020; and

“(bb)(AA) had employees for whom the borrower paid salaries and payroll taxes; or

“(BB) paid independent contractors, as reported on a Form 1099–MISC.

“(iii) ADDITIONAL LENDERS.—The authority to make loans under this paragraph shall be extended to additional lenders determined by the Administrator and the Secretary of the Treasury to have the necessary qualifications to process, close, disburse and service loans made with the guarantee of the Administration.

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“(iv) REFINANCE.—A loan made under subsection (b)(2) during the period beginning on January 31, 2020 and ending on the date on which covered loans are made available may be refinanced as part of a covered loan.

“(v) NONRECOURSE.—Notwithstanding the waiver of the personal guarantee requirement or collateral under subparagraph (J), the Administrator shall have no recourse against any individual shareholder, member, or partner of an eligible recipient of a covered loan for nonpayment of any covered loan, except to the extent that such shareholder, member, or partner uses the covered loan proceeds for a purpose not authorized under clause (i).

“(G) BORROWER REQUIREMENTS.—

“(i) CERTIFICATION.—An eligible recipient applying for a covered loan shall make a good faith certification—

“(I) that the uncertainty of current economic conditions makes necessary the loan request to support the ongoing operations of the eligible recipient;

“(II) acknowledging that funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments;

“(III) that the eligible recipient does not have an application pending for a loan under this subsection for the same purpose and duplicative of amounts applied for or received under a covered loan; and

“(IV) during the period beginning on February 15, 2020 and ending on December 31, 2020, that the eligible recipient has not received amounts under this subsection for the same purpose and duplicative of amounts applied for or received under a covered loan.

“(H) FEE WAIVER.—During the covered period, with respect to a covered loan—

“(i) in lieu of the fee otherwise applicable under paragraph (23)(A), the Administrator shall collect no fee; and

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“(ii) in lieu of the fee otherwise applicable under paragraph (18)(A), the Administrator shall collect no fee.

“(I) CREDIT ELSEWHERE.—During the covered period, the requirement that a small business concern is unable to obtain credit elsewhere, as defined in section 3(h), shall not apply to a covered loan.

“(J) WAIVER OF PERSONAL GUARANTEE REQUIREMENT.—During the covered period, with respect to a covered loan—

“(i) no personal guarantee shall be required for the covered loan; and

“(ii) no collateral shall be required for the covered loan.

“(K) MATURITY FOR LOANS WITH REMAINING BALANCE AFTER APPLICATION OF FORGIVENESS.—With respect to a covered loan that has a remaining balance after reduction based on the loan forgiveness amount under section 1106 of the CARES Act—

“(i) the remaining balance shall continue to be guaranteed by the Administration under this subsection; and

“(ii) the covered loan shall have a [minimum maturity of 5 years and a maximum maturity of 10 years](#) from the date on which the borrower applies for loan forgiveness under that section.

“(L) INTEREST RATE REQUIREMENTS.—A covered loan shall bear an interest rate not to exceed 4 percent.

“(M) LOAN DEFERMENT.—

“(i) DEFINITION OF IMPACTED BORROWER.—

“(I) IN GENERAL.—In this subparagraph, the term ‘impacted borrower’ means an eligible recipient that—

“(aa) is in operation on February 15, 2020; and

“(bb) has an application for a covered loan that is approved or pending approval on or after the date of enactment of this paragraph.

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“(II) PRESUMPTION.—For purposes of this subparagraph, an impacted borrower is presumed to have been adversely impacted by COVID–19.

“(ii) DEFERRAL.—During the covered period, the Administrator shall—

“(I) consider each eligible recipient that applies for a covered loan to be an impacted borrower; and

“(II) require lenders under this subsection to provide complete payment deferment relief for impacted borrowers with covered loans ~~for a period of not less than 6 months~~, including payment of principal, interest, and fees, ~~and not more than 1 year~~until the date on which the amount of forgiveness determined under section 1106 of the CARES Act is remitted to the lender.

“(iii) SECONDARY MARKET.—During the covered period, with respect to a covered loan that is sold on the secondary market, if an investor declines to approve a deferral requested by a lender under clause (ii), the Administrator shall exercise the authority to purchase the loan so that the impacted borrower may receive a deferral ~~for a period of not less than 6 months~~, including payment of principal, interest, and fees, ~~and not more than 1 year~~until the date on which the amount of forgiveness determined under section 1106 of the CARES Act is remitted to the lender.

“(iv) GUIDANCE.—Not later than 30 days after the date of enactment of this paragraph, the Administrator shall provide guidance to lenders under this paragraph on the deferment process described in this subparagraph.

“(v) RULE OF CONSTRUCTION.—If an eligible recipient fails to apply for forgiveness of a covered loan within 10 months after the last day of the covered period defined in section 1106(a) of the CARES Act, such eligible recipient shall make payments of principal, interest, and fees on such covered loan beginning on the day that is not earlier than the date that is 10 months after the last day of such covered period.

“(N) SECONDARY MARKET SALES.—A covered loan shall be eligible to be sold in the secondary market consistent with this subsection. The

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Administrator may not collect any fee for any guarantee sold into the secondary market under this subparagraph.

“(O) REGULATORY CAPITAL REQUIREMENTS.—

“(i) RISK WEIGHT.—With respect to the appropriate Federal banking agencies or the National Credit Union Administration Board applying capital requirements under their respective risk-based capital requirements, a covered loan shall receive a risk weight of zero percent.

“(ii) TEMPORARY RELIEF FROM TDR DISCLOSURES.—

Notwithstanding any other provision of law, an insured depository institution or an insured credit union that modifies a covered loan in relation to COVID–19-related difficulties in a troubled debt restructuring on or after March 13, 2020, shall not be required to comply with the Financial Accounting Standards Board Accounting Standards Codification Subtopic 310–40 (‘Receivables – Troubled Debt Restructurings by Creditors’) for purposes of compliance with the requirements of the Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.), until such time and under such circumstances as the appropriate Federal banking agency or the National Credit Union Administration Board, as applicable, determines appropriate.

“(P) REIMBURSEMENT FOR PROCESSING.—

“(i) IN GENERAL.—The Administrator shall reimburse a lender authorized to make a covered loan at a rate, based on the balance of the financing outstanding at the time of disbursement of the covered loan, of—

“(I) 5 percent for loans of not more than \$350,000;

“(II) 3 percent for loans of more than \$350,000 and less than \$2,000,000; and

“(III) 1 percent for loans of not less than \$2,000,000.

“(ii) FEE LIMITS.—An agent that assists an eligible recipient to prepare an application for a covered loan may not collect a fee in excess of the limits established by the Administrator.

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“(iii) **TIMING.**—A reimbursement described in clause (i) shall be made not later than 5 days after the disbursement of the covered loan.

“(iv) **SENSE OF THE SENATE.**—It is the sense of the Senate that the Administrator should issue guidance to lenders and agents to ensure that the processing and disbursement of covered loans prioritizes small business concerns and entities in underserved and rural markets, including veterans and members of the military community, small business concerns owned and controlled by socially and economically disadvantaged individuals (as defined in section 8(d)(3)(C)), women, and businesses in operation for less than 2 years.

“(Q) **DUPLICATION.**—Nothing in this paragraph shall prohibit a recipient of an economic injury disaster loan made under subsection (b)(2) during the period beginning on January 31, 2020 and ending on the date on which covered loans are made available that is for a purpose other than paying payroll costs and other obligations described in subparagraph (F) from receiving assistance under this paragraph.

“(R) **WAIVER OF PREPAYMENT PENALTY.**—Notwithstanding any other provision of law, there shall be no prepayment penalty for any payment made on a covered loan.”.

- (b) **Commitments For 7(A) Loans.**—During the period beginning on February 15, 2020 and ending on June 30, 2020—
- (1) the amount authorized for commitments for general business loans authorized under section 7(a) of the Small Business Act (15 U.S.C. 636(a)), including loans made under paragraph (36) of such section, as added by subsection (a), shall be \$349,000,000,000; and
 - (2) the amount authorized for commitments for such loans under the heading “BUSINESS LOANS PROGRAM ACCOUNT” under the heading “Small Business Administration” under title V of the Consolidated Appropriations Act, 2020 (Public Law 116–93; 133 Stat. 2475) shall not apply.
- (c) **Express Loans.**—

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- (1) IN GENERAL.—Section 7(a)(31)(D) of the Small Business Act (15 U.S.C. 636(a)(31)(D)) is amended by striking “\$350,000” and inserting “\$1,000,000”.
- (2) PROSPECTIVE REPEAL.—Effective on January 1, 2021, section 7(a)(31)(D) of the Small Business Act (15 U.S.C. 636(a)(31)(D)) is amended by striking “\$1,000,000” and inserting “\$350,000”.
- (d) Exception To Guarantee Fee Waiver For Veterans.—Section 7(a)(31)(G) of the Small Business Act (15 U.S.C. 636(a)(31)(G)) is amended—
 - (1) by striking clause (ii); and
 - (2) by redesignating clause (iii) as clause (ii).
- (e) Interim Rule.—On and after the date of enactment of this Act, the interim final rule published by the Administrator entitled “Express Loan Programs: Affiliation Standards” (85 Fed. Reg. 7622 (February 10, 2020)) is permanently rescinded and shall have no force or effect.

§ 1106. LOAN FORGIVENESS.

- (a) Definitions.—In this section—
 - (1) the term “covered loan” means a loan guaranteed under paragraph (36) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)), as added by section 1102;
 - (2) the term “covered mortgage obligation” means any indebtedness or debt instrument incurred in the ordinary course of business that—
 - (A) is a liability of the borrower;
 - (B) is a mortgage on real or personal property; and
 - (C) was incurred before February 15, 2020;
 - (3) the term “covered period” means, subject to subsection (1), the 8-week period beginning on the date of the origination of a covered loan; and ending the earlier of—
 - (A) the date that is 24 weeks after such date of origination; or

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(B) December 31, 2020:

- (4) the term “covered rent obligation” means rent obligated under a leasing agreement in force before February 15, 2020;
 - (5) the term “covered utility payment” means payment for a service for the distribution of electricity, gas, water, transportation, telephone, or internet access for which service began before February 15, 2020;
 - (6) the term “eligible recipient” means the recipient of a covered loan;
 - (7) the term “expected forgiveness amount” means the amount of principal that a lender reasonably expects a borrower to expend during the covered period on the sum of any—
 - (A) payroll costs;
 - (B) payments of interest on any covered mortgage obligation (which shall not include any prepayment of or payment of principal on a covered mortgage obligation);
 - (C) payments on any covered rent obligation; and
 - (D) covered utility payments; and
 - (8) the term “payroll costs” has the meaning given that term in paragraph (36) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)), as added by section 1102 of this Act.
- (b) Forgiveness.—An eligible recipient shall be eligible for forgiveness of indebtedness on a covered loan in an amount equal to the sum of the following costs incurred and payments made during the covered period:
- (1) Payroll costs.
 - (2) Any payment of interest on any covered mortgage obligation (which shall not include any prepayment of or payment of principal on a covered mortgage obligation).
 - (3) Any payment on any covered rent obligation.

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- (4) Any covered utility payment.
- (c) Treatment Of Amounts Forgiven.—
 - (1) IN GENERAL.—Amounts which have been forgiven under this section shall be considered canceled indebtedness by a lender authorized under section 7(a) of the Small Business Act (15 U.S.C. 636(a)).
 - (2) PURCHASE OF GUARANTEES.—For purposes of the purchase of the guarantee for a covered loan by the Administrator, amounts which are forgiven under this section shall be treated in accordance with the procedures that are otherwise applicable to a loan guaranteed under section 7(a) of the Small Business Act (15 U.S.C. 636(a)).
 - (3) REMITTANCE.—Not later than 90 days after the date on which the amount of forgiveness under this section is determined, the Administrator shall remit to the lender an amount equal to the amount of forgiveness, plus any interest accrued through the date of payment.
 - (4) ADVANCE PURCHASE OF COVERED LOAN.—
 - (A) REPORT.—A lender authorized under section 7(a) of the Small Business Act (15 U.S.C. 636(a)), or, at the discretion of the Administrator, a third party participant in the secondary market, may, report to the Administrator an expected forgiveness amount on a covered loan or on a pool of covered loans of up to 100 percent of the principal on the covered loan or pool of covered loans, respectively.
 - (B) PURCHASE.—The Administrator shall purchase the expected forgiveness amount described in subparagraph (A) as if the amount were the principal amount of a loan guaranteed under section 7(a) of the Small Business Act 636(a)).
 - (C) TIMING.—Not later than 15 days after the date on which the Administrator receives a report under subparagraph (A), the Administrator shall purchase the expected forgiveness amount under subparagraph (B) with respect to each covered loan to which the report relates.
- (d) Limits On Amount Of Forgiveness.—

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- (1) **AMOUNT MAY NOT EXCEED PRINCIPAL.**—The amount of loan forgiveness under this section shall not exceed the principal amount of the financing made available under the applicable covered loan.

- (2) **REDUCTION BASED ON REDUCTION IN NUMBER OF EMPLOYEES.**—
 - (A) **IN GENERAL.**—The amount of loan forgiveness under this section shall be reduced, but not increased, by multiplying the amount described in subsection (b) by the quotient obtained by dividing—
 - (i) the average number of full-time equivalent employees per month employed by the eligible recipient during the covered period; by

 - (ii) (I) at the election of the borrower—
 - (aa) the average number of full-time equivalent employees per month employed by the eligible recipient during the period beginning on February 15, 2019 and ending on June 30, 2019; or

 - (bb) the average number of full-time equivalent employees per month employed by the eligible recipient during the period beginning on January 1, 2020 and ending on February 29, 2020; or

 - (II) in the case of an eligible recipient that is seasonal employer, as determined by the Administrator, the average number of full-time equivalent employees per month employed by the eligible recipient during the period beginning on February 15, 2019 and ending on June 30, 2019.

 - (B) **CALCULATION OF AVERAGE NUMBER OF EMPLOYEES.**—For purposes of subparagraph (A), the average number of full-time equivalent employees shall be determined by calculating the average number of full-time equivalent employees for each pay period falling within a month.

- (3) **REDUCTION RELATING TO SALARY AND WAGES.**—
 - (A) **IN GENERAL.**—The amount of loan forgiveness under this section shall be reduced by the amount of any reduction in total salary or wages of any

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employee described in subparagraph (B) during the covered period that is in excess of 25 percent of the total salary or wages of the employee during the most recent full quarter during which the employee was employed before the covered period.

- (B) EMPLOYEES DESCRIBED.—An employee described in this subparagraph is any employee who did not receive, during any single pay period during 2019, wages or salary at an annualized rate of pay in an amount more than \$100,000.
- (4) TIPPED WORKERS.—An eligible recipient with tipped employees described in section 3(m)(2)(A) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(m)(2)(A)) may receive forgiveness for additional wages paid to those employees.
- (5) EXEMPTION FOR RE-HIRES.—
 - (A) IN GENERAL.—In a circumstance described in subparagraph (B), the amount of loan forgiveness under this section shall be determined without regard to a reduction in the number of full-time equivalent employees of an eligible recipient or a reduction in the salary of 1 or more employees of the eligible recipient, as applicable, during the period beginning on February 15, 2020 and ending on the date that is 30 days after the date of enactment of this Act.
 - (B) CIRCUMSTANCES.—A circumstance described in this subparagraph is a circumstance—
 - (i) in which—
 - (I) during the period beginning on February 15, 2020 and ending on the date that is 30 days after the date of enactment of this Act, there is a reduction, as compared to February 15, 2020, in the number of full-time equivalent employees of an eligible recipient; and
 - (II) not later than ~~June 30~~December 31, 2020, the eligible employer has eliminated the reduction in the number of full-time equivalent employees;

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(ii) in which—

- (I) during the period beginning on February 15, 2020 and ending on the date that is 30 days after the date of enactment of this Act, there is a reduction, as compared to February 15, 2020, in the salary or wages of 1 or more employees of the eligible recipient; and
- (II) not later than ~~June 30~~December 31, 2020, the eligible employer has eliminated the reduction in the salary or wages of such employees; or

(iii) in which the events described in clause (i) and (ii) occur.

(6) EXEMPTIONS.—The Administrator and the Secretary of the Treasury may prescribe regulations granting de minimis exemptions from the requirements under this subsection.

(7) EXEMPTION BASED ON EMPLOYEE AVAILABILITY.—During the period beginning on February 15, 2020, and ending on December 31, 2020, the amount of loan forgiveness under this section shall be determined without regard to a proportional reduction in the number of full-time equivalent employees if an eligible recipient, in good faith—

(A) is able to document—

(i) an inability to rehire individuals who were employees of the eligible recipient on February 15, 2020; and

(ii) an inability to hire similarly qualified employees for unfilled positions on or before December 31, 2020; or

(B) is able to document an inability to return to the same level of business activity as such business was operating at before February 15, 2020, due to compliance with requirements established or guidance issued by the Secretary of Health and Human Services, the Director of the Centers for Disease Control and Prevention, or the Occupational Safety and Health Administration during the period beginning on March 1, 2020, and ending December 31, 2020, related to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID-19.

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(8) LIMITATION ON FORGIVENESS.—To receive loan forgiveness under this section, an eligible recipient shall use at least 60 percent of the covered loan amount for payroll costs, and may use up to 40 percent of such amount for any payment of interest on any covered mortgage obligation (which shall not include any prepayment of or payment of principal on a covered mortgage obligation), any payment on any covered rent obligation, or any covered utility payment.

- (e) Application.—An eligible recipient seeking loan forgiveness under this section shall submit to the lender that is servicing the covered loan an application, which shall include—
 - (1) documentation verifying the number of full-time equivalent employees on payroll and pay rates for the periods described in subsection (d), including—
 - (A) payroll tax filings reported to the Internal Revenue Service; and
 - (B) State income, payroll, and unemployment insurance filings;
 - (2) documentation, including cancelled checks, payment receipts, transcripts of accounts, or other documents verifying payments on covered mortgage obligations, payments on covered lease obligations, and covered utility payments;
 - (3) a certification from a representative of the eligible recipient authorized to make such certifications that—
 - (A) the documentation presented is true and correct; and
 - (B) the amount for which forgiveness is requested was used to retain employees, make interest payments on a covered mortgage obligation, make payments on a covered rent obligation, or make covered utility payments; and
 - (4) any other documentation the Administrator determines necessary.
- (f) Prohibition On Forgiveness Without Documentation.—No eligible recipient shall receive forgiveness under this section without submitting to the lender that is servicing the covered loan the documentation required under subsection (e).
- (g) Decision.—Not later than 60 days after the date on which a lender receives an application for loan forgiveness under this section from an eligible recipient, the lender shall issue a decision on the an application.

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- (h) Hold Harmless.—If a lender has received the documentation required under this section from an eligible recipient attesting that the eligible recipient has accurately verified the payments for payroll costs, payments on covered mortgage obligations, payments on covered lease obligations, or covered utility payments during covered period—
 - (1) an enforcement action may not be taken against the lender under section 47(e) of the Small Business Act (15 U.S.C. 657t(e)) relating to loan forgiveness for the payments for payroll costs, payments on covered mortgage obligations, payments on covered lease obligations, or covered utility payments, as the case may be; and
 - (2) the lender shall not be subject to any penalties by the Administrator relating to loan forgiveness for the payments for payroll costs, payments on covered mortgage obligations, payments on covered lease obligations, or covered utility payments, as the case may be.
- (i) Taxability.—For purposes of the Internal Revenue Code of 1986, any amount which (but for this subsection) would be includible in gross income of the eligible recipient by reason of forgiveness described in subsection (b) shall be excluded from gross income.
- (j) Rule Of Construction.—The cancellation of indebtedness on a covered loan under this section shall not otherwise modify the terms and conditions of the covered loan.
- (k) Regulations.—Not later than 30 days after the date of enactment of this Act, the Administrator shall issue guidance and regulations implementing this section.
- (l) Application to Certain Eligible Recipients.—An eligible recipient that received a covered loan before the date of enactment of this subsection may elect for the covered period applicable to such covered loan to end on the date that is 8 weeks after the date of the origination of such covered loan.

Summary report:	
Litera® Change-Pro for Word 10.7.0.7 Document comparison done on 6/5/2020 5:31:43 PM	
Style name: Color Legislative Moves+Images	
Intelligent Table Comparison: Active	
Original DMS: iw://DMS/AmericasActive/93315845/2	
Modified DMS: iw://DMS/AmericasActive/93315847/2	
Changes:	
Add	18
Delete	9
Move From	0
Move To	0
Table Insert	0
Table Delete	0
Table moves to	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	27