

the program would expire before the procedural steps, including the comment periods generally required by the Paperwork Reduction Act, could be completed.

Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a proposed rule, or a final rule pursuant to section 553(b) of the APA or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the **Federal Register**. 5 U.S.C. 603, 604. Specifically, the RFA normally requires agencies to describe the impact of a rulemaking on small entities by providing a regulatory impact analysis. Such analysis must address the consideration of regulatory options that would lessen the economic effect of the rule on small entities. The RFA defines a “small entity” as (1) a proprietary firm meeting the size standards of the Small Business Administration (SBA); (2) a nonprofit organization that is not dominant in its field; or (3) a small government jurisdiction with a population of less than 50,000. 5 U.S.C. 601(3)–(6). Except for small government jurisdictions with a population of less than 50,000, neither State nor local governments are “small entities.”

The requirement to conduct a regulatory impact analysis does not apply if the head of the agency “certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” 5 U.S.C. 605(b). The agency must, however, publish the certification in the **Federal Register** at the time of publication of the rule, “along with a statement providing the factual basis for such certification.” If the agency head has not waived the requirements for a regulatory flexibility analysis in accordance with the RFA’s waiver provision, and no other RFA exception applies, the agency must prepare the regulatory flexibility analysis and publish it in the **Federal Register** at the time of promulgation or, if the rule is promulgated in response to an emergency that makes timely compliance impracticable, within 180 days of publication of the final rule. 5 U.S.C. 604(a), 608(b).

Rules that are exempt from notice and comment are also exempt from the RFA requirements, including conducting a regulatory flexibility analysis, when among other things the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. Small Business

Administration’s Office of Advocacy guide: *How to Comply with the Regulatory Flexibility Act. Ch.1. p.9*. Since this rule is exempt from notice and comment, SBA is not required to conduct a regulatory flexibility analysis.

Authority: 15 U.S.C. 636(a)(36); Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116–136, section 1114 and Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (Pub. L. 116–260), section 303.

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SMALL BUSINESS ADMINISTRATION

13 CFR Parts 120 and 121

[Docket No. SBA–2021–0002]

RIN 3245–AH63

Business Loan Program Temporary Changes; Paycheck Protection Program Second Draw Loans

AGENCY: U.S. Small Business Administration.

ACTION: Interim final rule.

SUMMARY: This interim final rule announces the implementation of section 311 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (the Economic Aid Act). The Economic Aid Act authorizes the U.S. Small Business Administration to guarantee additional loans under the temporary Paycheck Protection Program, which was originally established under the Coronavirus Aid, Relief, and Economic Security Act to provide economic relief to small businesses nationwide adversely impacted under the Coronavirus Disease 2019 (COVID–19) Emergency Declaration (COVID–19 Emergency Declaration) issued by President Trump on March 13, 2020. Section 311 of the Economic Aid Act adds a second temporary program to SBA’s 7(a) Loan Program titled, “Paycheck Protection Program Second Draw Loans.” This interim final rule implements the key provisions of section 311 of the Economic Aid Act and requests public comment.

DATES:

Effective Date: This interim final rule is effective January 12, 2021.

Applicability Date: This interim final rule applies to loan applications and applications for loan forgiveness submitted for Paycheck Protection Program Second Draw Loans.

Comment Date: Comments must be received on or before February 16, 2021.

ADDRESSES: You may submit comments, identified by number SBA–2021–0002 through the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

SBA will post all comments on www.regulations.gov. If you wish to submit confidential business information (CBI) as defined in the User Notice at www.regulations.gov, please send an email to ppp-ifr@sba.gov. All other comments must be submitted through the Federal eRulemaking Portal described above. Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: Call Center Representative at 833–572–0502, or the local SBA Field Office; the list of offices can be found at <https://www.sba.gov/tools/local-assistance/districtoffices>.

SUPPLEMENTARY INFORMATION:

I. Background Information

On December 27, 2020, President Trump signed the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (the Economic Aid Act) (Pub. L. 116–260) into law to provide continued assistance to individuals and businesses that have been financially impacted by the ongoing coronavirus pandemic. Section 311 of the Economic Aid Act added a new temporary section 7(a)(37) to the Small Business Act (15 U.S.C. 636(a)(37)). This new section authorizes the U.S. Small Business Administration (SBA or the Administration) to guarantee Paycheck Protection Program Second Draw Loans (PPP Second Draw Program), under generally the same terms and conditions available under the Paycheck Protection Program (PPP) established under section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)). Under section 311, SBA may guarantee loans under the PPP Second Draw Program through March 31, 2021 (“Second Draw PPP Loans”) to borrowers that previously received a PPP loan under section 7(a)(36) of the Small Business Act (“First Draw PPP Loans”) and have used or will use the full amount of the initial PPP loan for authorized purposes on or before the expected date of disbursement of the Second Draw PPP Loan.

Like First Draw PPP Loans, Second Draw PPP Loans are intended to provide expeditious relief to America’s small

businesses. Second Draw PPP Loans generally are guaranteed by SBA under the same terms, conditions, and processes as First Draw PPP Loans. SBA guarantees 100 percent of Second Draw PPP Loans and SBA may forgive up to the full principal loan amount. Second Draw PPP Loans are subject to SBA's and the Department of the Treasury's (Treasury's) consolidated interim final rules implementing updates to the Paycheck Protection Program for First Draw PPP Loans ("Consolidated First Draw PPP IFR") issued concurrently with this interim final rule (IFR)¹ and all PPP loan program requirements, except as specified in this IFR. The key differences between First Draw PPP Loans and Second Draw PPP Loans are described in this IFR, which explains the loan terms, eligibility requirements, and application process for Second Draw PPP Loans.

II. Comments and Immediate Effective Date

This interim final rule is being issued without advance notice and public comment because section 303 of the Economic Aid Act authorizes SBA to issue regulations to implement the Economic Aid Act without regard to notice requirements. In addition, this rule is being issued to allow for immediate implementation of this program. The intent of the Economic Aid Act is that SBA provide relief to America's small businesses expeditiously. The last day to apply for and receive a PPP loan is March 31, 2021. Given the short duration of this program, and the urgent need to issue loans quickly, the Administrator in consultation with the Secretary has determined that it is impractical and not in the public interest to provide a 30-day delayed effective date. An immediate effective date will give small businesses the maximum amount of time to apply for loans and lenders the maximum amount of time to process applications before the program ends. This good cause justification also supports waiver of the 60-day delayed effective date for major rules under the Congressional Review Act at 5 U.S.C. 808(2). Although this IFR is effective immediately, comments are solicited from interested members of the public on all aspects of the interim final rule.

¹ The Consolidated First Draw PPP IFR titled "Business Loan Program Temporary Changes: Extension of and Changes to Paycheck Protection Program" restates existing regulatory provisions to provide lenders and new PPP borrowers a single regulation to consult on borrower eligibility, lender eligibility, and loan application and origination requirements issues for new First Draw PPP loans, as well as general rules relating to First Draw PPP Loan increases and loan forgiveness.

These comments must be submitted on or before February 16, 2021. SBA will consider these comments and the need for making any revisions as a result of these comments.

III. Summary of Key Terms of PPP Second Draw Loans

The rules applicable to Second Draw PPP Loans are published in section IV of this IFR. This summary provides additional information and explains the key terms in the IFR. All references to subsections refer to section IV.

Second Draw PPP Loans are generally subject to the same terms, conditions and requirements as First Draw PPP Loans. These include, but are not limited to the following terms:

- The guarantee percentage is 100 percent.
- No collateral will be required.
- No personal guarantees will be required.
- The interest rate will be 100 basis points or one percent, calculated on a non-compounding, non-adjustable basis.²
- The maturity is five years.
- All loans will be processed by all lenders under delegated authority and lenders will be permitted to rely on certifications of the borrower to determine the borrower's eligibility and use of loan proceeds.

Subsection (b) of this IFR confirms that these terms apply to Second Draw PPP Loans. Subsection (b) also confirms that SBA's Consolidated First Draw PPP IFR, Frequently Asked Questions (FAQs), and other guidance about PPP loans under section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)) apply to Second Draw PPP Loans, except as specified in this IFR.³

The Economic Aid Act includes terms and conditions, including but not limited to terms relating to eligibility and a borrower's maximum loan amount, that apply only to Second Draw PPP Loans and do not apply to First Draw PPP Loans, regardless of when the First Draw PPP Loan is made. These terms and conditions specific to Second Draw PPP Loans are summarized below.

A. Eligibility Requirements

1. General Eligibility Requirements

In general, the Economic Aid Act made the eligibility requirements for Second Draw PPP Loans narrower than the eligibility requirements for First Draw PPP Loans. The Economic Aid Act

² Section 339 of the Economic Aid Act added "calculated on a non-compounding, non-adjustable basis" to the maximum interest rate for a PPP loan.

³ SBA will be revising the FAQs to conform to the Economic Aid Act as quickly as feasible.

generally provides that a borrower is eligible for a Second Draw PPP Loan only if it has 300 or fewer employees and experienced a revenue reduction in 2020 relative to 2019 (described further below).⁴ In addition, the Economic Aid Act provides that a Second Draw PPP Loan may only be made to an eligible borrower that (i) has received a First Draw PPP Loan, and (ii) has used, or will use, the full amount of the First Draw PPP Loan on or before the expected date on which the Second Draw PPP Loan is disbursed to the borrower.⁵ Accordingly, subsections (c)(1)(i) through (c)(1)(iv) of this IFR implement these criteria. Subsection (c)(1)(ii) of the IFR clarifies that "the full amount" of the borrower's First Draw PPP Loan includes the amount of any increase on such First Draw PPP Loan made pursuant to the Economic Aid Act. In addition, subsection (c)(1)(ii) of the IFR clarifies that the borrower must have spent the full amount of its First Draw PPP Loan on eligible expenses under the PPP rules to be eligible for a Second Draw PPP Loan. This clarification will help ensure program integrity by preventing a borrower from receiving a Second Draw PPP Loan if the borrower has not complied with PPP loan program requirements.⁶

2. Revenue Reduction Requirement

The Economic Aid Act provides that, to be eligible for a Second Draw PPP Loan, the borrower must have experienced a revenue reduction of 25% or greater in 2020 relative to 2019.⁷ A borrower must calculate this revenue reduction by comparing the borrower's quarterly gross receipts for one quarter in 2020 with the borrower's gross receipts for the corresponding quarter of 2019. For example, a borrower with gross receipts of \$50,000 in the second quarter of 2019 and gross receipts of \$30,000 in the second quarter of 2020 has experienced a revenue reduction of 40 percent between the quarters, and is therefore eligible for a Second Draw PPP loan (assuming all other eligibility criteria are met). Subsection (c)(1)(iv)(A) of the IFR reflects this methodology. Subsection (c)(1)(iv)(B) of the IFR provides that a borrower that was in operation in all four quarters of 2019 is deemed to have experienced the required revenue reduction if it

⁴ See paragraph 7(a)(37)(A)(iv) of the Small Business Act.

⁵ See paragraph 7(a)(37)(O) of the Small Business Act.

⁶ Subsection (B)(11) of the Consolidated First Draw PPP IFR specifies that the proceeds of a PPP loan may be spent only on certain eligible expenses.

⁷ See paragraph 7(a)(37)(A)(iv) of the Small Business Act.

experienced a reduction in annual receipts of 25 percent or greater in 2020 compared to 2019 and the borrower submits copies of its annual tax forms substantiating the revenue decline. This provision will allow a borrower to provide annual tax return forms to substantiate its revenue reduction. The Administrator, in consultation with the Secretary of the Treasury (Secretary), has determined that this is necessary to improve administrability of Second Draw PPP Loans by providing borrowers an additional verifiable method for substantiating their revenue reduction. This method will be particularly important for small borrowers that may not have quarterly revenue information readily available. Moreover, this approach is appropriate because, if annual filings show a 25 percent revenue reduction, then at least one quarter in 2020 would have had at least a 25 percent revenue reduction. A borrower that did not experience a 25 percent annual decline in revenues, or that was not in operation in all four quarters of 2019, may still meet the revenue reduction requirement under one of the quarterly measurements described above.

The Economic Aid Act does not include a general definition of gross receipts for purposes of determining a borrower's revenue reduction.⁸ Subsection (c)(2) of the IFR defines gross receipts consistent with the definition of receipts in 13 CFR 121.104 of SBA's size regulations because this definition appropriately captures the type of income that is typically included in a small business's gross receipts.⁹

⁸ For an eligible nonprofit organization, a veterans organization, an eligible nonprofit news organization, eligible 501(c) organization, or eligible destination marketing organization, gross receipts has the meaning in section 6033 of the Internal Revenue Code of 1986. See paragraph 7(a)(37)(I)(ii) of the Small Business Act. Subsection (c)(2) of the IFR clarifies that this definition, which generally relates to eligible nonprofit organizations, applies only to eligible nonprofit news organizations rather than to all eligible news organizations.

⁹ Subsection (c)(2) of the IFR generally defines gross receipts to include all revenue in whatever form received or accrued (in accordance with the entity's accounting method) from whatever source, including from the sales of products or services, interest, dividends, rents, royalties, fees, or commissions, reduced by returns and allowances. Generally, receipts are considered "total income" (or in the case of a sole proprietorship, independent contractor, or self-employed individual "gross income") plus "cost of goods sold," and excludes net capital gains or losses as these terms are defined and reported on IRS tax return forms. Gross receipts do not include the following: Taxes collected for and remitted to a taxing authority if included in gross or total income (such as sales or other taxes collected from customers and excluding taxes levied on the concern or its employees); proceeds from transactions between a concern and its domestic or foreign affiliates; and amounts collected for another by a travel agent, real estate

Moreover, this definition will enhance the administrability of Second Draw PPP Loans because it is a definition already used by the Administration and many small businesses.

The IFR specifies that any forgiveness amount of a First Draw PPP Loan that a borrower received in calendar year 2020 is excluded from a borrower's gross receipts. Excluding the forgiveness amount from a borrower's gross receipts is consistent with section 7A(i) of the Small Business Act, which expressly excludes PPP forgiveness amounts from being taxed as income.¹⁰ This clarification ensures the effectiveness of the second draw loan program by ensuring that a borrower is not disqualified from receiving a Second Draw PPP Loan because it received forgiveness on a First Draw PPP Loan. This furthers the purpose of the second draw loan provisions, which is to deliver additional aid to small businesses that previously received a First Draw PPP Loan.

3. Business Concerns With More Than One Physical Location

Under the CARES Act, any single business entity that is assigned a NAICS code beginning with 72 (including hotels and restaurants) and employs not more than 500 employees per physical location is eligible to receive a First Draw PPP Loan.¹¹ In addition, as discussed below, under the Consolidated First Draw PPP IFR, SBA's affiliation rules (13 CFR 121.301) do not apply to any business entity that is assigned a NAICS code beginning with 72 and that employs not more than a total of 500 employees.¹² As a result, if each hotel or restaurant location owned by a parent business is a separate legal business entity and employs not more than 500 employees, each hotel or restaurant location is permitted to apply for a separate PPP loan provided it uses its unique EIN.

Section 317 of the Economic Aid Act modified this provision for Second

agent, advertising agent, conference management service provider, freight forwarder or customs broker. All other items, such as subcontractor costs, reimbursements for purchases a contractor makes at a customer's request, investment income, and employee-based costs such as payroll taxes, may not be excluded from gross receipts. Subsection (c)(2) also adapts the methodology for calculating affiliate receipts from 13 CFR 121.104.

¹⁰ Section 1106 of the CARES Act (15 U.S.C. 9005) was 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) in section 304(b) of the Economic Aid Act.

¹¹ Paragraph 7(a)(36)(D)(iii)(I) of the Small Business Act.

¹² Paragraph 7(a)(36)(D)(iv) of the Small Business Act.

Draw PPP Loans by reducing the limit on employees per physical location to 300. Accordingly, a single business entity that is assigned a NAICS code beginning with 72 is eligible to receive a Second Draw PPP Loan if it employs no more than 300 employees per physical location and meets the revenue reduction requirements and otherwise satisfies the eligibility criteria described in this IFR.¹³ Under section 317 of the Economic Aid Act, the same standard applies to certain news organizations.¹⁴ Subsections (c)(3) and (c)(4) of the IFR implement these statutory provisions. Borrowers may consult PPP Frequently Asked Question (FAQ) 24¹⁵ for guidance on these standards for business concerns with more than one physical location, except that, for Second Draw PPP Loans, the number of employees per physical location is limited to 300 rather than 500.

B. Affiliation Rules

The same affiliation rules that apply to First Draw PPP Loans apply to Second Draw PPP Loans, except as provided in this IFR. As with First Draw PPP Loans, in most cases, a borrower is considered together with its affiliates to determine eligibility for the PPP.¹⁶ However, the CARES Act waived the affiliation rules for certain categories of borrowers.¹⁷ Paragraph 7(a)(37)(E) of the Small Business Act, as amended by the Economic Aid Act, applies the same

¹³ Paragraph 7(a)(37)(D) of the Small Business Act.

¹⁴ Paragraph 7(a)(36)(D)(iii)(II) of the Small Business Act.

¹⁵ See PPP FAQ #24 (posted April 13, 2020), available at <https://www.sba.gov/sites/default/files/2020-12/Final%20PPP%20FAQs%20%28December%202020%29-508.pdf>.

¹⁶ Paragraph 7(a)(36)(D)(iv) of the Small Business Act (15 U.S.C. 636(a)(36)(D)(iv)), as added by the CARES Act and amended by the Economic Aid Act, waived the affiliation rules contained in § 121.103 for (1) any business concern with not more than 500 employees that, as of the date on which the loan is disbursed, is assigned a NAICS code beginning with 72; (2) any business concern operating as a franchise that is assigned a franchise identifier code by SBA; (3) 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 (4)(a) 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 13 CFR 121.105, or any successor thereto) that employs not more than 500 employees, or the size standard established by the Administrator for the NAICS code applicable to the business concern, per physical location of such business concern and is majority owned or controlled by a business concern that is assigned a NAICS code beginning with 511110 or 5151; or (b) any nonprofit organization that is assigned a NAICS code beginning with 5151.

¹⁷ Paragraph 7(a)(36)(D)(iv) of the Small Business Act.

waivers to Second Draw PPP Loans, adds a waiver for certain eligible news organizations, and makes adjustments to reflect the reduced size requirement for Second Draw PPP Loans. Specifically, business concerns with a NAICS code beginning with 72 qualify for the affiliation waiver for Second Draw PPP Loans if they employ 300 or fewer employees. Eligible news organizations with a NAICS code beginning with 511110 or 5151 (or majority-owned or controlled by a business concern with those NAICS codes) may qualify for the affiliation waiver for Second Draw PPP Loans only if they employ 300 or fewer employees per physical location.¹⁸ Subsection (d)(2) implements these revised affiliation waivers. SBA also adopted a religious exemption to the affiliation rules by regulation,¹⁹ which applies to Second Draw PPP loans.

C. Excluded Entities

An entity that is ineligible to receive a First Draw PPP Loan under the CARES Act or Consolidated First Draw PPP IFR is also ineligible for a Second Draw PPP Loan.²⁰ Subsection (e)(1) of the IFR implements this restriction. Subsection (e)(1) ensures that a borrower that received a First Draw PPP Loan despite being ineligible to receive the loan is not eligible to receive a Second Draw PPP Loan.

The Economic Aid Act also prohibits several additional categories of borrowers from receiving a Second Draw PPP Loan under section 7(a)(37) of the Small Business Act. These categories of prohibited borrowers are listed in subsection (e) of the IFR:

- A business concern or entity primarily engaged in political activities or lobbying activities, including any entity that is organized for research or for engaging in advocacy in areas such as public policy or political strategy or that describes itself as a think tank in any public documents;²¹
- certain entities organized under the laws of the People's Republic of China or the Special Administrative Region of Hong Kong, or with other specified ties to the People's Republic of China or the

Special Administrative Region of Hong Kong;²²

- any person required to submit a registration statement under section 2 of the Foreign Agents Registration Act of 1938 (22 U.S.C. 612);²³
- a person or entity that receives a grant for shuttered venue operators under section 324 of the Economic Aid Act;²⁴
- entities in which the President, the Vice President, the head of an Executive department, or a Member of Congress, or the spouse of such person owns, controls, or holds at least 20 percent of any class of equity;²⁵ or
- a publicly traded company, defined as 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).²⁶

In addition, subsection (e)(9) of this IFR provides that an entity that has previously received a Second Draw PPP Loan may not receive another Second Draw PPP Loan, as required by the Economic Aid Act.²⁷ Subsection (e)(9) also prohibits an entity that has permanently closed from receiving a Second Draw PPP Loan because paragraph 7(a)(37)(A)(iv) of the Small Business Act is best understood to describe existing businesses. The Administrator, in consultation with the Secretary, has determined this provision is also necessary to maintain program integrity, prevent abuse, and preserve the availability of Second Draw PPP Loan funds for businesses still in operation. Preserving funds for such businesses is necessary because only businesses that are still in operation will retain employees, which is a primary purpose of the PPP. A borrower that has temporarily closed or temporarily suspended its business remains eligible for a Second Draw PPP Loan.

D. Payroll Cost Calculation

In general, section 307 of the Economic Aid Act provides that the maximum loan amount for a Second Draw PPP Loan is equal to the lesser of two and half months of the borrower's average monthly payroll costs or \$2 million. Relative to First Draw PPP loans, the Economic Aid Act adjusted the methodology for calculating a borrower's payroll costs. Unlike First

Draw PPP Loans, the Economic Aid Act provides that the relevant time period for calculating a borrower's payroll costs for a Second Draw PPP Loan is either the twelve-month period prior to when the loan is made or calendar year 2019. The Act also provided tailored methodologies for certain categories of borrowers. These calculations are reflected in subsection (f) of this IFR. Subsection (f) of the IFR uses "calendar year 2020" to refer to "the twelve-month period prior to when the loan is made." Calculating payroll costs based on calendar year 2020 rather than the twelve months preceding the date the loan is made will simplify the calculations and documentation requirements for borrowers because payroll records are more commonly created and retained on a calendar-year basis. Allowing borrowers to calculate payroll costs based on calendar year 2020 is also not expected to result in a significant difference in payroll costs compared to the twelve months preceding the date the loan is made because all Second Draw PPP Loans will be made in the first quarter of 2021. However, the rule notes that Second Draw PPP Loan borrowers who are not self-employed (including sole proprietorships and independent contractors) are also permitted to use the precise 1-year period before the date on which the loan is made to calculate payroll costs if they choose not to use 2019 or 2020 to calculate payroll costs.

Consistent with the Economic Aid Act, subsections (f)(3) and (f)(4) of the IFR include tailored calculation methodologies for seasonal businesses, new entities that did not exist for the full twelve-month period preceding the Second Draw PPP Loan, and borrowers assigned a NAICS code beginning with 72 at the time of disbursement. For borrowers assigned a NAICS code beginning with 72 at the time of disbursement, the Economic Aid Act provides that the maximum loan amount is equal to three-and-a-half (3.5) months of payroll costs rather than two-and-a-half (2.5) months.²⁸ These subsections also provide that, for a borrower with a NAICS code beginning with 72 that would fall into more than one category listed in subsection (f) (for example, a business with a NAICS code beginning with 72 that is also a seasonal business or is also a new entity without 12 months of payroll costs), the borrower may calculate its average monthly payroll costs based on the methodology that applies to the entity but may use the 3.5 multiplier

¹⁸ Paragraph 7(a)(37)(E) of the Small Business Act.

¹⁹ See section (B)(3)(c) of the Consolidated First Draw PPP IFR.

²⁰ Paragraph 7(a)(37)(O) of the Small Business Act provides that a Second Draw PPP Loan may be made only to a borrower that received a First Draw PPP Loan under paragraph 7(a)(36). In addition, section 7(a)(37)(B) provides that the Administrator may guarantee covered loans to eligible entities under the same terms, conditions, and processes as First Draw PPP Loans.

²¹ Paragraph 7(a)(37)(A)(iv)(III)(bb) of the Small Business Act.

²² Paragraph 7(a)(37)(A)(iv)(III)(cc) of the Small Business Act.

²³ Paragraph 7(a)(37)(A)(iv)(III)(dd) of the Small Business Act.

²⁴ Paragraph 7(a)(37)(A)(iv)(III)(ee) of the Small Business Act.

²⁵ Section 322 of the Economic Aid Act.

²⁶ Section 342 of the Economic Aid Act.

²⁷ Paragraph 7(a)(37)(F) of the Small Business Act.

²⁸ Paragraph 7(a)(37)(C)(iv) of the Small Business Act.

applicable to businesses with a NAICS code beginning with 72. The Administrator, in consultation with the Secretary, has determined that this methodology is necessary to provide small businesses in the accommodation and food services sector the full amount of relief provided in the Economic Aid Act while allowing these borrowers to calculate their average monthly payroll costs accurately.

The Economic Aid Act included a new payroll cost calculation for farmers and ranchers receiving First Draw PPP Loans. However, it did not specify how payroll costs should be calculated for Second Draw PPP Loans to farmers and ranchers. This IFR clarifies that the same general calculation for farmers and ranchers applicable to First Draw PPP Loans applies to Second Draw PPP Loans, with adjustments that (i) eliminate the provision for refinancing of an Economic Injury Disaster Loan (EIDL), which does not apply to Second Draw PPP Loans, and (ii) apply the choice of time period for calculating a farmer's or rancher's payroll costs for Second Draw PPP Loans, consistent with other Second Draw PPP Loans. This IFR also specifies that, in calculating a farmer's or rancher's maximum loan amount, any employee payroll costs should be subtracted from the farmer's or rancher's gross income to avoid double-counting amounts that represent pay to the employees of the farmer or rancher.

Subsections (f)(7) and (f)(8) of the IFR include tailored calculation methodologies for self-employed individuals and partnerships. These methodologies are based on the corresponding methodologies for self-employed individuals and partnerships that are used for First Draw PPP Loans.²⁹ These methodologies have been adjusted to eliminate the provision for refinancing of an EIDL loan, which does not apply to Second Draw PPP loans and to apply the choice of time period for calculating payroll costs, consistent with other Second Draw PPP loans.

Finally, subsection (f)(9) provides that businesses that are part of a single corporate group shall in no event receive more than \$4,000,000 of Second Draw PPP Loans in the aggregate. The Administrator, in consultation with the Secretary, determined that limiting the amount of Second Draw PPP Loans that a single corporate group may receive will promote the availability of PPP loans to the largest possible number of borrowers, consistent with the CARES

and Economic Aid Act. The Administrator has concluded that a limitation of \$4,000,000 is appropriate because it is proportional to the \$20,000,000 maximum amount for corporate groups that is provided under the Consolidated First Draw PPP IFR when the maximum loan amount for a single PPP loan is \$10,000,000.

E. Second Draw PPP Loan Application and Documentation Requirements

Subsection (g) of this IFR includes the application and documentation requirements for Second Draw PPP Loans. The documentation required to substantiate an applicant's payroll cost calculations is generally the same as documentation required for First Draw PPP Loans. However, no additional documentation to substantiate payroll costs will be required if the applicant (i) used calendar year 2019 figures to determine its First Draw PPP Loan amount, (ii) used calendar year 2019 figures to determine its Second Draw PPP Loan amount (instead of calendar year 2020), and (iii) the lender for the applicant's Second Draw PPP Loan is the same as the lender that made the applicant's First Draw PPP Loan. In such cases, additional documentation is not required because the lender already has the relevant documentation supporting the borrower's payroll costs. The lender may request additional documentation, however, if on further review the lender concludes that it would be useful in conducting the lender's good-faith review of the borrower's loan amount calculation.

For loans with a principal amount greater than \$150,000, the applicant must also submit documentation adequate to establish that the applicant experienced a revenue reduction of 25% or greater in 2020 relative to 2019. (The revenue reduction requirement is addressed in subsection (c)(1)(iv) of this IFR.) Such documentation may include relevant tax forms, including annual tax forms, or, if relevant tax forms are not available, quarterly financial statements or bank statements. For loans with a principal amount of \$150,000 or less, such documentation is not required at the time the borrower submits its application for a loan, but must be submitted on or before the date the borrower applies for loan forgiveness, as required under the Economic Aid Act.³⁰ If a borrower does not submit an application for loan forgiveness, such documentation must be provided upon SBA's request.

F. Lender Requirements

Subsection (g) of this IFR contains the provisions specific to lenders for Second Draw PPP Loans. Paragraph 7(a)(37)(K) of the Small Business Act, added by the Economic Aid Act, states that a lender approved to make First Draw PPP loans may make Second Draw PPP Loans under the same terms and conditions as new First Draw PPP Loans. Subsection (g)(2) of this IFR provides that lenders are subject to the same requirements when making Second Draw PPP Loans as when they are making First Draw PPP Loans. These provisions allow a lender approved to make Second Draw PPP Loans to use existing program guidance and standard operating procedures to the maximum extent practicable.³¹ The requirements applicable to PPP lenders are in sections (C) and (D) of the Consolidated First Draw PPP IFR. If a borrower has not submitted new payroll documentation with its Second Draw PPP Loan application because it previously submitted 2019 payroll information to the same lender when it applied for its First Draw PPP Loan, then the lender must confirm the borrower's average monthly payroll costs based on that prior documentation.

In addition, for a Second Draw PPP Loan greater than \$150,000, the lender must confirm the dollar amount and percentage of the borrower's revenue reduction by performing a good faith review, in a reasonable time, of the borrower's calculations and supporting documents concerning the borrower's revenue reduction. If the lender identifies errors in the borrower's calculation or a material lack of substantiation in the borrower's supporting documents, the lender should work with the borrower to remedy the issue.

G. Loans to Borrowers With Unresolved First Draw PPP Loans

As described in SBA's interim final rule on SBA Loan Review Procedures and Related Borrower and Lender Responsibilities, SBA may review any PPP loan, as the Administrator deems appropriate.³² Subsection (i) of the IFR establishes procedures relating to the handling of a Second Draw PPP Loan application by a borrower whose First Draw PPP Loan is under review by SBA ("unresolved borrower"). If a borrower's First Draw PPP loan is under review by SBA and/or information in SBA's possession indicates that the borrower may have been ineligible for the First

²⁹ See subsections (B)(4)(b) and (B)(4)(e) of the Consolidated First Draw PPP IFR.

³⁰ See paragraph 7(a)(37)(I)(i) of the Small Business Act.

³¹ Paragraph 7(a)(37)(N) of the Small Business Act.

³² 85 FR 33010, 33012.

Draw PPP Loan it received or for the loan amount it received, the lender will receive notification from SBA when the lender submits an application for a guaranty of a Second Draw PPP Loan and will not receive an SBA loan number until the issue related to the unresolved borrower's First Draw PPP Loan is resolved. SBA will resolve issues related to unresolved borrowers expeditiously. These procedures are designed to promote compliance with the eligibility requirements for Second Draw PPP Loans by preventing additional loans from being made to borrowers that were not eligible for a First Draw PPP Loan or received an impermissible loan amount. At the same time, these procedures do not disqualify an eligible unresolved borrower from receiving a Second Draw PPP Loan, in recognition that many flags will be resolved in the borrower's favor. The Administrator, in consultation with the Secretary, has determined that these procedures strike an appropriate balance between promoting program integrity and preventing abuse, while making Second Draw PPP Loans available to all eligible borrowers as expeditiously as possible. SBA will set aside available appropriations to fund Second Draw PPP Loans applied for by unresolved borrowers in the event they are approved.

H. Loan Forgiveness

Loan forgiveness of Second Draw PPP Loans and the loan review process for Second Draw PPP Loans are generally subject to the interim final rules regarding Loan Forgiveness and SBA Loan Review Procedures and Related Borrower and Lender Responsibilities, as modified to conform to the Economic Aid Act by the Consolidated First Draw PPP IFR, which is being published concurrently with this IFR. Subsection (j) contains forgiveness provisions specific to Second Draw PPP loans.

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IV. Paycheck Protection Program Second Draw Loans

(a) Second Draw PPP Loan Program

Under section 7(a)(37) of the Small Business Act (15 U.S.C. 636(a)(37)), SBA is authorized to guarantee Paycheck Protection Program Second Draw Loans ("Second Draw PPP Loans").

(b) What requirements apply to Second Draw PPP Loans?

(1) Second Draw PPP Loans are subject to SBA's and the Department of the Treasury's ("Treasury's") consolidated interim final rule implementing the Paycheck Protection Program ("Consolidated First Draw PPP IFR") and all PPP loan program requirements, except as otherwise provided in this section, including but not limited to the following terms:

- (i) The guarantee percentage is 100 percent.
- (ii) No collateral will be required.
- (iii) No personal guarantees will be required.
- (iv) The interest rate will be 100 basis points or one percent, calculated on a non-compounding, non-adjustable basis.
- (v) The maturity is five years.
- (vi) All loans will be processed by all lenders under delegated authority and lenders will be permitted to rely on certifications of the borrower in order to determine eligibility of the borrower and the use of loan proceeds.

(2) Frequently Asked Questions and other guidance issued by SBA or by SBA in consultation with the Department of the Treasury with respect to PPP loans under section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)) ("First Draw PPP Loans") apply to Second Draw PPP Loans, except as otherwise provided in this section.

(c) Who is eligible for a Second Draw PPP Loan?

Subject to subsection (e) of this section, below, the following applicants are eligible for Second Draw PPP Loans:

- (1) An applicant is eligible for a Second Draw PPP Loan if it is a business concern, independent contractor, eligible self-employed individual, sole proprietor, nonprofit organization eligible for a First Draw PPP Loan, veterans organization, Tribal business concern, housing cooperative, small agricultural cooperative, eligible 501(c)(6) organization or destination

marketing organization, or an eligible nonprofit news organization³³ that:

(i) Previously received a First Draw PPP loan in accordance with the eligibility criteria in the Consolidated First Draw PPP IFR;

(ii) has used, or will use, the full amount of its First Draw PPP Loan (including the amount of any increase on such First Draw PPP Loan) on authorized uses under subsection (B)(11) of the Consolidated First Draw PPP IFR on or before the expected date on which the Second Draw PPP Loan will be disbursed;³⁴

(iii) employs not more than 300 employees, unless it satisfies the alternative criteria for businesses with a North American Industry Classification System ("NAICS") code beginning with 72 and eligible news organizations with more than one physical location described in subsection (c)(3) or (c)(4) of this section; and

(iv) (A) experienced a reduction in revenue in calendar year 2020, measured as follows:

(1) the applicant had gross receipts during the first, second, third, or fourth quarter in 2020 that demonstrate at least a 25 percent reduction from the applicant's gross receipts during the same quarter in 2019 (for example, an applicant that had gross receipts of \$50,000 in the second quarter of 2019 and had gross receipts of \$30,000 in the second quarter of 2020 experienced a 40 percent revenue reduction between these two quarters);

(2) if the applicant was not in business during the first or second quarter of 2019, but was in business during the third and fourth quarters of 2019, the applicant had gross receipts during the first, second, third, or fourth quarter of 2020 that demonstrate at least a 25 percent reduction from the applicant's gross receipts during the third or fourth quarter of 2019 (for example, an applicant that had gross receipts of \$50,000 in the third quarter of 2019 and had gross receipts of \$30,000 in the third quarter of 2020—demonstrating a reduction of 40 percent from the applicant's gross receipts during the third quarter in 2019);

(3) if the applicant was not in business during the first, second, or third quarter of 2019, but was in business during the fourth quarter of 2019, the applicant had gross receipts

³³ All terms in this subsection have the same definitions as in sections 7(a)(36) and (37) of the Small Business Act and the Consolidated First Draw PPP IFR, as applicable.

³⁴ A lender must make disbursement of the loan within ten calendar days of loan approval. See subsection (D)(7) of the Consolidated First Draw PPP IFR.

during the first, second, third, or fourth quarter of 2020 that demonstrate at least a 25 percent reduction from the fourth quarter of 2019 (for example, an applicant that had gross receipts of \$50,000 in the fourth quarter of 2019 and had gross receipts of \$30,000 in the fourth quarter of 2020—demonstrating a reduction of 40 percent from the applicant's gross receipts during the fourth quarter in 2019); or

(4) if the applicant was not in business during 2019, but was in operation on February 15, 2020, the applicant had gross receipts during the second, third, or fourth quarter of 2020 that demonstrate at least a 25 percent reduction from the gross receipts of the entity during the first quarter of 2020 (for example, an applicant that had gross receipts of \$50,000 in the first quarter of 2020 and had gross receipts of \$30,000 in the fourth quarter of 2020—demonstrating a reduction of 40 percent from the applicant's gross receipts during the first quarter in 2020).

(B) An applicant that was in operation in all four quarters of 2019 is deemed to have experienced the revenue reduction in subsection (c)(1)(iv)(A)(1) if it experienced a reduction in annual receipts of 25 percent or greater in 2020 compared to 2019 and the borrower submits copies of its annual tax forms substantiating the revenue decline.

(2)(i) Gross receipts includes all revenue in whatever form received or accrued (in accordance with the entity's accounting method) from whatever source, including from the sales of products or services, interest, dividends, rents, royalties, fees, or commissions, reduced by returns and allowances. Generally, receipts are considered "total income" (or in the case of a sole proprietorship, independent contractor, or self-employed individual "gross income") plus "cost of goods sold," and excludes net capital gains or losses as these terms are defined and reported on IRS tax return forms. Gross receipts do not include the following: Taxes collected for and remitted to a taxing authority if included in gross or total income (such as sales or other taxes collected from customers and excluding taxes levied on the concern or its employees); proceeds from transactions between a concern and its domestic or foreign affiliates; and amounts collected for another by a travel agent, real estate agent, advertising agent, conference management service provider, freight forwarder or customs broker. All other items, such as subcontractor costs, reimbursements for purchases a contractor makes at a customer's request, investment income, and employee-based costs such as payroll

taxes, may not be excluded from gross receipts.

(ii) Gross receipts of affiliates are calculated as follows:

(A) Gross receipts of a borrower with affiliates is calculated by adding the gross receipts of the business concern with the gross receipts of each affiliate.

(B) If a borrower has acquired an affiliate or been acquired as an affiliate during 2020, gross receipts includes the receipts of the acquired or acquiring concern. This aggregation applies for the entire period of measurement, not just the period after the affiliation arose. However, if a concern acquired a segregable division of another business concern during 2020, gross receipts do not include the receipts of the acquired division prior to the acquisition.

(C) The gross receipts of a former affiliate are not included. This exclusion of gross receipts of such former affiliate applies during the entire period of measurement, rather than only for the period after which affiliation ceased. However, if a borrower sold a segregable division during 2020, the gross receipts will continue to include the receipts of the division that was sold.

(D) All terms in this subsection shall have the meaning attributed to them by the IRS.

(iii) For an eligible nonprofit organization, a veterans organization, an eligible nonprofit news organization, an eligible 501(c)(6) organization, or eligible destination marketing organization, gross receipts means gross receipts within the meaning of section 6033 of the Internal Revenue Code of 1986.

(iv) The amount of any forgiven First Draw PPP Loan shall not be included toward any borrower's gross receipts.

(3) Any business concern that has more than one physical location and that employs not more than 300 employees per physical location is eligible to receive a Second Draw PPP Loan if it is assigned a NAICS code beginning with 72 at the time of loan disbursement and otherwise meets the eligibility criteria in subsection (c)(1).

(4) Any business concern, or 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.*), that has more than one physical location and that employs not more than 300 employees per physical location is eligible to receive a Second Draw PPP Loan if it meets the eligibility criteria in subsection (c)(1) and: (1) Is majority owned or controlled by a business concern that is assigned a NAICS code beginning with 511110 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 (2) makes a good faith certification that proceeds of the loan will be used to support expenses at the component of the organization that produces or distributes locally focused or emergency information.

(d) How do SBA's affiliation rules affect an applicant's eligibility for a Second Draw PPP Loan?

(1) Eligibility for Second Draw PPP Loans is governed by the same affiliations rules (and waivers) as First Draw PPP Loans, except as described in subsection (d)(2).

(2) The affiliation rules under 13 CFR 121.301(f) are waived with respect to eligibility for a Second Draw PPP Loan for:

(i) Any business concern with not more than 300 employees that, as of the date on which the covered loan is disbursed, is assigned a NAICS code beginning with 72; and

(ii) (A) 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 13 CFR 121.105, or any successor thereto) that employs not more than 300 employees, per physical location of such business concern and is majority owned or controlled by a business concern that is assigned a NAICS code beginning with 511110 or 5151; or

(B) any nonprofit organization that is assigned a NAICS code beginning with 5151.

(e) Who is not eligible for a Second Draw PPP Loan?

An applicant is not eligible for a Second Draw PPP Loan, even if it meets the eligibility requirements of subsection (c) of this section, if the applicant is:

(1) Excluded from eligibility under the Consolidated First Draw PPP IFR;³⁵

(2) a business concern or entity primarily engaged in political activities or lobbying activities, as defined in section 3 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1602), including any entity that is organized for research or for engaging in advocacy in areas such as public policy or political strategy or

³⁵ See generally section (B)(2) of the Consolidated First Draw PPP IFR.

otherwise describes itself as a think tank in any public documents;

(3) any business concern or entity:

(i) 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

(ii) 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;

(4) any person required to submit a registration statement under section 2 of the Foreign Agents Registration Act of 1938 (22 U.S.C. 612);

(5) any person or entity that receives a grant for shuttered venue operators under section 324 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act;

(6) any entity in which the President, the Vice President, the head of an Executive department, or a Member of Congress, or the spouse of such person as determined under applicable common law, directly or indirectly holds a controlling interest in the entity, where:

(i) "controlling interest" means owning, controlling, or holding not less than 20 percent, by vote or value, of the outstanding amount of any class of equity interest in an entity;

(ii) "equity interest" means:

(A) A share in an entity, without regard to whether the share is transferable or classified as stock or anything similar;

(B) a capital or profit interest in a limited liability company or partnership; or

(C) a warrant or right, other than a right to convert, to purchase, sell, or subscribe to a share or interest described in (A) or (B), respectively;

(iii) "Executive department" has the meaning given the term in section 101 of title 5, United States Code;

(iv) "Member of Congress" means a Member of the Senate or House of Representatives, a Delegate to the House of Representatives, and the Resident Commissioner from Puerto Rico; and

(v) For the purpose of determining whether a person has a controlling interest in the entity, the securities owned, controlled, or held by the President, the Vice President, the head of an Executive department, or a

Member of Congress, shall be aggregated with the securities held by his or her spouse as determined under applicable common law;

(7) any 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), where 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)) (except SBA will not consider whether a news organization that is eligible under subsection (c)(4) is affiliated with an entity, which includes any entity that owns or controls such news organization, that is an issuer);

(8) an entity that has previously received a Second Draw PPP Loan; or

(9) an entity that has permanently closed.

(f) What is the maximum loan amount for a Second Draw PPP Loan?

(1) In general, the maximum loan amount for a Second Draw PPP Loan is equal to the lesser of two and half months of the borrower's average monthly payroll costs or \$2 million, except as otherwise specified in this subsection (e). A borrower's average monthly payroll costs may be based on calendar year 2020, calendar year 2019,³⁶ or as otherwise specified in subsections (f)(2) through (f)(9) of this section. "Payroll costs" has the same meaning as in subsections (B)(4)(g) and (B)(4)(h) of the Consolidated First Draw PPP IFR and is calculated in the same manner. In calculating a borrower's payroll costs, the borrower must subtract any compensation paid to an employee in excess of \$100,000 on an annualized basis, as prorated for the time period during which the payments are made or the obligation to make the payments is incurred.

(2) Except as otherwise provided in subsection (f)(3) through (f)(7), the maximum amount of a Second Draw PPP Loan is calculated as the lesser of:

(i) The product obtained by multiplying:

(A) The average total monthly payment for payroll costs incurred or paid by the borrower during 2019 or 2020 (at the election of the borrower); by

(B) 2.5; or

(ii) \$2,000,000.

³⁶ Second Draw PPP Loan borrowers who are not self-employed, sole proprietorships, or independent contractors are also permitted to use the precise 1-year period before the date on which the loan is made to calculate payroll costs if they choose not to use 2019 or 2020. Since most borrowers will use 2019 or 2020 the rule text refers only to 2019 or 2020 for simplicity and readability.

(3) The maximum amount of a Second Draw PPP Loan to a borrower that is a seasonal employer (meaning an employer that does not operate for more than 7 months in any calendar year or that 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) is calculated as the lesser of:

(i) The product obtained by multiplying:

(A) At the election of the borrower, the average total monthly payments for payroll costs incurred or paid by the borrower for any 12-week period between February 15, 2019 and February 15, 2020; by

(B) 2.5 (or, only for a borrower assigned a NAICS code beginning with 72 at the time of disbursement as defined in subsection (f)(10), 3.5); or

(ii) \$2,000,000.

(4) The maximum amount of a Second Draw PPP Loan to a borrower that did not exist during the 1-year period preceding February 15, 2020, but was in operation on February 15, 2020 ("new entity"), is calculated as the lesser of:

(i) The product obtained by multiplying:

(A) The quotient obtained by dividing:

(1) The sum of the total monthly payments by the borrower for payroll costs paid or incurred by the borrower as of the date on which the borrower applies for the Second Draw PPP Loan; by

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

(B) 2.5 (or, only for a borrower assigned a NAICS code beginning with 72 at the time of disbursement as defined in subsection (f)(10), 3.5); or

(ii) \$2,000,000.

(5) The maximum amount of a Second Draw PPP Loan made to a borrower assigned a NAICS code beginning with 72 at the time of disbursement as defined in subsection (f)(10) (that is not a seasonal employer or new entity addressed in subsection (f)(3) or (f)(4) or a borrower with self-employment income or a partnership addressed in subsection (f)(7) or (f)(8) of this section) is calculated as the lesser of:

(i) The product obtained by multiplying:

(A) The average total monthly payment for payroll costs incurred or paid by the borrower during either 2019 or 2020 (at the borrower's election) by

(B) 3.5; or

(ii) \$2,000,000.

(6) (i) The maximum amount of a Second Draw PPP Loan to a farmer or rancher that:

(A) Operates as a sole proprietorship or as an independent contractor, or is an eligible self-employed individual;

(B) reports farm income or expenses on a Schedule F (IRS Form 1040); and

(C) was in business as of February 15, 2020; is calculated according to (ii) or (iii) of this subsection(e)(6), depending on whether the borrower has employees.

(ii) If a borrower meeting the criteria in subsection (6)(i) of this section does not have any employees, the maximum loan amount is the product obtained by multiplying:

(A) The gross income of the borrower in 2019 or 2020, as reported on a Schedule F (IRS Form 1040), that is not more than \$100,000, divided by 12; and

(B) 2.5.

(iii) If a borrower meeting the criteria in subsection (6)(i) of this section has employees, the maximum loan amount is calculated as the lesser of:

(A) The product obtained by multiplying:

(1) The sum of (i) the difference between gross income and employee payroll costs of the borrower in 2019 or 2020 (at the election of the borrower), as reported on a Schedule F (IRS Form 1040), that is not more than \$100,000, divided by 12, and (ii) the average total monthly payment for employee payroll costs incurred or paid by the borrower during the same year elected by the borrower; by

(2) 2.5; or

(B) \$2,000,000.

(7) The maximum amount of a Second Draw PPP Loan to a borrower that has income from self-employment and files a Form 1040, Schedule C, is calculated as follows, depending on whether the borrower has employees:

(i) For a borrower that has income from self-employment and does not have any employees, the maximum loan amount is the lesser of:

(A) The product obtained by multiplying:

(1) The net profit of the borrower in 2019 or 2020, as reported on IRS Form 1040 Schedule C, that is not more than \$100,000, divided by 12; and

(2) 2.5 (or, only for a borrower assigned a NAICS code beginning with 72 as defined in subsection (f)(10) at the time of disbursement, 3.5).

(ii) For a borrower that has income from self-employment and has employees, the maximum loan amount is the lesser of:

(A) The product obtained by multiplying:

(1) The sum of (i) the net profit of the borrower in 2019 or 2020 (at the election of the borrower), as reported on IRS Form 1040 Schedule C, that is not more than \$100,000, divided by 12; (ii)

the average total monthly payment for employee payroll costs incurred or paid by the borrower during the same year elected by the borrower; by

(2) 2.5 (or, only for a borrower assigned a NAICS code beginning with 72 at the time of disbursement as defined in subsection (f)(10), 3.5); or

(B) \$2,000,000.

(8) The maximum amount of a Second Draw PPP Loan to a borrower that files taxes as a partnership is calculated as the lesser of:

(i) The product obtained by multiplying:

(A) The sum of (1) net earnings from self-employment of individual general partners in 2019 or 2020 (at the election of the borrower), as reported on IRS Form 1065 K-1, reduced by section 179 expense deduction claimed, unreimbursed partnership expenses claimed, and depletion claimed on oil and gas properties, multiplied by 0.9235,³⁷ that is not more than

\$100,000, divided by 12; (2) the average total monthly payment for employee payroll costs incurred or paid by the borrower during the same year elected by the borrower; by

(B) 2.5 (or, only for a borrower assigned a NAICS code beginning with 72 as defined in subsection (f)(10) at the time of disbursement, 3.5); or

(ii) \$2,000,000.

(9) Businesses that are part of a single corporate group shall in no event receive more than \$4,000,000 of Second Draw PPP Loans in the aggregate. Corporate group has the same meaning as in subsection (B)(4)(f) of the Consolidated First Draw PPP IFR.

(10) For purposes of calculating a borrower's maximum payroll costs, a borrower may multiply its average monthly payroll costs by 3.5 only if the borrower is in the Accommodation and Food Services sector and has reported a NAICS code beginning with 72 as its business activity code on its most recent IRS income tax return.

(g) How do I submit an application for a Second Draw PPP Loan and what documentation must I provide to demonstrate eligibility?

(1) The applicant must submit to the lender SBA Form 2483-SD (Paycheck Protection Program Second Draw Borrower Application Form) or the lender's equivalent form including the required certifications and the documentation in subsection (g)(2).

³⁷ This treatment follows the computation of self-employment tax from IRS Form 1040 Schedule SE Section A line 4 and removes the "employer" share of self-employment tax, consistent with how payroll costs for employees in the partnership are determined.

(2) At the time an applicant submits its loan application form, it must submit the following unless the documentation was submitted to the lender for the First Draw PPP Loan (*i.e.*, the applicant used calendar year 2019 figures to determine both its First Draw PPP Loan amount and its Second Draw PPP Loan amount, and the lender for the applicant's Second Draw PPP Loan is the same as the lender that made the applicant's First Draw PPP Loan):

(i) If the applicant is not self-employed, the applicant's Form 941 (or other tax forms containing similar information) and state quarterly wage unemployment insurance tax reporting forms from each quarter in 2019 or 2020 (whichever was used to calculate payroll), as applicable, or equivalent payroll processor records, along with evidence of any retirement and employee group health, life, disability, vision and dental insurance contributions, must be provided. A partnership must also include its IRS Form 1065 K-1s.

(ii) If the applicant is self-employed and has employees, the applicant's 2019 or 2020 (whichever was used to calculate loan amount) IRS Form 1040 Schedule C, Form 941 (or other tax forms or equivalent payroll processor records containing similar information) and state quarterly wage unemployment insurance tax reporting forms from each quarter in 2019 or 2020 (whichever was used to calculate loan amount), as applicable, or equivalent payroll processor records, along with evidence of any retirement and employee group health, life, disability, vision and dental insurance contributions, if applicable, must be provided. A payroll statement or similar documentation from the pay period that covered February 15, 2020 must be provided to establish the applicant was in operation on February 15, 2020.

(iii) If the applicant is self-employed and does not have employees, the applicant must provide (a) its 2019 or 2020 (whichever was used to calculate loan amount) Form 1040 Schedule C, (b) a 2019 or 2020 (whichever was used to calculate loan amount) IRS Form 1099-MISC detailing nonemployee compensation received (box 7), invoice, bank statement, or book of record that establishes that the applicant is self-employed; and (c) a 2020 invoice, bank statement, or book of record to establish that the applicant was in operation on or around February 15, 2020.

(iv) For loans with a principal amount greater than \$150,000, documentation sufficient to establish that the applicant experienced a reduction in revenue, as provided in subsection(c)(1)(iv), must be

provided at the time of application, which may include relevant tax forms, including annual tax forms, or, if relevant tax forms are not available, a copy of the applicant's quarterly income statements or bank statements.

(v) For loans with a principal amount of \$150,000 or less, the applicant must submit documentation sufficient to establish that the applicant experienced a reduction in revenue as provided in subsection (c)(1)(i) of this section at the time of application, on or before the date the borrower submits an application for loan forgiveness, or, if the borrower does not apply for loan forgiveness, at SBA's request. Such documentation may include relevant tax forms, including annual tax forms, or, if relevant tax forms are not available, a copy of the applicant's quarterly income statements or bank statements.

(3) On the Second Draw PPP Loan borrower application, an authorized representative of the applicant³⁸ must make the certifications listed in subsection (B)(12) of the Consolidated First Draw PPP IFR, except:

(i) Instead of the certification in subsection (B)(12)(v) of the Consolidated First Draw PPP IFR, the applicant must certify that the applicant has not and will not receive another Second Draw Paycheck Protection Program Loan; and

(ii) an authorized representative of the applicant must also certify:

(A) The Applicant has realized a reduction in gross receipts in excess of 25% relative to the relevant comparison time period. For loans greater than \$150,000, Applicant has provided documentation to the lender substantiating the decline in gross receipts. For loans of \$150,000 or less, Applicant will provide documentation substantiating the decline in gross receipts upon or before seeking loan forgiveness for the Second Draw Paycheck Protection Program Loan or upon SBA request.

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

(C) The Applicant is not a business concern or entity (a) 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 (b) 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.

(D) The Applicant is not required to submit a registration statement under section 2 of the Foreign Agents Registration Act of 1938 (22 U.S.C. 612).

(E) The Applicant is not a business concern or entity primarily engaged in political or lobbying activities, including 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.

(4) A lender must submit SBA Form 2484-SD (Paycheck Protection Program Lender's Application—Second Draw Loan Guaranty) electronically in accordance with program requirements and maintain the forms and supporting documentation in its files.

(h) What do lenders need to know and do?

(1) A lender approved to make First Draw PPP Loans may make Second Draw PPP Loans under the same terms and conditions applicable to First Draw PPP Loans, including all requirements under sections (C) and (D) of the Consolidated First Draw PPP IFR, except as otherwise provided in this section.

(2) What do lenders have to do in terms of loan underwriting?

(i) Each lender shall:

(A) Confirm receipt of borrower certifications contained in Paycheck Protection Program Second Draw Borrower Application Form (SBA Form 2483-SD) or lender's equivalent;

(B) Confirm receipt of information demonstrating that a borrower was either an eligible self-employed individual, independent contractor, or sole proprietorship with no employees or had employees for whom the borrower paid salaries and payroll taxes on or around February 15, 2020;

(C) Confirm the dollar amount of average monthly payroll costs for 2019 or 2020 (whichever was used to calculate loan amount) by reviewing the payroll documentation submitted with the borrower's application;

(D) For a Second Draw PPP Loan greater than \$150,000 or a loan of

\$150,000 or less where the borrower provides documentation of revenue reduction, confirm the dollar amount and percentage of the borrower's revenue reduction by performing a good faith review, in a reasonable time, of the borrower's calculations and supporting documents concerning the borrower's revenue reduction. For a loan of \$150,000 or less where the borrower does not provide documentation of revenue reduction with its application, the lender shall perform this review when the borrower provides such documentation. If the lender identifies errors in the borrower's calculation or material lack of substantiation in the borrower's supporting documents, the lender should work with the borrower to remedy the issue.

(E) Follow applicable BSA requirements (listed in subsection (C)(3)(d) of the Consolidated First Draw PPP IFR); and

(ii) Each lender's underwriting obligation under the Second Draw PPP is limited to the items above and reviewing the "Paycheck Protection Program Second Draw Borrower Application Form" (SBA Form 2483-SD) or lender's equivalent form.

(iii) A lender may rely on any certification or documentation submitted by an applicant for a PPP loan or an eligible recipient or eligible entity that (A) is submitted pursuant to all applicable statutory requirements, regulations, and guidance related to a PPP loan, including under sections 7(a)(36) or (37) of the Small Business Act (15 U.S.C. 636(a)(36) and (37)); and (B) attests that the applicant, eligible recipient, or eligible entity, as applicable, has accurately provided the certification or documentation to the lender in accordance with the statutory requirements, regulations, and guidance related to PPP loans. With respect to a lender that relies on such a certification or documentation related to a Second Draw PPP Loan, an enforcement action may not be taken against the lender, and the lender shall not be subject to any penalties relating to loan origination or forgiveness of the Second Draw PPP Loan, if—(A) the lender acts in good faith relating to loan origination or forgiveness of the 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 Second Draw PPP Loan.

(3) SBA will pay lenders fees for processing Second Draw PPP Loans in the following amounts:

³⁸ A representative of the applicant can certify for the business as a whole if the representative is legally authorized to do so.

(i) for a Second Draw PPP Loan of up to (and including) \$50,000, in an amount equal to the lesser of:

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

(B) \$2,500; and

(ii) for a Second Draw PPP Loan of more than \$50,000, in an amount that is:

(A) 5 percent of the balance of the financing outstanding at the time of disbursement of the loan for a loan up to (and including) \$350,000; and

(B) 3 percent of the balance of the financing outstanding at the time of disbursement of the loan for a loan above \$350,000.

(i) Will an applicant's Second Draw PPP Loan application be affected if there are unresolved issues regarding the applicant's First Draw PPP Loan?

(1) If a First Draw PPP Loan is under review pursuant to PPP rules and/or information in SBA's possession indicates that the borrower may have been ineligible for the First Draw PPP Loan it received or for the loan amount received by the borrower, the lender will receive notification from SBA when the lender submits an application for guaranty of a Second Draw PPP Loan ("unresolved borrower").

(2) If the lender receives notification that the Applicant for a Second Draw PPP Loan is an unresolved borrower, the lender will not receive an SBA loan number. SBA will resolve the issue related to the unresolved borrower expeditiously and will notify the lender of the process to obtain an SBA loan number for the Second Draw PPP Loan, if appropriate.

(j) Are Second Draw PPP Loans eligible for loan forgiveness?

Second Draw PPP Loans are eligible for loan forgiveness on the same terms and conditions as First Draw PPP Loans, except that Second Draw PPP Loan borrowers with a principal amount of \$150,000 or less are required to provide documentation of revenue reduction if such documentation was not provided at the time of the loan application as specified in subsections (g)(2)(iv) and (v) of this section.

V. Additional Information

SBA may provide further guidance, if needed, through SBA notices and a program guide which will be posted on SBA's website at www.sba.gov.

Questions on the Paycheck Protection Program 7(a) Loans (First Draw PPP Loans and Second Draw PPP Loans) may be directed to the Lender Relations Specialist in the local SBA Field Office. The local SBA Field Office may be

found at <https://www.sba.gov/tools/local-assistance/districtoffices>.

Compliance With Executive Orders 12866, 12988, 13132, 13563, and 13771, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Orders 12866, 13563, and 13771

This interim final rule is economically significant for the purposes of Executive Orders 12866 and 13563, and the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) had determined that this is a major rule under the Congressional Review Act (5 U.S.C. 804(2)). SBA, however, is proceeding under the emergency provision at Executive Order 12866 section 6(a)(3)(D) based on the need to move expeditiously to mitigate the current economic conditions arising from the COVID-19 emergency. This rule's designation under Executive Order 13771 will be informed by public comment.

This rule is necessary to implement the Economic Aid Act in order to provide economic relief to small businesses nationwide adversely impacted under the COVID-19 Emergency Declaration. We anticipate that this rule will result in substantial benefits to small businesses, their employees, and the communities they serve. However, we lack data to estimate the effects of this rule.

The Administrator of OIRA has determined that this is a major rule for purposes of the Congressional Review Act (5 U.S.C. 801 *et seq.*) (CRA). Under section 801(3) of the CRA, a major rule takes effect 60 days after the rule is published in the **Federal Register**.

Notwithstanding this requirement, section 808(2) of the CRA allows agencies to dispense with the requirements of section 801 when the agency for good cause finds that such procedure would be impracticable, unnecessary, or contrary to the public interest and the rule shall take effect at such time as the agency promulgating the rule determines. Pursuant to section 808(2) of the CRA, SBA finds, for good cause, that a 60-day delay in the effective date is unnecessary and contrary to the public interest.

As discussed elsewhere in this interim final rule, the last day to apply for and receive a PPP loan is March 31, 2021. Given the short duration of this program, and the urgent need to issue loans quickly, the Administrator in consultation with the Secretary has determined that it is impractical and not

in the public interest to provide a delayed effective date. An immediate effective date will give small businesses the maximum amount of time to apply for loans and lenders the maximum amount of time to process applications before the program ends.

Executive Order 12988

SBA has drafted this rule, to the extent practicable, in accordance with the standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988, to minimize litigation, eliminate ambiguity, and reduce burden. The rule has no preemptive or retroactive effect.

Executive Order 13132

SBA has determined that this rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various layers of government. Therefore, SBA has determined that this rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act, 44 U.S.C. Chapter 35

SBA has determined that this rule will impose new recordkeeping or reporting requirements under the Paperwork Reduction Act ("PRA"). This information collection (IC) consists of SBA Form 2483-SD (Paycheck Protection Program Second Draw Application Form) and SBA Form 2484-SD (Paycheck Protection Program Lender's Application—Second Draw Loan Guaranty). SBA has requested emergency approval for the IC required to implement the Second Draw PPP Program described above.

Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a proposed rule, or a final rule pursuant to section 553(b) of the APA or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the **Federal Register**. 5 U.S.C. 603, 604. Specifically, the RFA normally requires agencies to describe the impact of a rulemaking on small entities by providing a regulatory impact analysis. Such analysis must address the consideration of regulatory options that would lessen the economic effect of the rule on small entities. The RFA defines a "small entity" as (1) a proprietary firm meeting the size standards of the Small Business Administration (SBA); (2) a nonprofit organization that is not dominant in its field; or (3) a small government

jurisdiction with a population of less than 50,000. 5 U.S.C. 601(3)–(6). Except for small government jurisdictions with a population of less than 50,000, neither State nor local governments are “small entities.”

The requirement to conduct a regulatory impact analysis does not apply if the head of the agency “certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” 5 U.S.C. 605(b). The agency must, however, publish the certification in the **Federal Register** at the time of publication of the rule, “along with a statement providing the factual basis for such certification.” If the agency head has not waived the requirements for a

regulatory flexibility analysis in accordance with the RFA’s waiver provision, and no other RFA exception applies, the agency must prepare the regulatory flexibility analysis and publish it in the **Federal Register** at the time of promulgation or, if the rule is promulgated in response to an emergency that makes timely compliance impracticable, within 180 days of publication of the final rule. 5 U.S.C. 604(a), 608(b).

Rules that are exempt from notice and comment are also exempt from the RFA requirements, including conducting a regulatory flexibility analysis, when among other things the agency for good cause finds that notice and public procedure are impracticable,

unnecessary, or contrary to the public interest. Small Business Administration’s Office of Advocacy guide: *How to Comply with the Regulatory Flexibility Ac. Ch.1. p.9*. Since this rule is exempt from notice and comment, SBA is not required to conduct a regulatory flexibility analysis.

Authority: 15 U.S.C. 636(a)(36); Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116–136, section 1114; and Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, Pub. L. 116–260, section 303.

Jovita Carranza,
Administrator.

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