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## The Paycheck Protection Program: First Draw PPP Loans

The Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (Pub. L. 116-260) (the “EAA”), which was passed by Congress on December 21, 2020 and signed into law by President Trump on December 27, 2020 as part of the Consolidated Appropriations Act, 2021, makes significant changes to the Paycheck Protection Program (PPP) established on March 27, 2020 under the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”).

### FIRST DRAW PPP LOAN PROGRAM

The Economic Aid Act reauthorized lending under the PPP for first-time loans (“First Draw PPP Loans”) and revised certain PPP requirements. These loans were available beginning the week of January 11, 2021. The application deadline for First Draw PPP Loans is March 31, 2021.

The SBA has implemented the reopening of First Draw PPP Loans pursuant to the Consolidated First Draw PPP Interim Final Rule (the “Consolidated IFR”) issued on or about January 1, 2021, which incorporates the Economic Aid Act amendments and consolidates and restates many of the interim final rules issued previously by the SBA with respect to First Draw PPP Loans, including as to borrower eligibility, lender eligibility, PPP application and origination requirements for new PPP loans, and loan increases and loan forgiveness for PPP loans. Certain provisions of the Economic Aid Act and Consolidated IFR are summarized below.

#### A. First Draw PPP Loan Eligibility Requirements

- ***Eligible First Draw PPP Borrowers.*** Small businesses are eligible for a First Draw PPP Loan if they (a) were in operation on February 15, 2020,<sup>1</sup> (b) have not permanently closed,<sup>2</sup> (c) need the loan to support ongoing business operations due to current economic uncertainty, AND (d) fall into one of the following categories:
  1. Any business (including partnerships<sup>3</sup>) with no more than 500 employees (full-time, part-time and affiliate employees) who principally reside in the United States.
  2. Any business that otherwise meets the SBA’s “size standards” under its applicable North American Industry Classification System (NAICS) code, which are usually stated in the average number of employees over the past 12 months or average annual receipts over the past 3 years.
  3. Any business that meets the SBA’s “alternative size standards” which means generally (a) a maximum tangible net worth of not more than \$15 million, and (b) an average net income after

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<sup>1</sup> A seasonal business will be considered to have been in operation as of February 15, 2020, if the business was in operation for any 12-week period between February 15, 2019 and February 15, 2020.

<sup>2</sup> New under the EAA and Consolidated IFR.

<sup>3</sup> New under the EAA and Consolidated IFR.

Federal income taxes (excluding any carry-over losses) of not more than \$5 million during the 2 full fiscal years before the date of the application.

4. Sole proprietors, independent contractors and self-employed individuals (NOT including partners of a partnership<sup>4</sup>) who (a) regularly carry on any trade or business, including those in the gig-economy (i.e. workers paid by the task, such as Uber and Lyft drivers, Amazon Flex delivery drivers, and handymen), (b) have their principal place of residence in the United States, and (c) filed or will file a Form 1040 Schedule C for 2019.
5. Hospitality and food service businesses (those with an NAICS code beginning with 72) with no more than 500 employees per physical location.
6. A tax-exempt non-profit entity under Section 501(c)(3) of the Internal Revenue Code (the “Code”) which has no more than 500 employees who principally reside in the United States or otherwise meets the SBA’s employee-based size standards for its industry (see 13 C.F.R. 121.201).
7. A tax-exempt veterans organization under Section 501(c)(19) of the Code which has no more than 500 employees who principally reside in the United States or otherwise meets the SBA’s employee-based size standards for its industry (see 13 C.F.R. 121.201).
8. A Tribal business described in Section 31(b)(2)(C) of the Small Business Act which has no more than 500 employees who principally reside in the United States or otherwise meets the SBA’s employee-based size standards for its industry (see 13 C.F.R. 121.201).
9. A housing cooperative<sup>5</sup> as defined in Section 216(b) of the Code that employs no more than **300 employees**.
10. A Section 501(c)(6) organization<sup>6</sup> under the Code if (a) the organization is not a professional sports league or organization with the purpose of promoting or participating in political campaign or other related activity; (b) it does not receive more than 15% of its receipts from lobbying activities; (c) its lobbying activities do not comprise more than 15% of its total activities; (d) the cost of its lobbying activities did not exceed \$1,000,000 during the most recent tax year that ended prior to February 15, 2020; and (d) it employs no more than **300 employees**.
11. A destination marketing organization<sup>7</sup> if (a) it is a 501(c)(3) tax exempt organization; (b) its lobbying activities do not comprise more than 15% of its total activities; (c) the cost of its lobbying activities did not exceed \$1,000,000 during the most recent tax year that ended prior to February 15, 2020; (d) it is (i) described in Section 501(c)(3) of the Code and is exempt for taxation under Section 501(a) of the Code, or (ii) a quasi-government entity or political subdivision of a State or local government, including any instrumentality of those entities; and (e) it employs no more than **300 employees**.
12. A news organization<sup>8</sup> that is majority owned or controlled by a NAICS code 511110 (Newspaper Publisher) or 5151 (Radio and Television Broadcasting) business that employs

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<sup>4</sup> New under the EAA and Consolidated IFR.

<sup>5</sup> New under the EAA and Consolidated IFR.

<sup>6</sup> New under the EAA and Consolidated IFR.

<sup>7</sup> New under the EAA and Consolidated IFR.

<sup>8</sup> New under the EAA and Consolidated IFR.

no more than 500 employees (or, if applicable, the size standard in number of employees established in 13 C.F.R. 121.201) per location;

13. A nonprofit broadcasting entity with a trade or business under NAICS code 511110 or 5151, that employs no more than 500 employees (or, if applicable, the size standard in number of employees established in 13 C.F.R. 121.201) per location, and will use the proceeds of any PPP loan only to support expenses at the component of the organization that produces or distributes locally focused or emergency information.
  14. An electric cooperative or telephone cooperative that is a 501(c)(12) tax exempt entity if it satisfies the employee-based size standard established in the CARES Act (500 or less), the SBA's employee-based size standard corresponding to its primary industry, if higher, or both tests in the SBA's "alternative size standard."
  15. The applicant was in operation on February 15, 2020, and either had employees for whom it paid salaries and payroll taxes or paid independent contractors, as reported on Form 1099-MISC, or was an eligible self-employed individual, independent contractor or sole proprietorship with no employees.
- ***Ineligible First Draw PPP Borrowers.*** Applicants who otherwise meet the foregoing requirements will be denied a First Draw PPP loan if any of the following apply:
    1. The applicant does not need the loan to support its ongoing operations due to the current economic uncertainty resulting from the COVID-19 pandemic.
    2. The applicant's business has permanently closed (businesses that have temporarily closed or suspended operations are eligible).
    3. The applicant is engaged in any activity that is illegal under Federal, state or local law (including direct or indirect cannabis businesses).
    4. The applicant's business or organization was not in operation on February 15, 2020.
    5. The applicant or ANY owner (if applicant is a business entity) is presently suspended, debarred, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the loan transaction by any Federal department or agency.
    6. The Applicant or its business has received or will receive a grant under the Shuttered Venue Operator Grant program under Section 324 of the EAA.<sup>9</sup>
    7. The President, Vice President, the head of an Executive department, or a Member of Congress, or the spouse of such person, directly or indirectly holds a controlling interest in the applicant.<sup>10</sup>
    8. Publicly traded companies, 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.

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<sup>9</sup> New under the EAA and Consolidated IFR.

<sup>10</sup> New under the EAA and Consolidated IFR.

9. The applicant or ANY owner (if applicant is a business entity) is a debtor in a bankruptcy proceeding, either at the time it submits the loan application or at any time before the loan is disbursed.
10. The applicant or ANY of its owners (if applicant is a business entity), or any business owned or controlled by them, has ever received a direct or guaranteed loan from the SBA or any other Federal agency that is currently delinquent or has defaulted in the last 7 years and caused a loss to the government.
11. The applicant (if an individual) or any individual owning more than 20% of the applicant's equity (if applicant is a business entity) is presently incarcerated or, for any felony, subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction.
12. The applicant (if an individual) or ANY of its owners has, within the last 5 years, for any felony involving fraud, bribery, embezzlement, or a false statement in a loan application or an application for federal financial assistance, or within the last year for any other felony, (a) been convicted; (b) pleaded guilty; (c) pleaded nolo contendere; or (d) commenced any form of parole or probation (including probation before judgment).
13. The applicant does not intend to use the loan funds to retain workers and maintain payroll or make qualified mortgage interest payments, lease payments, and utility payments.
14. The applicant is a business located in a foreign country (businesses in the U.S. owned by aliens may qualify).
15. The applicant is a household employer (employs household employees such as nannies or housekeepers).
16. The applicant is a financial business primarily engaged in the business of lending, such as banks, finance companies, and factors (pawn shops, although engaged in lending, may qualify in some circumstances).
17. The applicant is a hedge fund or private equity firm.
18. The applicant is a passive business owned by developers and landlords that do not actively use or occupy the assets acquired or improved with the loan proceeds (except Eligible Passive Companies under Small Business Act Section 120.111).
19. The applicant is a life insurance company.
20. The applicant is a pyramid sale distribution plan.
21. The applicant derives more than one-third of gross annual revenue from legal gambling activities.
22. The applicant is a private club or business which limits the number of memberships for reasons other than capacity.
23. The applicant is a government-owned entity (except for businesses owned or controlled by a Native American tribe).

24. The applicant is a loan packager earning more than one-third of its gross annual revenue from packaging SBA loans.
25. The applicant is a business in which the SBA lender or CDC, or any of its Associates (as defined in 13 CFR Section 109.20), owns an equity interest.
26. The applicant is a business which (a) presents live performances of a prurient sexual nature; or (b) derives directly or indirectly more than *de minimis* gross revenue through the sale of products or services, or the presentation of any depictions or displays, of a prurient sexual nature.
27. The applicant is a business primarily engaged in political or lobbying activities.
28. The applicant is engaged in a speculative business (such as oil wildcatting).

Many of the foregoing disqualifications are identified in 13 C.F.R. 120.11 and the SBA's Standard Operating Procedure (SOP) 50 10, Subpart B, Chapter 2, which the Consolidated IFR incorporates as disqualifying factors under the PPP.

## B. Determining Who are Employees.

- ***Employee Defined.*** The term “employees” for purposes of the PPP includes individuals employed on a full-time, part-time, or other basis. It also includes student employees, other than state or federal work-study students or students of an institution of higher education. Independent contractors of the business are **NOT** counted as “employees.” These individuals may apply for PPP Loans separately based on their own compensation and benefits expenses.
- ***Affiliation.*** The applicable employee number limitation will typically include employees of the borrower's affiliated businesses (domestic and foreign).<sup>11</sup> Businesses are affiliates of each other under SBA rules (see 13 C.F.R. Section 121.103(f)) when one controls or has the power to control the other, including through (a) ownership or control of more than 50% of the voting equity of the other, (b) control of the board of directors or the chief executive position, or (c) the ability of a shareholder to prevent a quorum or otherwise block action by the board of directors or shareholders.

The affiliation requirements have been waived for the following:

1. Accommodation and food service companies which have been assigned an NAICS code beginning with 72 (as noted above).
2. A business operating as a franchise that has an SBA-assigned franchise identifier code.
3. Any business that receives financial assistance from a company licensed under Section 301 of the Small Business Investment Act (SBIA), which typically does not affiliate businesses owned wholly or in substantial part by licensed small business investment companies or development companies qualifying under the SBIA.
4. Any business (including any station which broadcasts pursuant to a license granted by the FCC under Title III of the Communications Act of 1934) that employs no more than 500 employees, or meets the size standard established by the SBA for the NAICS code applicable to the

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<sup>11</sup> Applicants will be required to provide information concerning affiliates as part of the loan application.

business, per physical location of such business, and is majority owned or controlled by a business that is assigned an NAICS code beginning with 511110 or 5151.

5. Any nonprofit organization that is assigned an NAICS code beginning with 5151.
  6. Faith-based organizations where the application of the rule would substantially burden those organizations' religious exercise.
- ***Determining Number of Employees.*** Applicants can determine the number of employees over one of the following time periods:
    1. The average number of employees during the 12 months before the loan application.
    2. The average number of employees during calendar year 2019.
    3. The average number of employees per pay period in the 12 completed calendar months prior to the date of the loan application (this is the SBA's standard calculation).
    4. For seasonal employers, the average number of employees from February 15, 2019 and June 30, 2019 or between March 1, 2019 and June 30, 2019.
    5. For businesses in operation for less than 12 months, the average number of employees from January 1, 2020 through February 29, 2020, or the average number of employees for each of the pay periods that the business has been operational.

Applicants should NOT include volunteers or independent contractors in their employee numbers. As noted above, independent contractors are eligible to apply for PPP loans on their own.

### **C. Maximum First Draw PPP Loan Amount**

- ***Generally.*** The maximum amount for First Draw PPP Loans is the lesser of (a) \$10,000,000, or (b) an amount calculated using an authorized payroll-based formula, as explained below in this Section C.
- ***Methodology 1*** (Generally)

Step 1: Aggregate "payroll costs" (defined below) from 2019 or 2020 for employees whose principal place of business is the United States.

Step 2: Subtract any compensation paid to an employee in excess of \$100,000 on an annualized basis, as prorated for the period during which the payments are made or the obligation to make the payment is incurred.

Step 3: Divide the amount from Step 2 by 12 to calculate average monthly payroll costs.

Step 4: Multiply the average monthly payroll costs from Step 3 by 2.5.

Step 5: Add the outstanding amount of an Economic Injury Disaster Loan (EIDL) made between January 31, 2020 and April 3, 2020 that will be refinanced (do not include any "advance" under an EIDL COVID-19 loan). The total is the maximum amount of the First Draw PPP Loan.

- **Methodology 2** (Self-Employment Without Employees, Filing Form 1040 Schedule C)

Step 1: Find the net profit amount from line 31 of Schedule C to the applicant's 2019 or 2020 IRS Form 1040 (if using 2020 but have not filed a 2020 return, fill out and complete the expected value). If this amount is over \$100,000, reduce it to \$100,000. If this amount is \$0 or less, the applicant is not eligible for a First Draw PPP Loan.

Step 2: Divide the amount from Step 1 by 12 to calculate the average monthly net profit amount.

Step 3: Multiply the average monthly net profit amount from Step 2 by 2.5.

Step 4: Add the outstanding amount of an Economic Injury Disaster Loan (EIDL) made between January 31, 2020 and April 3, 2020 that you seek to refinance (do not include any "advance" under an EIDL COVID-19 loan). The total is the maximum amount of the First Draw PPP Loan.

- **Methodology 3** (Self-Employment With Employees, Filing Form 1040 Schedule C)

Step 1: Compute 2019 or 2020 payroll by adding (a) 2019 or 2020 Form 1040 Schedule C line 31 net profit amount (if using 2020 but have not filed a 2020 return, fill out and complete the expected value), up to \$100,000 on an annualized basis, as prorated for the period during which payments are made or the obligation to make the payments is incurred (if this amount is less than \$0, set the amount at \$0) plus (b) 2019 or 2020 gross wages and tips paid to the applicant's employees whose principal place of residence is in the United States computed using 2019 or 2020 IRS Form 941 Taxable Medicare wages and tips (line 5c, column 1) from each quarter plus any pre-tax employee contributions for health insurance or other fringe benefits excluded from Taxable Medicare wages and tips (subtract any amounts paid to any individual employee in excess of \$100,000 on an annualized basis), plus (c) 2019 or 2020 employer contributions to employee group health, life, disability, vision and dental insurance (portion of IRS Form 1040 Schedule C line 14 attributable to those contributions), retirement contributions (Form 1040 Schedule C line 19), and state and local taxes assessed on employee compensation (primarily under SUTA).

Step 2: Divide the amount from Step 1 by 12 to calculate the average monthly amount.

Step 3: Multiply the average monthly amount from Step 2 by 2.5.

Step 4: Add the outstanding amount of an Economic Injury Disaster Loan (EIDL) made between January 31, 2020 and April 3, 2020 that you seek to refinance (do not include any "advance" under an EIDL COVID-19 loan). The total is the maximum amount of the First Draw PPP Loan.

- **Methodology 4** (Seasonal Employers)

Under Section 336 of the EAA<sup>12</sup>, a seasonal employer must determine its maximum PPP loan amount by using the employer's (a) average total monthly payments for payroll for any 12-week period selected by the employer beginning February 15, 2019 and ending February 15,

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<sup>12</sup> New under the EAA and Consolidated IFR.

2020, or (b) average total monthly payments for payroll during any consecutive 12-week period between May 1, 2019 and September 15, 2019.

- **Methodology 5** (Farmers and Ranchers Without Employees)<sup>13</sup>

Step 1: Find the gross income from line 9 of Schedule F to the applicant's 2019 or 2020 IRS Form 1040 (if using 2020 but have not filed a 2020 return, fill out and complete the expected value). If this amount is over \$100,000, reduce it to \$100,000. If this amount is \$0 or less, the applicant is not eligible for a First Draw PPP Loan.

Step 2: Divide the amount from Step 1 by 12 to calculate the average monthly gross income.

Step 3: Multiply the average monthly gross income from Step 2 by 2.5.

Step 4: Add the outstanding amount of an Economic Injury Disaster Loan (EIDL) made between January 31, 2020 and April 3, 2020 that you seek to refinance (do not include any "advance" under an EIDL COVID-19 loan). The total is the maximum amount of the First Draw PPP Loan.

- **Methodology 6** (Farmers and Ranchers With Employees)

Step 1: Compute 2019 or 2020 payroll (using the same year for all items) by adding (a) the difference between 2019 or 2020 Form 1040 Schedule F line 9 gross income amount (if using 2020 but have not filed a 2020 return, fill out and complete the expected value) and the sum of Schedule F lines 15, 22, 23 and 37, up to \$100,000 on an annualized basis, as prorated for the period which the payments are made or the obligation to make the payments is incurred (if the amount is over \$100,000, reduce it to \$100; if the amount is less than \$0, set this amount at \$0), plus (b) 2019 or 2020 gross wages and tips paid to the applicant's employees whose principal place of residence is in the United States computed using 2019 or 2020 IRS Form 941 Taxable Medicare wages and tips (line 5c, column 1) from each quarter plus any pre-tax employee contributions for health insurance or other fringe benefits excluded from Taxable Medicare wages and tips (subtract any amounts paid to any individual employee in excess of \$100,000 on an annualized basis), plus (c) 2019 or 2020 employer contributions to employee group health, life, disability, vision and dental insurance (portion of IRS Form 1040 Schedule F line 15 attributable to those contributions), retirement contributions (Form 1040 Schedule F line 15), and state and local taxes assessed on employee compensation (primarily under SUTA).

Step 2: Divide the amount from Step 1 by 12 to calculate the average monthly amount.

Step 3: Multiply the average monthly amount from Step 2 by 2.5.

Step 4: Add the outstanding amount of an Economic Injury Disaster Loan (EIDL) made between January 31, 2020 and April 3, 2020 that you seek to refinance (do not include any "advance" under an EIDL COVID-19 loan). The total is the maximum amount of the First Draw PPP Loan.

A farmer or rancher who received a loan before December 27, 2020 may request a recalculation of the maximum loan amount based on the foregoing formula regarding gross

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<sup>13</sup> New under the EAA and Consolidated IFR.



income if doing so would result in a larger covered loan amount and may receive an increase in its PPP loan based on the recalculation.

- **Methodology 7** (Partnerships)

Step 1: Compute 2019 or 2020 payroll (using the same year for all items) by adding (a) net earnings from self-employment of individual general partners in 2019 or 2020, as reported on IRS Form 1065 K-1, reduced by Section 179 expense deductions claimed, unreimbursed partnership expenses claimed, and depletion claimed on oil and gas properties, multiplied by 0.9235, that is no more than \$100,000 per partner, plus (b) 2019 or 2020 gross wages and tips paid to the applicant's employees whose principal place of residence is in the United States computed using 2019 or 2020 IRS Form 941 Taxable Medicare wages and tips (line 5c, column 1) from each quarter plus any pre-tax employee contributions for health insurance or other fringe benefits excluded from Taxable Medicare wages and tips (subtract any amounts paid to any individual employee in excess of \$100,000 on an annualized basis), plus (c) 2019 or 2020 employer contributions for employee group health, life, disability, vision and dental insurance (portion of IRS Form 1065 line 19 attributable to those contributions), plus (d) 2019 or 2020 employer contributions to employee retirement plans, if any (IRS Form 1065 line 18); plus (e) 2019 or 2020 employer state and local taxes assessed on employee compensation (primarily under SUTA).

Step 2: Divide the amount from Step 1 by 12 to calculate the average monthly payroll costs.

Step 3: Multiply the average monthly payroll costs from Step 2 by 2.5.

Step 4: Add the outstanding amount of an Economic Injury Disaster Loan (EIDL) made between January 31, 2020 and April 3, 2020 that you seek to refinance (do not include any "advance" under an EIDL COVID-19 loan). The total is the maximum amount of the First Draw PPP Loan.

#### **D. Use of First Draw PPP Loans**

- ***Eligible Expenses.*** Proceeds of First Draw PPP Loan can be used for:
  1. Payroll Costs (as defined below) (at least 60% of the First Draw PPP Loan proceeds must be used for Payroll Costs).
  2. Costs related to the continuation of group health care, life, disability, vision, or dental benefits during periods of paid sick, medical, or family leave (including related insurance premiums).
  3. Mortgage interest payments (but not mortgage prepayments or principal payments).
  4. Rent payments.
  5. Utility payments.
  6. Interest payments on any other debt obligations that were incurred before February 15, 2020.
  7. Refinancing an SBA EIDL loan made between January 31, 2020 and April 3, 2020.
  8. Covered operations expenses (payments for any business software or cloud computing service that facilitates business operations, product or service delivery, the processing, payment or

tracking of payroll expenses, human resources, sales and billing functions, or accounting or tracking of supplies, inventory, records and expenses).

9. Covered property damage costs (costs related to property damage and vandalism or looting due to public disturbances that occurred during 2020 that were not covered by insurance or other compensation).
  10. Covered supplier costs (expenditures made by a borrower for the supply of goods that (a) are essential to the operations of the borrower at the time at which the expenditure is made, and (b) is made pursuant to a contract, order or purchase order in effect at any time before the covered loan period or with respect to perishable goods, in effect before or at any time during the covered period).
  11. Covered worker protection expenses (operating or capital expenditures to facilitate the adaptation of the business activities of any entity to comply with requirements established or guidance issued by the U.S. DHHS, CDC, OSHA, or any equivalent requirements established or guidance issued by a State or local government, during the period beginning on March 1, 2020 and ending on the date on which the national emergency with respect to COVID-19 expires, which may include expenditures to purchase, maintain, renovate or expand borrower assets (e.g., drive-through windows, outdoor business space, air or air pressure ventilation or filtration systems, physical barriers (e.g., sneeze guards), health screening capability) or to purchase respirators, masks, gloves, surgical gowns, and other personal protective equipment).
- ***Payroll Costs.*** Payroll costs for purposes of PPP loans include the following:
    1. Gross salaries, wages, commissions or similar compensation up to \$100,000 per year (\$8,333.33 per month) per employee whose principal place of residence is in the United States (because payroll costs are calculated on a gross basis, borrowers should not subtract federal taxes imposed and withheld, such as the employee's share of FICA and income taxes required to be withheld from employees; however, employer-side federal payroll taxes imposed on salaries and wages are excluded from payroll costs for purposes of the PPP).
    2. Cash tips or the equivalent (based on employer records of past tips or, in the absence of such records, a reasonable, good faith employer estimate of such tips).
    3. Payments for vacation, parental, family, medical or sick leave (excluding any sick leave or family or medical leave wages for which a credit is allowed under Sections 7001 and 7003 of the Families First Coronavirus Response Act).
    4. Allowance for separation or dismissal.
    5. Payments for provision of employee benefits consisting of group health care or group life, disability, vision or dental insurance (including insurance premiums).
    6. Employer contributions to retirement plans (such as 401(k), SEP IRAs, Simple IRAs).
    7. Payments of state and local taxes assessed on such compensation.
    8. For independent contractors or sole proprietors, wages, commissions, income, or net earnings from self-employment or similar compensation.

- **Unauthorized Use.** If PPP loan funds are used for unauthorized purposes, the borrower will be required to pay those amounts. If a borrower knowingly uses funds for unauthorized purposes, the borrower will be subject to additional liability such as charges for fraud.

#### E. Other First Draw PPP Loan Terms

- 1% interest rate, calculated on a non-compounding, non-adjustable basis<sup>14</sup>
- 5-year loan maturity
- Loan payment deferral until the SBA remits the loan forgiveness amount to the lender IF the borrower submits a loan forgiveness application to the lender within 10 months after the end of the applicable loan forgiveness period (interest will continue to accrue during the deferment period)
- Non-recourse (no personal guarantees)
- No collateral required
- 100% SBA guaranteed
- No borrower fees
- No prepayment penalties
- 100% loan forgiveness under certain circumstances
- Lenders are permitted to rely on certifications of the borrower to determine the borrower's eligibility and use of loan proceeds

#### F. First Draw PPP Loan Forgiveness

- **Forgiveness Covered Period.** The borrower's "loan forgiveness covered period" is the period beginning on the date the lender disburses the PPP loan and ending any date selected by the borrower that occurs during the period (a) beginning on the date that is 8 weeks after the date of disbursement and (b) ending on the date that is 24 weeks after the date of disbursement.
- **Loan Forgiveness Application.** The borrower must submit the loan forgiveness application to the lender within 10 months after the end of the loan forgiveness covered period. If the borrower fails to do this, it must begin to make principal and interest payments after that period.

#### G. First Draw PPP Loan Application and Underwriting

- **Application Deadline.** The First Draw PPP Loan application deadline is March 31, 2021.
- **Applicant Documentation**
  1. The applicant must submit a completed and signed SBA Paycheck Protection Program Borrower Application Form 2483 to an SBA-approved Section 7(a) lender (e-signatures or e-consents can be used regardless of the number of owners but borrowers should be prepared to provide "wet signatures" in due course). The authorized representative of the applicant will be required to make various certifications when executing the Loan Application. Knowingly making a false statement on the Loan Application is punishable under the law, including

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<sup>14</sup> If the borrower submits its First Draw PPP Loan forgiveness application within 10 months after the end of its "loan forgiveness period," it will not have to make any payments of principal or interest on the loan before the date on which the SBA remits the loan forgiveness amount on the loan to the lender.

imprisonment of not more than 5 years and/or a fine of up to \$250,000 under 18 USC §§ 1001 and 3571; imprisonment of not more than 2 years and/or a fine of not more than \$5,000 under 15 USC § 645; and imprisonment of not more than 30 years and/or a fine of not more than \$1,000,000 under 18 USC § 1014.

2. The applicant must submit the following documentation with the Loan Application:

- If the applicant is not self-employed, (i) the applicant's Form 941 (or other tax forms containing similar information), state quarterly wage unemployment insurance tax reporting forms from each quarter in 2019 or 2020 (whichever was used to calculate payroll), or equivalent payroll processor records, (ii) evidence of any retirement and employee group health, life, disability, vision and dental insurance contributions, (iii) a payroll statement or similar documentation from the pay period that covered February 15, 2020 to establish that the applicant was in business on that date.
- If the applicant is self-employed and has employees, (i) the applicant's 2019 or 2020 (whichever was used to calculate the 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 for each quarter in 2019 or 2020 (whichever was used to calculate loan amount), or equivalent payroll processor records, (ii) evidence of any retirement and employee group health, life, disability, vision and dental insurance contributions, and (iii) a payroll statement or similar documentation from the pay period that covered February 15, 2020, to establish that the application was in operation on February 15, 2020.
- If the applicant is self-employed without employees, (i) the applicant's 2019 or 2020 (whichever was used to calculate the loan amount) IRS Form 1040 Schedule C, (ii) 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 applicant is self-employed, and (iii) a 2020 invoice, bank statement, or book of record to establish that the applicant was in operation on February 15, 2020.
- If the applicant is a rancher or farmer with employees, (i) the applicant's 2019 or 2020 (whichever was used to calculate the loan amount) IRS Form 1040 Schedule F and state quarterly wage unemployment insurance tax reporting forms for each quarter in 2019 or 2020 (whichever was used to calculate loan amount), or equivalent payroll processor records, (ii) evidence of any retirement and employee group health, life, disability, vision and dental insurance contributions, and (iii) a payroll statement or similar documentation from the pay period that covered February 15, 2020, to establish that the application was in operation on February 15, 2020.
- If the applicant is a rancher or farmer without employees, (i) the applicant's 2019 or 2020 (whichever was used to calculate the loan amount) IRS Form 1040 Schedule F, (ii) 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 applicant is self-employed, and (iii) a payroll statement or similar documentation from the pay period that covered February 15, 2020, to establish that the application was in operation on February 15, 2020.

- If the applicant is a partnership, (i) the applicant's 2019 or 2020 (whichever was used to calculate the loan amount) IRS Form 1065 K-1s, (ii) relevant supporting documentation if the partnership has employees, including the 2019 or 2020 (whichever was used to calculate loan amount) IRS Form 941 and state quarterly wage unemployment insurance tax reporting forms from each quarter (or equivalent payroll processor records or IRS Wage and Tax Statements), (iii) evidence of any retirement and employee group health, life, disability, vision and dental insurance contributions, and (iv) a payroll statement or similar documentation from the pay period that covered February 15, 2020, to establish that the applicant was in business on that date.

- ***Loan Underwriting***

The lender must:

1. Confirm receipt of the borrower certifications contained in the SBA Paycheck Protection Program Borrower Application Form 2483;
2. Confirm receipt of information demonstrating that 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; and
3. Confirm the dollar amount of average monthly payroll costs for 2019 or 2020 by reviewing the payroll documentation submitted with the Loan Application.

- ***Lender Reliance of Applicant Certifications***

The lender can rely on any certification or documentation submitted by an applicant for a First Draw PPP Loan or an eligible recipient or eligible entity that (a) is submitted pursuant to all applicable statutory requirements, regulations and guidance related to the PPP loan program, 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.

An enforcement action may not be taken against a lender that relies on such certifications or documentation, and the lender shall not be subject to any penalties related to PPP loan origination or forgiveness if (a) the lender acts in good-faith 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 PPP loan.

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