

§ 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 ~~(21)~~—

(A) in the paragraph heading, by inserting “AND SECOND DRAW” after “PPP”;

(B) by striking “August 8, 2020” and inserting “March 31, 2021”;

(C) by striking “paragraph (36)” and inserting “paragraphs (36) and (37)”; and

(D) by striking “ \$659,000,000,000” and inserting “ \$806,450,000,000”; and

(2) in paragraph (2)—

(A) by striking “), such participation by the Administration shall be equal to” and all that follows through the period at the end and inserting “or the Community Advantage Pilot Program of the Administration), such participation by the Administration shall be equal to 90 percent of the balance of the financing outstanding at the time of disbursement of the loan.”

(B) to read as follows:

“(A) ~~in subparagraph (A), in the matter preceding clause~~IN GENERAL.—Except as provided in subparagraphs (B), ~~(D)~~, ~~by striking “and (E)” and inserting “(E), and (F)”;~~ ~~and, in an agreement to participate in a loan on a deferred basis under this subsection (including a loan made under the Preferred Lenders Program), such participation by the administration shall be equal to—~~

“(i) 75 percent of the balance of the financing outstanding at the time of disbursement of the loan, if such balance exceeds \$150,000; or

“(ii) 85 percent of the balance of the financing outstanding at the time of disbursement of the loan, if such balance is less than or equal to \$150,000.”

(3) in paragraph (31)—

Davis Polk Reformatted Version of December 23, 2020

(A) by striking “with a guaranty rate of not more than 50 percent.” and inserting the following: “with a guarantee rate—

“(I) for a loan in an amount less than or equal to \$350,000, of not more than 75 percent; and

“(II) for a loan in an amount greater than \$350,000, of not more than 50 percent.”

(B) by striking “guarantee rate” and all that follows through the period at the end and inserting “guarantee rate of not more than 50 percent.”

~~(B4)~~ 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~~

“(3) 2021 7(a) LOAN PROGRAM LEVEL AND FUNDING.—Notwithstanding the amount authorized under the heading ‘Small Business Administration—Business Loans Program Account under the Financial Services and General Government Appropriations Act, 2021 for commitments for general business loans authorized under paragraphs (1) through (35) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)), commitments for general business loans authorized under paragraphs (1) through (35) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)) shall not exceed \$75,000,000,000 for a combination of amortizing term loans and the aggregated maximum line of credit provided by revolving loans during the period beginning on the date of enactment of this Act and ending on September 30, 2021.’.

~~(25)~~ 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);

Davis Polk Reformatted Version of December 23, 2020

- “(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 ~~December~~March 31, ~~2020~~2021;
- “(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);
- “(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, or group life, disability, vision, or dental insurance 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~~ on an annualized basis, as prorated for the ~~covered~~ period during which the payments are made or the obligation to make payments is incurred; and

“(II) shall not include—

“(aa) the compensation of an individual employee in excess of ~~an annual salary of~~ \$100,000 on an annualized basis, as prorated for the ~~covered~~ period during which the compensation is paid or the obligation to pay the compensation is incurred;

“(bb) taxes imposed or withheld under chapters 21, 22, or 24 of the Internal Revenue Code of 1986 during the ~~covered~~ applicable 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.

Davis Polk Reformatted Version of December 23, 2020

“(x) the term ‘community development financial institution’ has the meaning given the term in section 4702 of title 12);

“(xi) the term ‘community financial institutions’ means—

“(I) a community development financial institution;

“(II) a minority depository institution, as defined in section 308 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1463 note);

“(III) a development company that is certified under title V of the Small Business Investment Act of 1958 (15 U.S.C. 695 et seq.); and

“(IV) an intermediary, as defined in subsection (m)(11); ~~and~~

“(xii) the term ‘credit union’ means a State credit union or a Federal credit union, as those terms are defined, respectively, in section 1752 of title 12~~;~~

“(xiii) the term ‘seasonal employer’ means an eligible recipient that—

“(I) does not operate for more than 7 months in any calendar year; or

“(II) during the preceding calendar year, had gross receipts for any 6 months of that year that were not more than 33.33 percent of the gross receipts of the employer for the other 6 months of that year;

“(xiv) the term ‘housing cooperative means a cooperative housing corporation (as defined in section 216(b) of the Internal Revenue Code of 1986) that employs not more than 300 employees;

“(xv) the term ‘destination marketing organization’ means a nonprofit entity that is—

“(I) an organization described in section 501(c) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code; or

“(II) a State, or a political subdivision of a State (including any instrumentality of such entities)—

“(aa) engaged in marketing and promoting communities and facilities to business and leisure travelers through a range of activities, including—

“(AA) assisting with the location of meeting and convention sites;

“(BB) providing travel information on area attractions, lodging accommodations, and restaurants;

“(CC) providing maps; and

“(DD) organizing group tours of local historical, recreational, and cultural attractions; or

“(bb) that is engaged in, and derives the majority of the operating budget of the entity from revenue attributable to, providing live events; and

“(xvi) the terms ‘exchange’, ‘issuer’, and ‘security’ have the meanings given those terms in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

“(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, housing cooperative, veterans organization, or Tribal business concern

described in section 31(b)(2)(C) shall be eligible to receive a covered loan if the business concern, nonprofit organization, [housing cooperative](#), 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, [housing cooperative](#), 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~~ [determined necessary](#) by the Administrator and the Secretary, [to establish the applicant as eligible](#).

“(iii) BUSINESS CONCERNS WITH MORE THAN 1 PHYSICAL LOCATION.—

- “(I) [IN GENERAL](#).—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 disbursement shall be eligible to receive a covered loan.

“(II) ELIGIBILITY OF NEWS ORGANIZATIONS.—

“(aa) DEFINITION.—In this subclause, the term ‘included business concern’ means a business concern, including any station which broadcasts pursuant to a license granted by the Federal Communications Commission under title III of the Communications Act of 1934 (47 U.S.C. 301 et seq.) without regard for whether such a station is a concern as defined in section 121.105 of title 13, Code of Federal Regulations, or any successor thereto—

“(AA) that employs not more than 500 employees, or the size standard established by the Administrator for the North American Industry Classification System code applicable to the business concern, per physical location of such business concern; or

“(BB) any nonprofit organization or any organization otherwise subject to section 511(a)(2)(B) of the Internal Revenue Code of 1986 that is a public broadcasting entity (as defined in section 397(11) of the Communications Act of 1934 (47 U.S.C. 3971(11))).

“(bb) ELIGIBILITY.—During the covered period, an included business concern shall be eligible to receive a covered loan if—

“(AA) the included business concern is majority owned or controlled by a business concern that is assigned a North American Industry Classification System code beginning with 51110 or 5151, or, with respect to a public broadcasting entity (as defined in section 397(11) of the Communications Act of 1934 (47 U.S.C. 397(11))), has a trade or business that falls under such a code; and

“(BB) the included business concern makes a good faith certification that proceeds of the loan will be used

to support expenses at the component of the included business concern that produces or distributes locally focused or emergency information.”

“(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—

“(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); ~~and~~

“(IV) (aa) any business concern (including any station which broadcasts pursuant to a license granted by the Federal Communications Commission under title III of the Communications Act of 1934 (47 U.S.C. 301 et seq.) without regard for whether such a station is a concern as defined in section 121.105 of title 13, Code of Federal Regulations, or any successor thereto) that employs not more than 500 employees, or the size standard established by the Administrator for the North American Industry Classification System code applicable to the business concern and is majority owned or controlled by a business that is assigned a North American Industry Classification System code beginning with 511110 or 5151; or

“(bb) any nonprofit organization that is assigned a North American Industry Classification System code beginning with 5151.”

“(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), or for purposes of determining the number of employees of a housing cooperative or a business concern or organization made eligible for a loan under this paragraph under clause (iii)(II), (iv)(IV), or (vii), 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, a business concern or organization made eligible for a loan under this paragraph under clause (vii), a housing cooperative, and a veterans organization in the same manner as with respect to a small business concern-;

“(vii) ELIGIBILITY FOR CERTAIN 501(c)(6) ORGANIZATIONS.—

“(I) IN GENERAL.—Any organization that is described in section 501(c)(6) of the Internal Revenue Code and that is exempt from taxation under section 501(a) of such Code (excluding professional sports leagues and organizations with the purpose of promoting or participating in a political campaign or other activity) shall be eligible to receive a covered loan if—

“(aa) the organization does not receive more than 15 percent of its receipts from lobbying activities;

“(bb) the lobbying activities of the organization do not comprise more than 15 percent of the total activities of the organization;

“(cc) the cost of the lobbying activities of the organization did not exceed \$1,000,000 during the most recent tax year of the organization that ended prior to February 15, 2020; and

“(dd) the organization employs not more than 300 employees.

“(II) DESTINATION MARKETING ORGANIZATIONS.—Any destination marketing organization shall be eligible to receive a covered loan if—

“(aa) the destination marketing organization does not receive more than 15 percent of its receipts from lobbying activities;

“(bb) the lobbying activities of the destination marketing organization do not comprise more than 15 percent of the total activities of the organization;

“(cc) the cost of the lobbying activities of the destination marketing organization did not exceed \$1,000,000 during the most recent tax year of the destination marketing organization that ended prior to February 15, 2020; and

“(dd) the destination marketing organization employs not more than 300 employees; and

“(ee) the destination marketing organization—

“(AA) is described in section 501(c) of the Internal Revenue Code and is exempt from taxation under section 501(a) of such Code; or

“(BB) is a quasi-governmental entity or a political subdivision of a State or local government, including any instrumentality of those entities.”

“(viii) INELIGIBILITY OF PUBLICLY TRADED ENTITIES.—

Notwithstanding any other provision of this paragraph, on and after the date of enactment of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, an entity that is an issuer, the securities of which are listed on an exchange registered as a national securities exchange under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f), shall be ineligible to receive a covered loan under this paragraph.

“(I) IN GENERAL.—Subject to subclause (II), and notwithstanding

“(II) RULE FOR AFFILIATED ENTITIES.—With respect to a business concern made eligible by clause (iii)(II) or clause (iv)(IV) of this subparagraph, the Administrator shall not consider whether any affiliated entity, which for purposes of this subclause shall include any entity that owns or controls such business concern, is an issuer.”

“(E) MAXIMUM LOAN AMOUNT.—~~During~~Except as provided in subparagraph (V), 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 a seasonal employer, ~~as determined by the Administrator~~, shall use the average total monthly payments for payroll ~~shall be~~ for ~~the~~any 12-week period ~~beginning~~selected by the seasonal employer between February 15, 2019, ~~or at the election of the eligible recipient, March 1, 2019, and ending June 30, 2019~~and February 15, 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) 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.

“(V) CALCULATION OF MAXIMUM LOAN AMOUNT FOR FARMERS AND RANCHERS.—

“(i) DEFINITION.—In this subparagraph, the term ‘covered recipient’ means an eligible recipient that—

“(I) operates as a sole proprietorship or as an independent contractor, or is an eligible self-employed individual;

“(II) reports farm income or expenses on a schedule F (or any equivalent successor schedule); and

“(III) was in business as of February 15, 2020.

“(ii) NO EMPLOYEES.—With respect to covered recipient without employees, the maximum covered loan amount shall be the lesser of—

“(I) the sum of—

“(aa) the product obtained by multiplying—

“(AA) the gross income of the covered recipient in 2019, as reported on a Schedule F (or any equivalent successor schedule), that is not more than \$100,000, divided by 12; and

“(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 April 3, 2020 that the borrower intends to refinance under the covered loan, not including any amount of any advance under the loan that is not required to be re-paid; or](#)

“(II) [\\$2,000,000.](#)

“(iii) WITH EMPLOYEES.—With respect to a covered recipient with employees, the maximum covered loan amount shall be calculated using the formula described in subparagraph (E), except that the gross income of the covered recipient described in clause (ii)(I)(aa)(AA) of this subparagraph, as divided by 12, shall be added to the sum calculated under subparagraph (E)(i)(I).

“(iv) RECALCULATION.—A lender that made a covered loan to a covered recipient before the date of enactment of this subparagraph may, at the request of the covered recipient—

“(I) [recalculate the maximum loan amount applicable to that covered loan based on the formula described in clause \(ii\) or \(iii\), as applicable, if doing so would result in a larger covered loan amount; and](#)

“(II) [provide the covered recipient with additional covered loan amounts based on that recalculation.](#)”

“(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;](#)

Davis Polk Reformatted Version of December 23, 2020

- “(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; ~~;~~
- “(VIII) covered operations expenditures, as defined in section 7A(a);
- “(IX) covered property damage costs, as defined in section 7A(a);
- “(X) covered supplier costs, as defined in section 7A(a); and
- “(XI) covered worker protection expenditures, as defined in section 7A(a).”.

“(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.

“(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) or (iv).

“(vi) PROHIBITION.—None of the proceeds of a covered loan may be used for—

“(I) lobbying activities, as defined in section 3 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1602);

“(II) lobbying expenditures related to a State or local election; or

“(III) expenditures designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before Congress or any State government, State legislature, or local legislature or legislative body.”

“(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,~~ withWith respect to a covered loan—
- “(i) in lieu of the fee otherwise applicable under paragraph (23)(A), the Administrator shall collect no fee; and
 - “(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,~~ withWith 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~~7A—

Davis Polk Reformatted Version of December 23, 2020

“(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, calculated on a non-compounding, non-adjustable basis.

“(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.

“(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~~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, including payment of principal, interest, and fees, until the date on which the amount of forgiveness determined under section ~~1106 of the CARES Act~~7A is remitted to the lender.

“(iii) SECONDARY MARKET.—~~During the covered period, with~~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, including payment of principal, interest, and fees, until the date on which the amount of forgiveness determined under section ~~1106 of the CARES Act~~ 7A 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~~7A(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 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 as follows:

“(I) With respect to a covered loan made during the period beginning on the date of enactment of this paragraph and ending on the day before the date of enactment of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, the Administrator shall reimburse such a lender at a rate, based on the balance of the financing outstanding at the time of disbursement of the covered loan, of—

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

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

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

“(II) With respect to a covered loan made on or after the date of enactment of the Economic Aid to Hard-Hit Small Businesses, Non-profits, and Venues Act, the Administrator shall reimburse such a lender—

“(aa) for a covered loan of not more than \$50,000, in an amount equal to the lesser of—

(AA) 50 percent of the balance of the financing outstanding at the time of disbursement of the covered loan; or

“(BB) \$2,500; and

“(bb) at a rate, based on the balance of the financing outstanding at the time of disbursement of the covered loan, of—

(AA) 5 percent for a covered loan of more than \$50,000 and not more than \$350,000;

“(BB) 3 percent for a covered loan of more than \$350,000 and less than \$2,000,000; and

“(CC) 1 percent for a covered loan of not 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. If an eligible recipient has knowingly retained an agent, such fees shall be paid by the eligible recipient and may not be paid out of the proceeds of a covered loan. A lender shall only be responsible for paying fees to an agent for services for which the lender directly contracts with the agent.

“(iii) TIMING.—A reimbursement described in clause (i) shall be made not later than 5 days after the reported disbursement of the covered loan and may not be required to be repaid by a lender unless the lender is found guilty of an act of fraud in connection with 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.”

“(T) REQUIREMENT FOR DATE IN OPERATION.—A business or organization that was not in operation on February 15, 2020 shall not be eligible for a loan under this paragraph.

“(U) EXCLUSION OF ENTITIES RECEIVING SHUTTERED VENUE OPERATOR GRANTS.—An eligible person or entity (as defined under of section 24 of the Economic Aid to Hard-Hit Small Business, Nonprofits, and Venues Act) that receives a grant under such section 24 shall not be eligible for a loan under this paragraph.”

“(37) PAYCHECK PROTECTION PROGRAM SECOND DRAW LOANS.—

“(A) DEFINITIONS.—In this paragraph—

“(i) the terms ‘eligible self-employed individual’, ‘housing cooperative’, ‘non-profit organization’, ‘payroll costs’, ‘seasonal employer’, and ‘veterans organization’ have the meanings given those terms in paragraph (36), except that ‘eligible entity’ shall be substituted for ‘eligible recipient’ each place it appears in the definitions of those terms;

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

“(iii) the terms ‘covered mortgage obligation’, ‘covered operating expenditure’, ‘covered property damage cost’, ‘covered rent obligation’, ‘covered supplier cost’, ‘covered utility payment’, and ‘covered worker protection expenditure’ have the meanings given those terms in section 7A(a);

“(iv) the term ‘eligible entity’—

“(I) means any business concern, nonprofit organization, housing cooperative, veterans organization, Tribal business concern, eligible self-employed individual, sole proprietor, independent contractor, or small agricultural cooperative that—

“(aa) employs not more than 300 employees; and

“(bb) (AA) except as provided in subitems (BB), (CC), and (DD), had gross receipts during the first, second, third, or, only with respect to an application submitted on or after January 1, 2021, fourth quarter in 2020 that demonstrate not less than a 25 percent reduction from the gross receipts of the entity during the same quarter in 2019;

“(BB) if the entity was not in business during the first or second quarter of 2019, but was in business during the third and fourth quarter of 2019, had gross receipts during the first, second, third, or, only with respect to an application submitted on or after January 1, 2021, fourth quarter of 2020 that demonstrate not less than a 25 percent reduction from the gross receipts of the entity during the third or fourth quarter of 2019;

“(CC) if the entity was not in business during the first, second, or third quarter of 2019, but was in business during the fourth quarter of 2019, had gross receipts during the first, second, third, or, only with respect to an application submitted on or after January 1, 2021, fourth quarter of 2020 that demonstrate not less than a 25 percent reduction from the gross receipts of the entity during the fourth quarter of 2019; or

“(DD) if the entity was not in business during 2019, but was in operation on February 15, 2020, had gross receipts during the second, third, or, only with respect to an application submitted on or after January 1, 2021, fourth quarter of 2020 that demonstrate not less than a 25 percent reduction from the gross receipts of the entity during the first quarter of 2020;

“(II) includes a business concern or organization made eligible for a loan under paragraph (36) under clause (iii)(II), (iv)(IV), or (vii)

of subparagraph (D) of paragraph (36) and that meets the requirements described in items (aa) and (bb) of subclause (I); and

“(III) does not include—

“(aa) any entity that is a type of business concern (or would be, if such entity were a business concern) described in section 120.110 of title 13, Code of Federal Regulations (or in any successor regulation or other related guidance or rule that may be issued by the Administrator) other than a business concern described in subsection (a) or (k) of such section; or

“(bb) any business concern or entity primarily engaged in political or lobbying activities, which shall include any entity that is organized for research or for engaging in advocacy in areas such as public policy or political strategy or otherwise describes itself as a think tank in any public documents;

“(cc) any business concern or entity—

“(AA) for which an entity created in or organized under the laws of the People’s Republic of China or the Special Administrative Region of Hong Kong, or that has significant operations in the People’s Republic of China or the Special Administrative Region of Hong Kong, owns or holds, directly or indirectly, not less than 20 percent of the economic interest of the business concern or entity, including as equity shares or a capital or profit interest in a limited liability company or partnership; or

“(BB) that retains, as a member of the board of directors of the business concern, a person who is a resident of the People’s Republic of China;

“(dd) any person required to submit a registration statement under section 2 of the Foreign Agents Registration Act of 1938 (22 U.S.C. 613); or

“(ee) an eligible person or entity (as defined under section 24 of the Economic Aid to Hard-Hit Small Businesses, Non-profits, and Venues Act) that receives a grant under such section 24; and

“(v) the term ‘Tribal business concern’ means a Tribal business concern described in section 31(b)(2)(C).

“(B) LOANS.—Except as otherwise provided in this paragraph, the Administrator may guarantee governed loans to eligible entities under the same terms, conditions, and processes as a loan made under paragraph (36).

“(C) MAXIMUM LOAN AMOUNT.—

“(i) IN GENERAL.—Except as otherwise provided in this subparagraph, the maximum amount of a covered loan made to an eligible entity is the lesser of—

“(I) the product obtained by multiplying—

“(aa) at the election of the eligible entity, the average total monthly payment for payroll costs incurred or paid by the eligible entity during—

“(AA) the 1-year period before the date on which the loan is made; or

“(BB) calendar year 2019; by

“(bb) 2.5; or

“(II) \$2,000,000.

“(ii) SEASONAL EMPLOYERS.—The maximum amount of a covered loan made to an eligible entity that is a seasonal employer is the lesser of—

“(I) the product obtained by multiplying—

“(aa) at the election of the eligible entity, the average total monthly payments of payroll costs incurred or paid by the eligible entity for any 12-week period between February 15, 2019 and February 15, 2020; by

“(bb) 2.5; or

“(II) \$2,000,000.

“(iii) NEW ENTITIES.—The maximum amount of a covered loan made to an eligible entity that did not exist during the 1-year period preceding February 15, 2020 is the lesser of—

“(I) the product obtained by multiplying—

“(aa) the quotient obtained by dividing—

“(AA) the sum of the total monthly payments by the eligible entity for payroll costs paid or incurred by the eligible entity as of the date on which the eligible entity applies for the covered loan; by

“(BB) the number of months in which those payroll costs were paid or incurred; by

“(bb) 2.5; or

“(II) \$2,000,000.

“(iv) NAICS 72 ENTITIES.—The maximum amount of a covered loan made to an eligible entity that is assigned a North American Industry Classification System code beginning with 72 at the time of disbursement is the lesser of—

“(I) the product obtained by multiplying—

“(aa) at the election of the eligible entity, the average total monthly payment for payroll costs incurred or paid by the eligible entity during—

“(AA) the 1-year period before the date on which the loan is made; or

“(BB) calendar year 2019; by

“(bb) 3.5; or

“(II) \$2,000,000.

“(D) BUSINESS CONCERNS WITH MORE THAN 1 PHYSICAL LOCATION.—

“(i) IN GENERAL.—For a business concern with more than 1 physical location, the business concern shall be an eligible entity if the business concern would be eligible for a loan under paragraph (36) pursuant to clause (iii) of subparagraph (D) of such paragraph, as applied in accordance with clause (ii) of this subparagraph, and meets the revenue reduction requirements described in item (bb) of subparagraph (A)(iv)(I).

“(ii) SIZE LIMIT.—For purposes of applying clause (i), the Administrator shall substitute ‘not more than 300 employees’ for ‘not more than 500 employees’ in paragraph (36)(D)(iii).

“(E) WAIVER OF AFFILIATION RULES.—

“(i) IN GENERAL.—The waiver described in paragraph (36)(D)(iv) shall apply for purposes of determining eligibility under this paragraph.

“(ii) SIZE LIMIT.—For purposes of applying clause (i), the Administrator shall substitute ‘not more than 300 employees’ for ‘not more than 500 employees’ in subclause (I) and (IV) of paragraph (36)(D)(iv).

“(F) LOAN NUMBER LIMITATION.—An eligible entity may only receive 1 covered loan.

“(G) EXCEPTION FROM CERTAIN CERTIFICATION REQUIREMENTS.—An eligible entity applying for a covered loan shall not be required to make the certification described in clause (iii) or (iv) of paragraph (36)(G).

“(H) FEE WAIVER.—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

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

“(I) GROSS RECEIPTS AND SIMPLIFIED CERTIFICATION OF REVENUE TEST.—

“(i) LOANS OF UP TO \$150,000.—For a covered loan of not more than \$150,000, the eligible entity—

“(I) may submit a certification attesting that the eligible entity meets the applicable revenue loss requirement under subparagraph (A)(iv)(I)(bb); and

“(II) if the eligible entity submits a certification under subclause (I), shall, on or before the date on which the eligible entity submits an application for forgiveness under subparagraph (J), produce adequate documentation that the eligible entity met such revenue loss standard.

“(ii) FOR NONPROFIT AND VETERANS ORGANIZATIONS.—For purposes of calculating gross receipts under subparagraph (A)(iv)(I)(bb) for an eligible entity that is a nonprofit organization, a veterans organization, or an organization described in subparagraph (A)(iv)(II), gross receipts means gross receipts within the meaning of section 6033 of the Internal Revenue Code of 1986.

“(J) LOAN FORGIVENESS.—

“(i) DEFINITION OF COVERED PERIOD.—In this subparagraph, the term ‘covered period has the meaning given that term in section 7A(a).

“(ii) FORGIVENESS GENERALLY.—Except as otherwise provided in this subparagraph, an eligible entity shall be eligible for forgiveness of indebtedness on a covered loan in the same manner as an eligible recipient with respect to a loan made under paragraph (36) of this section, as described in section 7A.

“(iii) FORGIVENESS AMOUNT.—An eligible entity shall be eligible for forgiveness of indebtedness on a covered loan in an amount equal to the sum of the following costs incurred or expenditures made during the covered period:

“(I) Payroll costs, excluding any payroll costs that are—

“(aa) qualified wages, as defined in subsection (c)(3) of section 2301 of the CARES Act (26 U.S.C. 3111 note), taken into account in determining the credit allowed under each section; or

“(bb) qualified wages taken into account in determining the credit allowed under subsection (a) or (d) of section 303 of the Taxpayer Certainty and Disaster Relief Act of 2020.

“(II) 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).

“(III) Any covered operations expenditure.

“(IV) Any covered property damage cost.

“(V) Any payment on any covered rent obligation.

“(VII) Any covered supplier cost.

“(VIII) Any covered worker protection expenditure.

“(iv) LIMITATION ON FORGIVENESS FOR ALL ELIGIBLE ENTITIES.—Subject to any reductions under section 7A(d), the forgiveness amount under this subparagraph shall be equal to the lesser of—

“(I) the amount described in clause (ii); and

“(II) the amount equal to the quotient obtained by dividing—

“(aa) the amount of the covered loan used for payroll costs during the covered period; and

“(bb) 0.60.

“(v) SUBMISSION OF MATERIALS FOR FORGIVENESS.—For purposes of applying subsection (l)(1) of section 7A to a covered loan of not more than \$150,000 under this paragraph, an eligible entity may be required to provide, at the time of the application for forgiveness, documentation required to substantiate revenue loss in accordance with subparagraph (I).

“(K) LENDER ELIGIBILITY.—Except as otherwise provided in this paragraph, a lender approved to make loans under paragraph (36) may make covered loans under the same terms and conditions as in paragraph (36).

“(L) REIMBURSEMENT FOR LOAN PROCESSING AND SERVICING.—The Administrator shall reimburse a lender authorized to make a covered loan—

“(i) for a covered loan of not more than \$50,000, in an amount equal to the lesser of—

“(I) 50 percent of the balance of the financing outstanding at the time of disbursement of the covered loan; or

“(II) \$2,500;

“(ii) 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 a covered loan of more than \$50,000 and not more than \$350,000; and

“(II) 3 percent for a covered loan of more than \$350,000.

“(M) PUBLICATION OF GUIDANCE.—Not later than 10 days after the date of enactment of this paragraph, the Administrator shall issue guidance addressing barriers to accessing capital for minority, underserved, veteran, and women-owned business concerns for the purpose of ensuring equitable access to covered loans.

“(N) STANDARD OPERATING PROCEDURE.—The Administrator shall, to the maximum extent practicable, allow a lender approved to make covered loans

to use existing program guidance and standard operating procedures for loans made under this subsection.

“(O) SUPPLEMENTAL COVERED LOANS.—A covered loan under this paragraph may only be made to an eligible entity that—

“(i) has received a loan under paragraph (36); and

“(ii) on or before the expected date on which the covered loan under this paragraph is disbursed to the eligible entity, has used, or will use, the full amount of the loan received under paragraph (36).”

- (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.—
- (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.

IN GENERAL. —Section 1106 of the CARES Act (15 U.S.C. 9005) is redesignated as section 7A, transferred to the Small Business Act (15 U.S.C. 631 et seq.), and inserted so as to appear after section 7 of the Small Business Act (15 U.S.C. 636).

- (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;(36);~~
 - (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 operations expenditure” means a payment for any business software or cloud computing service that facilitates business operations, product or service delivery, the processing, payment, or tracking of payroll expenses, human resources, sales and billing functions, or accounting and tracking of supplies, inventory, records, and expenses;
 - (4) the term “covered period” means the period—
 - (3A) ~~the term “covered period” means, subject to subsection (1), the period beginning on the date of the origination of a covered loan; and ending the earlier of—~~

(B) ending on a date selected by the eligible recipient of the covered loan that occurs during the period—

(i) beginning on the date that is 8 weeks after such date of origination; and

(Aii) ending on the date that is 24 weeks after such date of origination; ~~or~~

~~(B) December 31, 2020;~~

(5) the term “covered property damage cost” means a cost related to property damage and vandalism or looting due to public disturbances that occurred during 2020 that was not covered by insurance or other compensation;

(46) the term “covered rent obligation” means rent obligated under a leasing agreement in force before February 15, 2020;

(7) the term “covered supplier cost” means an expenditure made by an entity to a supplier of goods for the supply of goods that—

(A) are essential to the operations of the entity at the time at which the expenditure is made; and

(B) is made pursuant to a contract, order, or purchase order—

(i) in effect at any time before the covered period with respect to the applicable covered loan; or

(ii) with respect to perishable goods, in effect before or at any time during the covered period with respect to the applicable covered loan;

(58) 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;

(9) the term “covered worker protection expenditure”—

(A) means an operating or a capital expenditure to facilitate the adaptation of the business activities of an entity to comply with requirements established or guidance issued by the Department of Health and Human Services, the Centers for Disease Control, or the Occupational Safety and Health Administration, or any equivalent requirements established or guidance issued

by a State or local government, during the period beginning on March 1, 2020 and ending the date on which the national emergency declared by the President under the National Emergencies Act (50 U.S.C. 1601 et seq.) with respect to the Coronavirus Disease 2019 (COVID-19) expires related to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID-19;

(B) may include—

(i) the purchase, maintenance, or renovation of assets that create or expand—

(I) a drive-through window facility;

(II) an indoor, outdoor, or combined or air pressure ventilation or filtration system;

(III) a physical barrier such as a sneeze guard;

(IV) an expansion of additional indoor, outdoor, or combined business space;

(V) an onsite or offsite health screening capability; or

(VI) other assets relating to the compliance with the requirements or guidance described in subparagraph (A), as determined by the Administrator in consultation with the Secretary of Health and Human Services and the Secretary of Labor; and

(ii) the purchase of—

(I) covered materials described in section 328.103(a) of title 44, Code of Federal Regulations, or any successor regulation;

(II) particulate filtering face-piece respirators approved by the National Institute for Occupational Safety and Health, including those approved only for emergency use authorization; or

(III) other kinds of personal protective equipment, as determined by the Administrator in consultation with the Secretary of Health and Human Services and the Secretary of Labor; and

(C) does not include residential real property or intangible property;

~~(610)~~ the term “eligible recipient” means the recipient of a covered loan;

~~(711)~~ 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.~~

(E) covered operations expenditures;

(F) covered property damage costs;

(G) covered supplier costs; and

(H) covered worker protection expenditures; and

(12) the terms ‘payroll costs’ and ‘seasonal employer’ have the meanings given those terms in section 7(a)(36). Such payroll costs shall not include qualified wages taken into account in determining the credit allowed under subsection (a) or (d) of section 303 of the Taxpayer Certainty and Disaster Relief Act of 2020.

(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.

Davis Polk Reformatted Version of December 23, 2020

- (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.
- (4) Any covered utility payment.
- (5) Any covered operations expenditure.
- (6) Any covered property damage cost.
- (7) Any covered supplier cost.
- (8) Any covered worker protection expenditure.

(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.

Davis Polk Reformatted Version of December 23, 2020

(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.—

(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 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 December 31, 2020, [\(or, with respect to a covered loan made on or after the date of enactment of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, not later than the last day of the covered period with respect to such covered loan\)](#) the eligible employer has eliminated the reduction in the number of full-time equivalent employees;
- (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 December 31, 2020, [\(or, with respect to a covered loan made on or after the date of enactment of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, not later than the last day of the covered period with respect to such covered loan\)](#) 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) EXEMPTIONS BASED ON EMPLOYEE AVAILABILITY.—During the period beginning on February 15, 2020, and ending on December 31, 2020, [\(or, with respect to a covered loan made on or after the date of enactment of the Economic Aid to Hard-Hit Small Business, Nonprofits, and Venues Act, ending on the last](#)

[day of the covered period with respect to such covered loan](#)) 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 [\(or, with respect to a covered loan made on or after the date of enactment of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, on or before the last day of the covered period with respect to such covered loan\)](#); 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, [\(or, with respect to a covered loan made on or after the date of enactment of the Economic Aid to Hard-Hit Small Business, Nonprofits, and Venues Act, ending on the last day of the covered period with respect to such covered loan\)](#) related to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID-19.

- (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, [any payment on any covered operations expenditure, any payment on any covered property damage cost, any payment on any covered supplier cost, any payment on any covered worker protection expenditure,](#) or any covered utility payment.”; and

Davis Polk Reformatted Version of December 23, 2020

- (e) Application.—~~An~~Except as provided in subsection (l), 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, purchase orders, orders, invoices, or other documents verifying payments on covered mortgage obligations, covered rent obligations, payments on covered ~~lease obligations~~operations expenditures, payments on covered property damage costs, payments on covered supplier costs, payments on covered worker protection expenditures, 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, make payments on covered operations expenditures, make payments on covered property damage costs, make payments on covered supplier costs, make payments on covered worker protection expenditures, 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) or the certification required under subsection (l), as applicable.
- (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.

(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) Definition.—In this subsection, the term “initial or second draw PPP loan” means a covered loan or a loan under paragraph (37) of section 7(a).

(2) Reliance.—A lender may rely on any certification or documentation submitted by an applicant for an initial or second draw PPP loan or an eligible recipient or eligible entity receiving initial or second draw PPP loan that—

(A) is submitted pursuant to all applicable statutory requirements, regulations, and guidance related to initial or second draw PPP loan, including under paragraph (36) or (37) of section 7(a) and under this section; and

(B) attests that the applicant, eligible recipient, or eligible entity, as applicable, has actually provided the certification or documentation to the lender in accordance with the statutory requirements, regulations, and guidance described in subparagraph (A).

~~(13) No Enforcement Action.—With respect to a lender that relies on a certification or documentation described in paragraph (2) related to an initial or second draw PPP loan, 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)), and the lender shall not be subject to any penalties relating to loan origination or 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~~
of the initial or second draw PPP loan, if—

~~(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.~~

(A) the lender acts in good faith relating to loan origination or forgiveness of the initial or second draw PPP loan based on that reliance; and

(B) all other relevant Federal, State, local, and other statutory and regulatory requirements applicable to the lender are satisfied with respect to the initial or second draw PPP loan.

(i) Tax treatment.—For purposes of the Internal Revenue Code of 1986—

~~(i) Taxability.—For purposes of the Internal Revenue Code of 1986, any amount which (but for this subsection) would be includible in~~ no amount shall be included in the gross income of the eligible recipient by reason of forgiveness of indebtedness described in subsection (b) ~~shall be excluded from gross income.~~

(2) no deduction shall be denied, no tax attribute shall be reduced, and no basis increase shall be denied, by reason of the exclusion from gross income provided by paragraph (1), and

(3) in case of an eligible recipient that is a partnership or S corporation—

(A) any amount excluded from income by reason of paragraph (1) shall be treated as tax exempt income for purposes of sections 705 and 1366 of the Internal Revenue Code of 1986, and

(B) except as provided by the Secretary of the Treasury (or the Secretary's delegate), any increase in the adjusted basis of a partner's interest in a partnership under section 705 of the Internal Revenue Code of 1986 with respect to any amount described in subparagraph (A) shall equal the partner's distributive share of deductions resulting from costs giving rise to forgiveness described in subsection (b).

(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.~~

(l) Simplified Application.—

(1) Covered Loans Up To \$150,000.—

(A) In General.—With respect to a covered loan made to an eligible recipient that is not more than \$150,000, the covered loan amount shall be forgiven under this section if the eligible recipient—

(i) signs and submits to the lender a certification, to be established by the Administrator not later than 24 days after the date of enactment of the Economic Aid to Hard-Hit Small Business, Nonprofits, and Venues Act, which—

(I) shall be not more than 1 page in length; and

(II) shall only require the eligible recipient to provide—

(aa) a description of the number of employees the eligible recipient was able to retain because of the covered loan;

(bb) the estimated amount of the covered loan amount spent by the eligible recipient on payroll costs; and

(cc) the total loan value;

(ii) attests that the eligible recipient has—

(I) accurately provided the required certification; and

(II) complied with the requirements under section 7(a)(36); and

(iii) retains records relevant to the form that prove compliance with such requirements—

(I) with respect to employment records, for the 4-year period following submission of the form; and

(II) with respect to other records, for the 3-year period following submission of the form.

(B) Limitation On Requiring Additional Materials.—An eligible recipient of a covered loan that is not more than \$150,000 shall not, at the time of the application for forgiveness, be required to submit any application or

documentation in addition to the certification and information required to substantiate forgiveness.

(C) Records For Other Requirements.—Nothing in subparagraph (A) or (B) shall be construed to exempt an eligible recipient from having to provide documentation independently to a lender to satisfy relevant Federal, State, local, or other statutory or regulatory requirements, or in connection with an audit as authorized under subparagraph (E).

(D) Demographic Information.—The certification established by the Administrator under subparagraph (A) shall include a means by which an eligible recipient may, at the discretion of the eligible recipient, submit demographic information of the owner of the eligible recipient, including the sex, race, ethnicity, and veteran status of the owner.

(E) Audit Authority.—The Administrator may—

(i) review and audit covered loans described in subparagraph (A);

(ii) access any records described in subparagraph (A)(iii); and

(iii) in the case of fraud, ineligibility, or other material noncompliance with applicable loan or loan forgiveness requirements, modify—

(I) the amount of a covered loan described in subparagraph (A); or

(II) the loan forgiveness amount with respect to a covered loan described in subparagraph (A).

(2) Covered Loans Of More Than \$150,000.

(A) In General.—With respect to a covered loan in an amount that is more than \$150,000, the eligible recipient shall submit to the lender that is servicing the covered loan the documentation described in subsection (e).

(B) Demographic Information.—The process for submitting the documentation described in subsection (e) shall include a means by which an eligible recipient may, at the discretion of the eligible recipient, submit demographic information of the owner of the eligible recipient, including the sex, race, ethnicity, and veteran status of the owner.

(3) Forgiveness Audit Plan.—

(A) In General.—Not later than 45 days after the date of enactment of the Economic Aid to Hard-Hit Small Businesses, Non-Profits, and Venues Act, the Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives an audit plan that details—

- (i) the policies and procedures of the Administrator for conducting forgiveness reviews and audits of covered loans; and
- (ii) the metrics that the Administrator shall use to determine which covered loans will be audited.

(B) Reports.—Not later than 30 days after the date on which the Administrator submits the audit plan required under subparagraph (A), and each month thereafter, the Administrator shall submit to the Committee on Small Business of the House of Representatives a report on the forgiveness review and audit activities of the Administrator under this subsection, which shall include—

- (i) the number of active reviews and audits;
- (ii) the number of reviews and audits that have been ongoing for more than 60 days; and
- (iii) any substantial changes made to the audit plan submitted under subparagraph (A).

Summary report:	
Litera® Change-Pro for Word 10.7.0.7 Document comparison done on 1/5/2021 7:24:55 PM	
Style name: Color Legislative Moves+Images	
Intelligent Table Comparison: Active	
Original DMS: iw://DMS/AmericasActive/93984672/2	
Modified DMS: iw://DMS/AmericasActive/93987377/4	
Changes:	
Add	373
Delete	85
Move From	20
Move To	20
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:	498