

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 120 and 121

[Docket Number SBA-2021-0013]

RIN 3245-AH77

Business Loan Program Temporary Changes; Paycheck Protection Program as Amended by American Rescue Plan Act

AGENCY: U.S. Small Business Administration.

ACTION: Interim final rule.

SUMMARY: This interim final rule implements changes related to loans made under the Paycheck Protection Program (PPP), which was originally established under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) to provide economic relief to small businesses nationwide adversely impacted by the Coronavirus Disease 2019 (COVID-19). On December 27, 2020, the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (Economic Aid Act) was enacted, extending the authority to make PPP loans through March 31, 2021, revising certain PPP requirements, and permitting second draw PPP loans. On January 14, 2021, SBA published an interim final rule that incorporated the Economic Aid Act amendments to the PPP and consolidated the interim final rules (and important guidance) that had been issued governing borrower eligibility, lender eligibility, and PPP application and origination requirements for PPP loans. On March 11, 2021, the American Rescue Plan Act of 2021 (American Rescue Plan Act) (Pub. L. 117-2) was enacted expanding eligibility for first and second draw PPP loans, revising the exclusions from payroll costs for purposes of loan forgiveness, and providing that a PPP borrower that receives a PPP loan after December 27, 2020 can be approved for a Shuttered Venue

Operator Grant under certain conditions. This interim final rule revises the PPP rules to incorporate the American Rescue Plan Act's amendments to the PPP. Additionally, this interim final rule clarifies the eligibility for first draw PPP loans for applicants that are assigned a North American Industry Classification System (NAICS) code beginning with 72 and have more than one physical location and clarifies certain payroll cost exclusions included in the Economic Aid Act.

DATES: Effective date: The provisions of this interim final rule are effective [INSERT DATE OF FILING AT THE OFFICE OF THE FEDERAL REGISTER].

Applicability date: The provisions of this interim final rule incorporating the American Rescue Plan Act changes to the PPP apply to PPP loans approved, and loan forgiveness applications submitted, on or after March 11, 2021.

Comment date: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by number SBA-2021-00XX 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: A 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 March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act) (Pub. L. 116-136) was enacted to provide emergency assistance and health care response for individuals, families, and businesses affected by the coronavirus disease 2019 (COVID-19) pandemic. Section 1102 of the CARES Act temporarily permitted the Small Business Administration (SBA) to guarantee 100 percent of 7(a) loans under a new program titled the “Paycheck Protection Program,” pursuant to section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)) (First Draw PPP Loans). Section 1106 of the CARES Act provided for forgiveness of up to the full principal amount of qualifying loans guaranteed under the Paycheck Protection Program (PPP).

On December 27, 2020, the Economic Aid to Hard-Hit Small Businesses, Nonprofits and Venues Act (Economic Aid Act) (Pub. L. 116-260) was enacted. The Economic Aid Act reauthorized lending under the PPP through March 31, 2021. The Economic Aid Act added a new temporary section 7(a)(37) to the Small Business Act, which authorizes SBA to guarantee additional PPP loans (Second Draw PPP Loans) to eligible borrowers under generally the same terms and conditions available under section 7(a)(36) of the Small Business Act through March 31, 2021. The Economic Aid Act also redesignated section 1106 of the CARES Act as section 7A of the Small Business Act, to appear after section 7 of the Small Business Act.

SBA initially published an interim final rule implementing the PPP on April 15, 2020 and subsequently issued additional interim final rules. On January 14, 2021, SBA published interim final rules implementing the Economic Aid Act amendments to the PPP.¹ On February 5, 2021, SBA published an additional interim final rule implementing Economic Aid Act changes related to the forgiveness and review of PPP loans.² Following the publication of the interim final rules implementing the Economic Aid Act, SBA published another interim final rule revising certain loan amount calculation and eligibility provisions of those rules.³ As described below, this interim final rule further revises the consolidated interim final rule implementing updates to the PPP, the interim final rule on second draw PPP loans, and the consolidated interim final rule on loan forgiveness requirements and loan review procedures, by incorporating the expanded eligibility for First Draw and Second Draw PPP Loans and the exclusions from payroll costs that may be forgiven enacted in the American Rescue Plan Act; confirming that First Draw PPP Loan applicants that are assigned a NAICS code beginning with 72 and that employ no more than 500 employees per physical location are eligible; and clarifying certain forgiveness payroll cost exclusions in the Economic Aid Act.

II. Comments and Immediate Effective Date

This interim final rule is being issued without advance notice and public comment because section 1114 of the CARES Act and section 303 of the Economic Aid Act authorize SBA to issue regulations to implement the Paycheck Protection Program without regard to

¹ 86 FR 3692 (Jan. 14, 2021) (which we refer to as the “consolidated interim final rule implementing updates to the PPP”); 86 FR 3712 (Jan. 14, 2021) (which we refer to as the “interim final rule on second draw PPP loans”).

² 86 FR 8283 (Feb. 5, 2021) (which we refer to as the “consolidated interim final rule on loan forgiveness requirements and loan review procedures”).

³ 86 FR 13149 (March 8, 2021).

notice requirements. In addition, this rule is being issued to allow for immediate implementation of these changes. The intent of the CARES Act, the Economic Aid Act, and the American Rescue Plan Act is that SBA provide relief to America's small businesses and nonprofit organizations expeditiously. Given the urgent need to provide borrowers with timely relief and the short period of time before the program ends on March 31, 2021, SBA 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 allow SBA to give small businesses and nonprofit organizations affected by this interim final rule 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 interim final rule is effective immediately, comments are solicited from interested members of the public on all aspects of the interim final rule.

These comments must be submitted on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. SBA will consider these comments and the need for making any revisions as a result of these comments.

III. Paycheck Protection Program as Amended by the American Rescue Plan Act

1. Eligibility, Size, Affiliation Waivers, and Certifications

Part III.B.1. of the consolidated interim final rule implementing updates to the PPP identifies the businesses, organizations, and individuals that are eligible for First Draw PPP Loans, including the applicable size standards. Part III.B.3. of that rule sets forth the affiliation rules generally applicable to PPP loans, including the affiliation waivers available to certain businesses and organizations. The American Rescue Plan Act expands eligibility

to additional businesses and organizations and revises size standards and adds affiliation waivers for certain eligible businesses and organizations.

The American Rescue Plan Act also revises section 324 of the Economic Aid Act to provide that businesses that receive a PPP loan after December 27, 2020 are no longer ineligible for a Shuttered Venue Operator (SVO) Grant under certain conditions. Specifically, if a PPP borrower receives a First Draw or Second Draw PPP Loan after December 27, 2020, the amount of any subsequently-approved SVO grant will be reduced by the amount of the First Draw or Second Draw PPP Loan. (If a PPP borrower receives both a First Draw and a Second Draw PPP Loan after December 27, 2020, the amount of any subsequently-approved SVO grant will be reduced by the combined amount of both PPP loans.) However, because sections 7(a)(36)(U) and 7(a)(37)(A)(iv)(III)(ee) of the Small Business Act were not amended by the American Rescue Plan Act, if a PPP applicant is approved for an SVO grant before SBA issues a loan number for the PPP loan, the applicant is ineligible for the PPP loan and acceptance of any PPP loan proceeds will be considered an unauthorized use.

In addition, SBA is making a clarifying change to the list of eligible entities for First Draw PPP Loans by adding businesses with a NAICS code beginning with 72 that employ no more than 500 employees per physical location. These entities are included in section 7(a)(36)(D)(iii) of the Small Business Act (15 U.S.C. 636(a)(36)(D)(iii)), as amended by the CARES Act, and are addressed in section B.3. of the consolidated interim final rule implementing updates to the PPP. Because the omission of these entities from the list of eligible entities could cause borrower confusion, SBA is revising subsection B.1.a. to add these entities.

Therefore, Part III.B.1.a. (86 FR 3692, 3695) of the consolidated interim final rule implementing updates to the PPP is revised to read as follows:

1. What businesses, organizations, and individuals are eligible?

a. Am I eligible?^{2 3}

You are eligible for a PPP loan if:

i. You, together with any affiliates (if applicable),⁴ are:

- a small business concern under the applicable revenue-based size standard established by SBA in 13 C.F.R. 121.201 for your industry or under the SBA alternative size standard⁵;
- an independent contractor, eligible self-employed individual, or sole proprietor;
- a business concern, a tax-exempt nonprofit organization described in section 501(c)(3) of the Internal Revenue Code (IRC), a tax-exempt veterans organization described in section 501(c)(19) of the IRC, a Tribal business concern described in section 31(b)(2)(C) of the Small Business Act, and you employ no more than the greater of 500 employees or, if applicable, the size standard in number of employees established by SBA in 13 C.F.R. 121.201;

² See interim final rule on Second Draw PPP Loans for eligibility criteria for Second Draw PPP Loans, which was published separately. 86 FR 3712 (January 14, 2021).

³ This subsection was originally published at 85 FR 20811, subsection III.2.a. (April 15, 2020), as amended by 85 FR 36308 (June 16, 2020), 85 FR 36717 (June 18, 2020), and 85 FR 38301 (June 26, 2020), and has been modified to reflect subsequent rules or guidance, the Economic Aid Act, and the American Rescue Plan Act.

⁴ See subsection B.3 of the consolidated interim final rule implementing updates to the PPP regarding the applicability of affiliation rules at 13 CFR 121.103 and 121.301 to PPP loans.

⁵ Under SBA's alternative size standard, a business concern may qualify as a small business concern if it, together with any affiliates: (1) has a maximum tangible net worth of not more than \$15 million; and (2) the average net income after Federal income taxes (excluding any carry-over losses) for the two full fiscal years before the date of application is not more than \$5 million.

- a housing cooperative that employs no more than 300 employees and meets the criteria described in subsection B.1.g.v. of the consolidated interim final rule implementing updates to the PPP, as amended by this interim final rule;
- a business concern that is assigned a North American Industry Classification System (NAICS) code beginning with 72 that employs no more than 500 employees per physical location;
- an eligible section 501(c)(6) organization or an eligible destination marketing organization⁶, that employs no more than 300 employees per physical location;
- a news organization that is majority owned or controlled by a NAICS code 511110 or 5151 business or a nonprofit public broadcasting entity with a trade or business under NAICS 511110 or 5151, that employs no more than 500 employees (or, if applicable, the size standard in number of employees established by SBA in 13 C.F.R. 121.201 for your industry) per location;
- a tax-exempt non-profit organization described in section 501(c)(3) of the Internal Revenue Code that employs not more than 500 employees per physical location of the organization;
- a tax-exempt nonprofit organization described in any paragraph of section 501(c) of the Internal Revenue Code of 1986, other than

⁶ See subsections B.1.g.vii. and B.1.g.viii for additional information on the eligibility of section 501(c)(6) organizations, and destination marketing organizations. As amended by the American Rescue Plan Act, the applicable size standard for section 501(c)(6) organizations and destination marketing organizations is not more than 300 employees *per physical location*.

paragraph (3), (4), (6), or (19) that employs not more than 300 employees per physical location and meets the criteria described in subsection B.1.g.iii. of the consolidated interim final rule implementing updates to the PPP, as amended by this interim final rule;

- a business concern or other organization that is assigned a NAICS code of 519130, certifies in good faith as an internet-only news publisher or internet-only periodical publisher, and is engaged in the collection and distribution of local or regional and national news and information, that employs not more than 500 employees (or the size standard in number of employees established by SBA in 13 C.F.R. 121.201 for NAICS code 519130) per physical location, and meets the criteria described in subsection B.1.g.iv. of the consolidated interim final rule implementing updates to the PPP, as amended by this interim final rule; or
- another type of entity specifically provided for by PPP rules (as described below); and

ii. you were in operation on February 15, 2020, and either had employees for whom you paid salaries and payroll taxes or paid independent contractors, as reported on a Form 1099-MISC or you were an eligible self-employed individual, independent contractor, or sole proprietorship with no employees.

You must submit documentation sufficient to establish eligibility and to demonstrate the qualifying payroll amount, which may include, as applicable,

payroll records, payroll tax filings, Form 1099-MISC, Schedule C or F, income and expenses from a sole proprietorship, or bank records.

* * * * *

The American Rescue Plan Act expands eligibility for PPP loans to tax-exempt organizations described in any paragraph of section 501(c) of the Internal Revenue Code of 1986, except for section 501(c)(4). Thus, subsections III.B.1.g.iii. and iv. of the consolidated interim final rule implementing updates to the PPP, which describe the eligibility of electric cooperatives and telephone cooperatives that are exempt from Federal income taxation under section 501(c)(12) of the Internal Revenue Code, are no longer necessary. For PPP loans made after the effective date of this interim final rule, such organizations will be eligible as set forth in a new subsection for tax-exempt organizations under any paragraph of section 501(c) of the Internal Revenue Code (other than paragraph (3), (4), (6), or (19)) discussed immediately below. With the new statutory change, the size eligibility requirements for electric and telephone cooperatives have changed as well. Previously, these entities were eligible if they had no more than 500 employees, met the employee-based SBA size standard for their industry (if higher), or met SBA's alternative size standard. For PPP loans made after the effective date of this interim final rule, these entities are eligible if they have no more than 300 employees per physical location, and these entities are no longer permitted to use the employee-based SBA size standard for their industry or SBA's alternative size standard to determine size.

Therefore, Part III.B.1.g. of the consolidated interim final rule implementing updates to the PPP (86 FR 3692, 3696-3697) is revised by replacing subsections B.1.g.iii. and iv. of the industry-specific eligibility issues with two new subsections to read as follows:

g. Industry-Specific Eligibility Issues

* * * * *

iii. Are tax-exempt nonprofit organizations described in any paragraph of section 501(c) of the Internal Revenue Code of 1986, other than paragraph (3), (4), (6), or (19), eligible for PPP loans?¹⁷

Yes. An organization described in any paragraph of section 501(c) of the Internal Revenue Code of 1986, other than paragraph (3), (4), (6), or (19) and exempt from tax under section 501(a) of such Code, is eligible for a PPP loan if: (1) the organization does not receive more than 15 percent of its receipts from lobbying activities; (2) the lobbying activities of the organization do not comprise more than 15 percent of the total activities of the organization; (3) 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 (4) the organization employs not more than 300 employees.¹⁸ However, this does not include any organization that, if the organization were a business concern, would be described in 13 CFR 120.110 (or any successor regulation or other related guidance or rule that may be issued by SBA) other than a business concern

¹⁷ This subsection was originally published at 85 FR 29847, subsection III.1. (May 19, 2020) and has been revised to conform to the American Rescue Plan Act. Section 7(a)(36)(D)(ix) of the Small Business Act (15 U.S.C. 636(a)(36)(D)(ix)) as amended by the American Rescue Plan Act adds “additional covered nonprofit entities” to the eligible entities for First Draw PPP Loans. The term “additional covered nonprofit entities” is defined in section 7(a)(36)(A)(xvii) as “an organization described in any paragraph of section 501(c) of the Internal Revenue Code of 1986, other than paragraph (3), (4), (6), or (19), and exempt from tax under section 501(a) of such Code; and does not include any entity that, if the entity were a business concern, would be described in section 120.110 of title 13, Code of Federal Regulations (or in any successor regulation or other related guidance that may be issued by the Administrator) other than a business concern described in paragraph (a) or (k) of such section.”

¹⁸ For such entities with more than one physical location, section 7(a)(36)(D)(iii)(III) of the Small Business Act (15 U.S.C. 636(a)(36)(D)(iii)(III)), as amended by section 5001 of the American Rescue Plan Act, provides that such entities with more than one physical location are eligible if they employ not more than 300 employees *per physical location*.

described in paragraph (a) or (k) of such section. Tax-exempt organizations described in section 501(c)(3), 501(c)(6) and 501(c)(19) of the Internal Revenue Code of 1986 have separate eligibility requirements described elsewhere in this rule. Tax-exempt organizations described in section 501(c)(4) of the Internal Revenue Code of 1986 are ineligible for a PPP loan.

iv. Are internet publishing organizations eligible for PPP loans?¹⁹

Yes. A business concern or other organization that was not eligible to receive a PPP loan before March 11, 2021, is eligible for a PPP loan if it: (1) is assigned a NAICS code of 519130; (2) certifies in good faith that it is an internet-only news publisher or internet-only periodical publisher; (3) is engaged in the collection and distribution of local or regional and national news and information; (4) employs not more than 500 employees (or the size standard in number of employees established by SBA in 13 C.F.R. 121.201 for NAICS code 519130) per physical location; and (5) certifies in good faith that proceeds of the loan will be used to support expenses at the component of the business concern or organization that supports local or regional news.²⁰

* * * * *

To implement the American Rescue Plan Act provision that allows businesses to receive both a Shuttered Venue Operator (SVO) Grant and a PPP loan under certain conditions, Part III.B.2.a.vi. of the consolidated interim final rule implementing updates to the PPP (86 FR 3692, 3698) is revised to read as follows:

¹⁹ This subsection was originally published at 85 FR 35550, subsection III.1. (June 11, 2020) and has been revised to conform with the American Rescue Plan Act.

²⁰ See section 7(a)(36)(D)(iii)(IV) of the Small Business Act as amended by the American Rescue Plan Act.

2. What businesses, organizations, and individuals are ineligible?

a. Could I be ineligible even if I meet the eligibility requirements in section 1?²⁸

You are ineligible for a PPP loan if, for example:

* * * * *

vi. You or your business have been approved for a grant under the Shuttered Venue Operator (SVO) Grant Program under section 324 of the Economic Aid Act. (If you receive a PPP loan after December 27, 2020 and you are subsequently approved for an SVO grant, the amount of the SVO grant received will be reduced by the amount of a First Draw or Second Draw PPP Loan. If you receive both a First Draw and Second Draw PPP Loan after December 27, 2020 and you are subsequently approved for an SVO grant, the SVO grant will be reduced by the combined amounts of both PPP loans. A PPP loan received before December 27, 2020 will not reduce the amount of the SVO grant.)³⁰

As noted above, the American Rescue Plan Act added affiliation waivers for certain eligible organizations with respect to PPP loans. To implement the additional affiliation waiver applicable to eligible internet publishing organizations, the parenthetical at the end of Part III.B.2.a.viii. of the consolidated interim final rule implementing updates to the PPP (86 FR 3692, 3698) is revised to include a reference to B.1.g.iv, which describes the conditions under which such internet publishing companies are eligible. Therefore, Part III.B.2.a.viii of the

²⁸ This subsection was originally published at 85 FR 20811, subsection III.2.a. (April 15, 2020), and amended by 85 FR 36308 (June 16, 2020), 85 FR 36717 (June 18, 2020), 85 FR 38301 (June 26, 2020), and 86 FR 13149 (March 8, 2021), and has been modified to conform to subsequent interim final rules or guidance, the Economic Aid Act, the American Rescue Plan Act and for readability.

³⁰ This subsection has been revised to conform to section 5005 of the American Rescue Plan Act.

consolidated interim final rule implementing updates to the PPP, as amended by this interim final rule, is revised to read as follows:

* * * * *

viii. Your business 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)³² (SBA will not consider whether a news organization that is eligible under the conditions described in subsection 1.f. and 1.g.vi. or an internet publishing organization that is eligible under the conditions described in subsection 1.g.iv. is affiliated with an entity, which includes any entity that owns or controls such news organization or internet publishing organization, that is an issuer³³);

* * * * *

Also, Part III.B.12.vi. of the consolidated interim final rule implementing updates to the PPP (86 FR 3692, 3706) is revised to read as follows:

12. What certifications need to be made?

On the PPP borrower application, an authorized representative of the applicant must certify in good faith to all of the below:

* * * * *

vi. The Applicant has not been approved for a Shuttered Venue Operator (SVO) grant from SBA as of the date of this loan application, and the Applicant

³² Added to conform to section 342 of the Economic Aid Act, which also added the following definitions to paragraph 7(a)(36)(A) of the Small Business Act (15 U.S.C. 636(a)(36)(A)): “(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)).” This provision applies to loans made on or after December 27, 2020.

³³ See section 317 of the Economic Aid Act, as amended by section 5001 of the American Rescue Plan Act.

acknowledges that if the Applicant is approved for an SVO grant before SBA issues a loan number for this loan, the Applicant is ineligible for the loan and acceptance of any loan proceeds will be considered an unauthorized use.

Part III.B.3. of the consolidated interim final rule implementing updates to the PPP describes the affiliation rules generally applicable to PPP loans (86 FR 3692, 3698-3699).

The American Rescue Plan Act adds affiliation waivers for certain businesses and organizations. Therefore, footnote 40 in part III.B.3.a. is revised to read as follows:

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 and the American Rescue Plan Act, waives 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 North American Industry Classification System code beginning with 72; (2) any business concern operating as a franchise that is assigned a franchise identifier code by the Administration; (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); (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 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, per physical location of such business concern and is majority owned or controlled by a business concern that is assigned a North American Industry Classification System code beginning with 511110 or 5151; or (b) any nonprofit organization that is assigned a North American Industry Classification System code beginning with 5151; and (5) any business concern or organization that is assigned a NAICS code of 519130, certifies in good faith as an internet-only news publisher or internet-only periodical publisher, and is engaged in the collection and distribution of local or regional and national news and information, if the business concern or organization employs not more than 500 employees (or the size standard in number of employees established by SBA in 13 C.F.R. 121.201 for NAICS code 519130) per physical location, and is majority owned or controlled by a business concern or organization that is assigned NAICS 519130. This interim final rule has no effect on these statutory waivers, which remain in full force and effect. As a result, the affiliation rules contained in section 121.301 also do not apply to these types of entities. In addition, paragraph 7(a)(36)(D) of the Small Business Act (15 U.S.C. 636(a)(36)(D)), as amended by section 342 of the Economic Aid Act and section

5001 of the American Rescue Plan Act states that, with respect to a business concern made eligible under paragraph 7(a)(36)(D)(iii)(II) or (IV) or 7(a)(36)(D)(iv)(IV) or (V) (certain news organizations and internet publishing organizations), 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 or organization, is an issuer as defined in subsection III.B.2.a.viii.

Part IV.(c) of the interim final rule on second draw PPP loans sets forth who is eligible for a Second Draw PPP Loan. The American Rescue Plan Act amended the eligibility criteria for a Second Draw PPP Loan similarly to the amendments discussed above for First Draw PPP Loans. Therefore, part IV.(c)(1) of the interim final rule on second draw PPP loans (86 FR 3712, 3717) is revised to read as follows:

(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, an eligible nonprofit news organization, additional covered nonprofit entity, or eligible internet publishing company³³ that:

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

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.

- (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;
- (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, eligible news organizations, (501)(c)(3) nonprofit organizations, additional covered nonprofit entities, 501(c)(6) organizations, eligible destination marketing organizations, and eligible internet publishing organizations with more than one physical location described in subsection (c)(3), (c)(4), (c)(5), or (c)(6) of this section; and
- (iv) (A) experienced a reduction in revenue in calendar year 2020, measured as follows:

* * * * *

Part IV.(c) of the interim final rule on second draw PPP loans (86 FR 3712, 3718) also is revised by adding two new subsections at the end to read as follows:

- (5) An entity is eligible for a Second Draw PPP Loan if it is a 501(c)(3) nonprofit organization, an additional covered nonprofit entity, an eligible 501(c)(6) organization, or an eligible destination marketing organization and it employs not more than 300 employees per physical location of the entity or organization.
- (6) A business concern or other organization that was not eligible to receive a covered loan before March 11, 2021, is eligible to receive a Second Draw PPP Loan for the continued provision of news, information, content, or emergency

information if it is assigned a NAICS code of 519130, certifies in good faith as an internet-only news publisher or internet-only periodical publisher, and is engaged in the collection and distribution of local or regional and national news and information, and:

- (i) the business concern or organization employs not more than 300 employees per physical location of the business concern or organization; and
- (ii) the business concern or organization makes a good faith certification that proceeds of the loan will be used to support expenses at the component of the business concern or organization that supports local or regional news.

Part IV.(d) of the interim final rule on second draw PPP loans states that eligibility for Second Draw PPP Loans is governed by the same affiliation rules (and waivers) as First Draw PPP Loans, except as described in subsection (d)(2). The American Rescue Plan Act revised the affiliation waivers for First Draw and Second Draw PPP Loans. Although the American Rescue Plan Act did not amend section 7(a)(37)(E)(ii) of the Small Business Act (15 U.S.C. 636(a)(37)(E)(ii)) to substitute “not more than 300 employees” for “not more than 500 employees” in subclause (V) of section 7(a)(36)(D)(iv) of the Small Business Act (15 U.S.C. 636(a)(36)(D)(iv)), as section 7(a)(37)(E)(ii) does for eligible news organizations, SBA is doing so here to harmonize the affiliation waiver for internet publishing organizations with the 300 employees per location size standard for Second Draw PPP Loans to internet publishing organizations. .

Therefore, Part IV.(d)(2) of the interim final rule on second draw PPP loans (86 FR 3712, 3718) is revised by adding a new subsection (iii) to read as follows:

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

* * * * *

(iii) Any business concern or other organization that was not eligible to receive a covered loan before March 11, 2021, is assigned a NAICS code of 519130, certifies in good faith as an internet-only news publisher or internet-only periodical publisher, and is engaged in the collection and distribution of local or regional and national news and information, if the business concern or organization:

(A) employs not more than 300 employees, per physical location of the business concern or organization; and

(B) is majority owned or controlled by a business concern or organization that is assigned a NAICS code of 519130.

In order to implement the American Rescue Plan Act provision that allows businesses to receive both a Shuttered Venue Operator (SVO) Grant and a PPP loan, part IV.(e)(5) of the interim final rule on second draw PPP loans (86 FR 3712, 3719) is revised to read as follows:

(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:

* * * * *

(5) any person or entity that has been approved for a grant under the Shuttered Venue Operator (SVO) Grant Program under section 324 of the Economic Aid Act. (If you receive a PPP loan after December 27, 2020 and you are

subsequently approved for an SVO grant, the amount of the SVO grant received will be reduced by the amount of a First Draw or Second Draw PPP Loan. If you receive both a First Draw and Second Draw PPP Loan after December 27, 2020 and you are subsequently approved for an SVO grant, the SVO grant will be reduced by the combined amounts of both PPP loans. A PPP loan received prior to December 27, 2020 will not reduce the amount of the SVO grant.)

As noted above, the American Rescue Plan Act added affiliation waivers for certain eligible organizations with respect to PPP loans. To implement the additional affiliation waiver applicable to eligible internet publishing organizations, the parenthetical at the end of Part IV.(e)(7) of the interim final rule on second draw loans (86 FR 3712, 3719) is revised to include a reference to Part IV.(c)(6), which describes the conditions under which such internet publishing companies are eligible. Therefore, Part IV.(e)(7) of the interim final rule on second draw loans, as amended by this interim final rule, is revised to read as follows:

* * * * *

(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 that SBA will not consider whether a news organization that is eligible under subsection (c)(4) or an internet publishing organization that is eligible under subsection (c)(6) is affiliated with an entity, which includes any entity that owns or controls such news organization or internet publishing organization, that is an issuer);

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2. Forgiveness of First Draw and Second Draw PPP Loans

Part III.B.14 of the consolidated interim final rule implementing updates to the PPP provides general information to borrowers on loan forgiveness. The consolidated interim final rule implementing updates to the PPP requires a revision to clarify certain forgiveness payroll cost exclusions included in the Economic Aid Act and to incorporate section 3134 of the Internal Revenue Code of 1986 (Internal Revenue Code) as added by section 9651 of the American Rescue Plan Act. Additionally, section 5001(c) of the American Rescue Plan Act revised the forgiveness payroll cost exclusions to include premiums taken into account in determining the credit allowed under section 6432 of the Internal Revenue Code. Therefore, the fourth full sentence in part III.B.14 of the consolidated interim final rule implementing updates to the PPP (86 FR 3692, 3706) reading “[p]ayroll costs that are qualified wages taken into account in determining the Employer Retention Credit are not eligible for loan forgiveness,” is revised to read “The following payroll costs are not eligible for loan forgiveness: (a) qualified wages taken into account in determining (i) the Employee Retention Credit under section 2301 of the CARES Act, as amended by section 206 of the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (Relief Act), (ii) the Employee Retention Credit under section 3134 of the Internal Revenue Code, or (iii) the disaster credit under section 303 of the Relief Act, and (b) premiums for COBRA continuation coverage taken into account in determining the credit under section 6432 of the Internal Revenue Code.”

Part IV.1 of the consolidated interim final rule on loan forgiveness requirements and loan review procedures sets forth general information about loan forgiveness for First Draw and Second Draw PPP Loans. The consolidated interim final rule on loan forgiveness requirements and loan review procedures requires revisions to clarify certain forgiveness payroll cost exclusions under the Economic Aid Act and revisions to incorporate the forgiveness payroll cost exclusions required by the American Rescue Plan Act. Part IV.1.a.(1) describes the payroll costs that are eligible for loan forgiveness and identifies those costs that are to be excluded. The second full sentence of part IV.1.a.(1), Payroll Costs (86 FR 8283, 8286), reading “[p]ayroll costs that are qualified wages taken into account in determining the Employer Retention Credit are not eligible for loan forgiveness,” is revised to read “The following payroll costs are not eligible for loan forgiveness: (a) qualified wages taken into account in determining (i) the Employee Retention Credit under section 2301 of the CARES Act, as amended by section 206 of the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (Relief Act) (CARES Act Employee Retention Credit), (ii) the Employee Retention Credit under section 3134 of the Internal Revenue Code of 1986 (ARP Employee Retention Credit), or (iii) the disaster credit under section 303 of the Relief Act (Disaster Credit), and (b) premiums for COBRA continuation coverage taken into account in determining the credit under section 6432 of the Internal Revenue Code of 1986 (COBRA Continuation Coverage).”

Part IV.1.b. of the consolidated interim final rule on loan forgiveness requirements and loan review procedures describes the amount eligible for loan forgiveness for individuals with self-employment income who file an IRS Form 1040, Schedule C or F. The last clause of part IV.1.b.i (86 FR 8283, 8287) is revised to read “but excluding any qualified wages

taken into account in determining the CARES Act Employee Retention Credit, ARP Employee Retention Credit, or the Disaster Credit or premiums for COBRA Continuation Coverage.”

3. *Additional Information*

SBA may provide further guidance, if needed, through SBA notices that will be posted on SBA’s website at www.sba.gov. Questions on the Paycheck Protection Program 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 and 13563 the Congressional Review Act, the Administrative Procedure Act, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601-612).

Executive Orders 12866 and 13563

This interim final rule is economically significant for the purposes of Executive Orders 12866 and 13563. 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 is necessary to provide economic relief to small businesses and nonprofit organizations nationwide adversely impacted under the COVID-19 Emergency Declaration. We anticipate that this rule will result in substantial benefits to small businesses, nonprofit organizations, their employees, and the communities they serve. However, we lack data to estimate the effects of this rule.

The Administrator of the Office of Management and Budget’s Office of Information and Regulatory Affairs (OIRA) has determined that this is a major rule for purposes of Subtitle E

of the Small Business Regulatory Enforcement and Fairness Act of 1996 (also known as the Congressional Review Act or CRA) (5 U.S.C. 804(2) et seq.). Under the CRA, a major rule takes effect 60 days after the rule is published in the Federal Register. 5 U.S.C. 801(a)(3).

Notwithstanding this requirement, 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. 5 U.S.C. 808(2). Pursuant to § 808(2), SBA for good cause finds that a 60-day delay to provide public notice is impracticable and contrary to the public interest. Likewise, for the same reasons, SBA for good cause finds that there are grounds to waive the 30-day effective date delay under the Administrative Procedure Act. 5 U.S.C. 553(d)(3).

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, SBA 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 and nonprofit organizations affected by this interim final rule 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 require revisions to existing recordkeeping or reporting requirements of the Paycheck Protection Program (PPP) information collections (OMB Control Numbers 3245–0407 and 3245-0417. The revisions will affect SBA Form 2483, Borrower Application Form Revised March 3, 2021, SBA Form 2483-C, Borrower Application Form for Schedule C Filers Using Gross Income March 3, 2021, SBA Form 2483-SD, Second Draw Borrower Application Form Revised March 3, 2021, SBA Form 2483-SD-C, Second Draw Borrower Application Form for Schedule C Filers Using Gross Income March 3, 2021, SBA Form 2484, Lender’s Application – Paycheck Protection Program Loan Guaranty Revised March 3, 2021, SBA Form 2484-SD, Lender’s Application – Second Draw Loan Guaranty Revised March 3, 2021,. SBA Forms 2483, 2483-C, 2483-SD, and 2483-SD-C were amended to include the additional eligible entities (where applicable) and revise the Shuttered Venue Operator Grant Program certification due to the changes made by the American Rescue Plan Act. Other clarifying changes were also made to the forms. Additionally, conforming changes were made to SBA Forms 2484 and 2484-SD.

SBA has requested Office of Management and Budget (OMB) emergency approval of the revisions to the information collections to give small businesses and nonprofits affected by this interim final rule the maximum amount of time to apply for loans and lenders the maximum amount of time to process applications before the program ends.

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 Administrative Procedure Act 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.

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. SBA 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); 15 U.S.C. 636(a)(37); 15 U.S.C. 636m; Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116-136, section 1114, Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (Pub. L. 116-260), section 303, and American Rescue Plan Act of 2021, sections 5001 and 5005.

James Rivera,
Acting Administrator,
Small Business Administration.